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SCSL-03-01-A
(6975-9531)

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SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR

IN THE APPEALS CHAMBER

Before: Justice Shireen Avis Fisher, Presiding
Justice Emmanuel Ayoola
Justice George Gelaga King
Justice Renate Winter
Justice Jon M. Kamanda
Justice Philip Nyamu Waki, Alternate Judge

Registrar: Ms. Binta Mansaray

Date filed: 23 November 2012

SPECIAL COURT FOR SIERRA LEONE
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THE PROSECUTOR **Against** **CHARLES GHANKAY TAYLOR**
(Case No. SCSL-03-01-A)

PUBLIC PROSECUTION RESPONDENT'S SUBMISSIONS
WITH CONFIDENTIAL ANNEXES A AND D

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I. OVERVIEW

Introduction

1. Pursuant to Article 20 of the Statute of the Special Court for Sierra Leone ("Statute") and Rules 106 and 112 of the Rules of Procedure and Evidence ("Rules"), the Prosecution files these Respondent's Submissions ("Response")[1] to the appeal of Charles Ghankay Taylor against the Judgement dated 18 May 2012,[2] as revised by the Corrigendum[3] issued on 30 May 2012,[4] and the Sentencing Judgement[5] dated 30 May 2012, in the case of *The Prosecutor v. Charles Ghankay Taylor*, Case No. SCSL-03-01-T. On 19 July 2012, the Prosecution and Mr. Taylor filed their respective Notices of Appeal.[6] On 1 October 2012 both Parties filed their Appellant's Submissions.[7] The Appeals Chamber ordered the Parties to file their Respondent's Submissions on 23 November 2012.[8]

2. Mr. Taylor ("Taylor") was found guilty pursuant to Article 6(1) of the Statute of: (i) aiding and abetting the commission of the crimes set forth in Counts 1 to 11 of the Indictment,[9] and (ii) planning the commission of crimes set forth in Counts 1 to 11 of the Indictment that were perpetrated during the attacks on Kono and Makeni in December 1998 and in the invasion of and retreat from Freetown between December 1998 and February 1999. Trial Chamber II sentenced Taylor to a single term of imprisonment of fifty (50) years.

3. Taylor is appealing all convictions against him and the sentence of fifty (50) years imprisonment.[10] The Prosecution opposes all of Taylor's Grounds of Appeal. None of his Grounds of Appeal demonstrate any error of law invalidating the Judgement, and/or error of fact or procedure occasioning a miscarriage of justice, pursuant to Article 20 of the Statute and Rule 106 of the Rules. Where the Trial Chamber relied *only* on circumstantial evidence, it

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[1] The Prosecution wishes to thank interns Caitlin Warner and Morgen Morrissette for their essential assistance and tireless dedication in helping prepare this Response.
[2] Judgement, SCSL-03-01-T-1281, 18 May 2012.
[3] Corrigendum to Judgement filed on 18 May 2012, SCSL-03-01-T-1284, 30 May 2012.
[4] Judgement, SCSL-03-01-T-1283, 18 May 2012 (Judgement).
[5] Sentencing Judgement, SCSL-03-01-T-1285, 30 May 2012 (Sentencing Judgement).
[6] Prosecution's Notice of Appeal, SCSL-03-01-A-1300, 19 July 2012 (Prosecution Notice); Notice of Appeal of Charles Ghankay Taylor, SCSL-03-01-A-1301, 19 July 2012 (Taylor Notice).
[7] Prosecution Appellant's Submissions, SCSL-03-01-A-1325, 1 October 2012 (Prosecution Appeal); Appellant's Submissions of Charles Ghankay Taylor, SCSL-2003-01-A-1326, 1 October 2012; Corrigendum to Appellant's Submissions of Charles Ghankay Taylor, SCSL-2003-01-A-1331, 8 October 2012 (Taylor Appeal).
[8] Decision on Defence Motion for Reconsideration or Review of "Decision on Prosecution and Defence Motions for Extension of Time and Page Limits Pursuant to Rules 111, 112 and 113" and Final Order on Extension of Time for Filing Submissions, SCSL-03-01-T-1320, 21 August 2012.
[9] Prosecution's Second Amended Indictment, SCSL-03-01-PT-263, 29 May 2007 (Indictment).
[10] Taylor Appeal, paras. 20-21, 875.

reached the only reasonable conclusion available to it. Taylor's Appeal should be dismissed in its entirety.

4. Before responding to each of Taylor's Grounds of Appeal, the Prosecution makes the following preliminary submissions. The Prosecution has attempted to present a holistic and comprehensive response within the context of Taylor's cross referencing in numerous Grounds and repetitive arguments in others. To the extent possible, the Prosecution has responded with minimum repetition. Some of Taylor's Grounds fail to properly develop an issue for appeal; some references are incomplete, inaccurate or misleading. The Prosecution has noted all those it has identified. Similarly, some submissions are mere repetitions of arguments adversely decided at trial which do not warrant appellate intervention.

5. It is clear from the Chamber's exhaustive assessment of the evidence before it that the challenged findings and conclusions are right in law and within its discretion to resolve evidentiary differences and reach factual findings. The Judgement must be considered in light of this comprehensive approach and the Chamber's discretion as the primary fact finder. Taylor's piecemeal approach to the findings and conclusions do not establish errors of law, factor or procedure in regard to the Chamber's proper application of the correct law to the totality of the evidence.

II. RESPONSE TO TAYLOR'S GROUNDS OF APPEAL

Standard of Appellate Review

6. It is incumbent upon a party to demonstrate in an appeal how the Trial Chamber erred. The Appeals Chamber has repeatedly reiterated that it has the inherent discretion to dismiss a party's submissions which are evidently unfounded without providing detailed reasoning in writing. Submissions that are obscure, contradictory, vague or suffer from other formal and obvious insufficiencies may be, on that basis, summarily dismissed without detailed reasoning.[11] As the Prosecution argues below, several of Taylor's Grounds of Appeal suffer from these deficiencies and should to be summarily dismissed.

7. The standards of review on appeal for errors of law and fact are dealt with in paragraphs 8 to 11 herein as well as in paragraphs 10-12 of the Prosecution Appellant's Submissions, and for an appeal against sentence in paragraphs 196 to 197 of the Prosecution Appellant's Submissions.

[11] *RUF* Appeal Judgment (AJ), paras. 36-44. See also *Munyakazi* AJ, para. 10; *Krajišnik* AJ, paras. 16, 17.

8. In regard to procedural errors, the Appellant must state in what manner the error has occasioned a miscarriage of justice. Procedural errors that could be corrected, waived or ignored (as immaterial or inconsequential) without injustice to the parties are not regarded as procedural errors occasioning a miscarriage of justice.[12]

9. In regard to alleged errors in the exercise of the Trial Chamber's discretion, the Appeals Chamber will only disturb a decision where it is established that the Trial Chamber committed a discernible error in the exercise of its discretion by: misdirecting itself as to the legal principle or law to be applied, taking irrelevant factors into consideration, failing to consider relevant factors or to give them sufficient weight, or made an error as to the facts upon which it exercised its discretion.[13]

10. It is well established that a conviction may be based on circumstantial evidence.[14] A circumstantial case consists of evidence of a number of different circumstances which, taken together, point to the guilt of the accused person because they would usually exist in combination only because the accused did what is alleged against him.[15] Where a conclusion is based *only* on circumstantial evidence, that conclusion must be the only reasonable conclusion available.[16]

11. Credibility of witnesses and the weight of the evidence is a matter for the trier of fact. "Corroboration" is not a term of art, but one of common sense. It relates to whether the trust of the trier of fact is restored in the testimony of a witness whose evidence there is reason to approach with caution. Whatever restores trust in the witness personally restores it as a whole. If independent evidence supports some aspects of the witness's account, sufficient to restore trust in the truthfulness of the witness, then the trier of fact may reasonably accept the trustworthiness of the witness's testimony in its further respects, even where unsupported by other evidence.[17] While the Trial Chamber may not have expressly defined its concept of corroboration, it is evident from the Judgement that the Chamber approached the matter of corroboration in the manner just stated.

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[12] *RUF* AJ, para. 34; *CDF* AJ, para. 35.
[13] *RUF* AJ, para. 35; *CDF* AJ, para. 36.
[14] *Gacumbitsi* AJ, para. 115; *Rukundo* AJ, para. 188.
[15] Judgement, paras. 170-171. See also *Ntagerura* AJ, para. 304 (quoting *Čelebići* AJ, para. 458).
[16] *Ntagerura* AJ, para. 304 (quoting *Čelebići* AJ, para. 458).
[17] *Vetrovec*, pp. 820, 826-28.

PART I: NO ERRORS IN THE EVALUATION OF EVIDENCE

12. Taylor's contentions, set out in Grounds 1 to 5 of his Appeal, that the Trial Chamber systemically erred in evaluating evidence should be dismissed for the reasons set out below. Taylor refers back to Grounds 1 to 5 inclusive in his other Grounds of Appeal. To mirror Taylor's submissions, and to avoid undue repetition, the Prosecution will also refer back to these Response submissions, as necessary, when responding to the specific factual findings which Taylor alleges are invalidated because the Trial Chamber: based them on uncorroborated hearsay evidence;[18] failed to evaluate the motive of the source or which are based on hearsay from unidentified sources;[19] incorrectly approached witness credibility;[20] allegedly reversed the burden of proof;[21] and did not approach the evidence of witnesses who had received payments with caution;[22] which the Prosecution has dealt with in the context of the individual Ground of Appeal to which they relate.[23]

13. At the outset, the Prosecution recalls that "it is primarily for the Trial Chamber to determine whether a witness is credible and to decide which witnesses' testimony to prefer, without necessarily articulating every step of its reasoning".[24] The Trial Chamber, being the primary trier-of-fact, had the responsibility to evaluate witnesses' testimony, resolve any inconsistencies and to consider whether, having taken into account the totality of the evidence, the testimony was reliable and credible.[25] The task of hearing, assessing and weighing the evidence at trial is primarily left to the Trial Chamber, who is best placed to assess it, including the demeanour of witnesses. The Appeals Chamber will only interfere

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[18] This includes those in Taylor Appeal Ground 1, paras. 27, 28, 32, 33 which are dealt with in the response to Grounds 12, 23, 26 and 29 as appropriate; the citations referred to in Taylor Appeal Ground 1, para. 36, fn. 48 as appropriate; the citations referred to in Taylor Notice, para. 13, fn. 16 as appropriate. The allegation in Taylor Notice, para. 14, fn. 17 was not mentioned in his Appeal Brief and the Prosecution considers it abandoned.

[19] This includes those in Taylor Appeal Ground 2, para. 42 which are dealt with in the response to Ground 29 and the general allegation that Bockarie had a motivation to exaggerate or lie as alleged in Taylor Appeal Ground 2, paras. 40, 41 whenever they arise in the context of a specific factual finding to which they are relevant in the Taylor Appeal; and the citations referred to in Taylor Notice, para. 16, fn. 18 as appropriate.

[20] This includes those in Taylor Appeal Ground 3, paras. 44, 47-52; Taylor Notice, para. 17 as necessary.

[21] See Taylor Appeal, para. 56. This includes those in Taylor Appeal Ground 4, paras. 57-60, Taylor Notice, para. 20 as necessary. The reference at para. 59 of his Taylor Appeal to Ground 8 is incorrect, as the paragraphs he cites in support do not make a finding that a fact was "likely".

[22] This includes those in Taylor Appeal Ground 5 as necessary.

[23] The Prosecution has considered that any reference to a Judgement paragraph mentioned only in Grounds 1-4 of Taylor Appeal and/or the Taylor Notice and not developed in the factual findings to which it relates as set out in Parts II and III of his Appeal Brief have been abandoned.

[24] *RUF* AJ, para. 1058 citing *Kupreškić* AJ, para. 32.

[25] *Kupreškić* AJ, para. 31.

with those findings where no reasonable trier of fact could have reached the same finding or where the finding is wholly erroneous.[26]

GROUND 1: No error in the Trial Chamber's evaluation and reliance on uncorroborated hearsay evidence

(i) Overview

14. The Trial Chamber properly relied on uncorroborated hearsay evidence in making findings of fact essential to its determination of guilt. This Ground of Appeal should therefore be dismissed. As held by the ICTR Appeals Chamber, "It is well established that, as a matter of law, it is permissible to base a conviction on hearsay evidence".[27] Moreover, as will be shown, while it is not an error to rely on uncorroborated hearsay, Taylor often mischaracterises evidence as being uncorroborated when it was corroborated. Consequently, Taylor has failed to demonstrate any error warranting appellate intervention.

(ii) Arguments

15. The Chamber recognised that it was required by law to approach hearsay evidence with caution, contrary to Taylor's assertion.[28] The Chamber expressly noted its practice of considering hearsay evidence with caution and outlined in detail the factors it had taken into account in assessing the probative value of such evidence[29] which were in line with Appeals Chamber jurisprudence.[30] Indeed, Taylor himself recognised that the Chamber had directed itself to approach hearsay evidence with caution, undermining his own argument.[31] Similarly, the Trial Chamber also directed itself that it must take "particular care" when relying on the evidence of a single witness.[32]

16. Moreover, the ICTR and ICTY cases relied on by Taylor to support his position[33] do not evidence a categorical exclusion of uncorroborated or unsourced hearsay evidence as a rule of law.[34] They are simply examples where the Trial Chambers concerned, in light of the

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[26] *RUF* AJ, para. 32; *CDF* AJ, para. 33.
[27] *Karera* AJ, para. 39; *Gacumbitsi* AJ, para. 115.
[28] Taylor Appeal, paras. 24, 36.
[29] Judgement, paras. 168-69.
[30] *RUF* AJ, para. 518 referring to *RUF* TJ, paras. 495-96; *Karera* AJ, para. 39.
[31] Taylor Appeal, para. 29.
[32] Judgement, para. 166.
[33] Taylor Appeal, para. 36, fn. 50; Taylor Notice, para. 14, fn. 17.
[34] Two of the cases are wrongly cited as they are not examples of the exclusion of hearsay evidence as the Defence stated at fn. 17 of its Notice of Appeal: *Hadžihasanović & Kubura* TJ, para. 272 is just a statement of factors considered by the Chamber when *admitting* such evidence; *Strugar* TJ, para. 322 is not a finding regarding reliance on hearsay evidence, the finding is at para. 324 and the fact that the Exhibit contained hearsay evidence was not the only reason it was not accepted, see para. 323.

particular facts and circumstances, exercised their discretion not to rely on uncorroborated or unsourced hearsay to find an allegation proven. They do not support the position that it is an error of law to do so. Indeed in eight of the examples cited, it was not *only* because the evidence was unsourced or uncorroborated hearsay that the Chamber did not rely on it.[35]

17. Taylor extends the scope of the ICTY *Prlić* Decision, which held that a conviction cannot be based solely or in a decisive manner on a deposition, far beyond the principle the decision upheld, and he argues that a Trial Chamber cannot base any "*directly incriminating finding*" on hearsay.[36] The *Prlić* Decision related to a different situation, specifically, whether the transcript of the Prosecution's questioning of the accused, Prlić, when he was a suspect, should have been admitted in proceedings where he was one of several co-accused in a joint trial.[37] The *Prlić* Decision related to the admissibility of this transcript, and not its weight, which the ICTY Appeals Chamber expressly noted would be properly determined by the Trial Chamber when the trial record was complete.[38] As such, this case is inapposite.

18. Contrary to Taylor's submissions,[39] it is not the law of this Court, the ICTR nor the ICTY that a Trial Chamber cannot rely on uncorroborated hearsay evidence in convicting an accused. It is well established that a Trial Chamber has the discretion to cautiously consider and rely on hearsay evidence to establish an element of a crime.[40] As held by the ICTR Appeals Chamber, "It is well established that, as a matter of law, it is permissible to base a conviction on hearsay evidence".[41] As set out in the *Fofana and Kondewa* ("*CDF*") Appeal Judgment, and the *Sesay et al.* ("*RUF*") Trial Judgement, when deciding whether to convict on the basis of hearsay evidence, the ultimate issue for the Trial Chamber is whether the evidence is reliable for the truth of its contents in the sense of being voluntary, truthful and

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[35] In *Bizimungu*, the Trial Chamber had significant concerns regarding witness GJQ's general credibility, see *Bizimungu* TJ, paras. 203, 491-94, 712; *Bizimungu* TJ, para. 1018, Uwizeye's uncorroborated hearsay evidence was contradicted by its source and the Defence evidence raised a doubt, see *Bizimungu* TJ, paras. 1010-17; *Bizimungu* TJ, para. 693, the Chamber also found the Defence evidence raised a doubt in the Prosecution case regarding this allegation, see paras. 683-93; *Bizimungu* TJ, para. 764, the Chamber also had concerns regarding witness GHY's general credibility, see *Bizimungu* TJ, paras. 757-60; *Gotovina* TJ, para. 51, the Trial Exhibit was also inconsistent with other evidence; *Popović* TJ, para. 1532, the evidence was also vague and ambiguous; *Haradinaj* TJ, paras. 196-97, there was also no evidence that the victims were killed by the KLA; *Kordić & Čerkez* AJ, para. 190 relates to a decision not to allow the *admission* of new evidence which is not in issue in this Appeal so this case is not relevant.

[36] Taylor Appeal, paras. 24-26.

[37] *Prlić* Transcript Decision, paras. 2-4, 36.

[38] *Prlić* Transcript Decision, para. 8.

[39] See, in particular, Taylor Appeal, paras. 24, 29, 37.

[40] *RUF* AJ, para. 518; *Munyakazi* AJ, para. 77; *Kalimanzira* AJ, para. 96; *Gacumbitsi* AJ, para. 115; *Karera* AJ, para. 39.

[41] *Karera* AJ, para. 39; *Gacumbitsi* AJ, para. 115.

trustworthy.[42] In determining the probative value of such evidence, a Trial Chamber can consider factors such as whether the hearsay is first-hand or removed, whether it emanates from identified or unidentified/anonymous sources, the opportunity to cross-examine the person who made the statement, whether the hearsay statement is corroborated, the potential for errors of perception and the circumstantial guarantees of trustworthiness surrounding the statement.[43] As a result, contrary to Taylor's submission, corroboration is *only one* of many potentially relevant factors in the Trial Chamber's assessment of the probative value of hearsay and is not mandatory. Indeed, as a matter of law, a Trial Chamber may convict an accused on the basis of a single credible witness.[44]

19. The Prosecution agrees with Taylor[45] that corroboration may exist even when some details differ between testimonies, provided that no credible testimony describes the facts in question in a way which is not compatible with another credible testimony.[46] However, Taylor is incorrect when he argues that the Trial Chamber erred by failing to specifically define corroboration,[47] as a Trial Chamber is not obligated to detail every legal principle in its judgement before applying it. As will be demonstrated in response to Taylor's Grounds of Appeal detailing the specific factual findings which he argues are uncorroborated, Taylor has failed to demonstrate any error in the Chamber's approach to corroboration.[48]

20. It is abundantly clear from paragraphs 166, 168 to 169 of its Judgement that the Trial Chamber exercised the appropriate caution when relying on uncorroborated hearsay evidence. In these paragraphs, the Chamber noted its correct practice of examining such evidence with caution, recognising and expressly taking into account whether the hearsay statement is corroborated, among other factors. As recognised by the Appeals Chamber in *RUF,* a statement by a Trial Chamber at the beginning of its judgement correctly setting out the factors it is legally obliged to, and has, considered in relation to issues such as hearsay evidence, is sufficient to demonstrate the exercise of this caution whenever it considered such evidence throughout its judgement. Specifically, the Appeals Chamber found that the Trial Chamber in *RUF* had exercised the appropriate caution when relying on hearsay identification evidence and the evidence of a single witness, as it had set out at the beginning of the

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[42] *CDF* AJ, para. 198; *RUF* TJ, para. 495.
[43] *RUF* AJ, para. 518 referring to *RUF* TJ, paras. 495-496; *Karera* AJ, para. 39.
[44] *Muvunyi I* AJ, para. 128; *Gacumbitsi* AJ, para. 72; *Seromba* AJ, para. 79.
[45] Taylor Appeal, para. 30 citing *Nahimana* AJ, para. 428.
[46] *Nahimana* AJ, para. 428. See also *Rukundo* AJ, para. 201.
[47] Taylor Appeal, para. 34.
[48] This includes those in Taylor Appeal Ground 1, paras. 32 and 33 which are dealt with in the response to Grounds 23, 26 and 29 as appropriate.

Judgement how it had approached the assessment of this kind of evidence in general. This is clear as the paragraphs cited by the Appeals Chamber demonstrating the Trial Chamber's correctness were the general paragraphs setting out its overall approach to such evidence rather than the factual findings themselves.[49] The situation in *RUF* is therefore identical to this case and so Taylor's argument that the Trial Chamber failed to apply the requisite caution before relying on hearsay evidence must fail.

(iii) Conclusion

21. In light of the above, the Trial Chamber did not err in law by relying on uncorroborated hearsay evidence.

GROUND 2: No error in the Trial Chamber's assessment of the sources of hearsay evidence

(i) Overview

22. The Trial Chamber consistently assessed the reliability of the sources of hearsay evidence, contrary to Taylor's contention, and committed no error of law warranting appellate intervention.

(ii) Arguments

23. The Trial Chamber adequately assessed the reliability of hearsay evidence. Having set out the criteria by which it evaluated such evidence, the Trial Chamber made reasonable determinations of fact based upon it. It was not required to repeat the criteria by which it weighed hearsay evidence each time it dealt with such evidence in the Judgement. It is implicit in the Judgement that the Trial Chamber assessed the reliability of the source of the hearsay, as a function of circumstantial guarantees of trustworthiness, in addition to evaluating the reliability of the witness providing the evidence.[50] Moreover, Taylor's assertion that hearsay evidence from an anonymous source can almost never be accorded any independent evidential weight is legally incorrect.[51]

24. As the Trial Chamber correctly stated at paragraphs 168 to 169 of its Judgement, and as discussed in the response to Ground 1 above, the way a Trial Chamber assesses the

[49] *RUF* AJ, para. 518, fn. 1333 referring to *RUF* TJ, paras. 495-96; *RUF* AJ, para. 522, fn. 1342 referring to *RUF* TJ, para. 500.

[50] *Contra* Taylor Appeal, paras. 38, 40. The Trial Chamber applied this approach to Bockarie. *Contra* Taylor Appeal, paras. 40-41, there is nothing to support Taylor's general allegation that Bockarie had a motivation to exaggerate or lie about Taylor's backing. See, e.g., the response to Ground 23, para. 453 below. It is implicit in the Judgement that the Trial Chamber assessed Bockarie's reliability as a function of circumstantial guarantees of trustworthiness, as it did with all sources.

[51] Taylor Appeal, para. 39.

probative value of hearsay evidence is to evaluate all the circumstances surrounding it, which include whether the hearsay emanated from identified or unidentified or anonymous sources and the context and circumstances under which it arose, in keeping with Appeals Chamber jurisprudence.[52] The motive of any source and whether this source has been identified are but two of the factors a Trial Chamber can take into account when determining the reliability of the hearsay evidence, but, as with corroboration, are not mandatory and will depend on the circumstances of the case.[53] A Trial Chamber is not precluded from cautiously relying on hearsay whose source is unidentified if it finds the hearsay nevertheless reliable.[54] In addition, a party can challenge the credibility and reliability of the hearsay and the motive of its source by cross-examining the person before the Court. The task of hearing, assessing and weighing the evidence at trial is primarily left to the Trial Chamber who is best placed to assess it. The Appeals Chamber will only interfere with those findings where no reasonable trier of fact could have reached the same finding or where the finding is wholly erroneous.[55]

25. The cases relied on by Taylor to support his position do not evidence, as a matter of law, a categorical exclusion of hearsay evidence when the source is unknown or the motive of the source has not been tested separately to the probative value of the hearsay. Rather, they demonstrate that when assessing the probative value and reliability of hearsay evidence the source of the hearsay is one of the factors to be considered.[56] The cases cited by Taylor in footnote 53 of his Appeal Brief are simply examples where the ICTY or ICTR Trial Chambers, in the exercise of their discretion, have not relied on such evidence. They do not support the position that it is an error of law to rely on unsourced hearsay *per se*.[57]

(iii) Conclusion

26. In light of the above, Taylor has failed to demonstrate that the Trial Chamber erred in law in assessing the reliability of the sources of hearsay evidence.

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[52] *RUF* AJ, para. 518 referring to *RUF* TJ, paras. 495-496; *Karera* AJ, para. 39.
[53] Response to Ground 1, para. 18.
[54] *Rukundo* AJ, para. 196.
[55] *RUF* AJ, para. 32; *CDF* AJ, para. 33.
[56] The only relevant case cited by Taylor is *Nahimana* AJ, para. 831, see Taylor Appeal, para. 39. In Taylor Appeal, para. 39, fn. 51, *Čelebići* TJ, para. 27 has been incorrectly cited as it is not to do with hearsay; *Hadžihasanović & Kubura* TJ, para. 272 concerns the admission of hearsay under Rule 89(C) and not the Trial Chamber's assessment of its reliability in light of all the evidence on the record and therefore is not helpful.
[57] Taylor Appeal, para. 39, fn. 53. In half of the examples, the hearsay was rejected not only as it was unsourced: *Haradinaj* TJ, para. 317, the Trial Chamber also considered the fact that it did not spell out the circumstances under which the MUP learned about the abduction; *Ndindabahazi* TJ, para. 115, the Trial Chamber also considered that the hearsay was vague and that consequently the Trial Chamber had not applied the requisite degree of caution.

GROUND 3: No error in law in the Trial Chamber's approach to credibility of witnesses

(i) Overview

27. The Trial Chamber made no error in law by conducting a general credibility assessment of 22 witnesses at the beginning of its Judgement. Taylor has thus failed to demonstrate any error warranting appellate intervention.

(ii) Arguments

28. Contrary to Taylor's claim, it is not an error of law to select significant witnesses for general credibility assessments at the outset of a judgement.[58] How a Trial Chamber chooses to organise its judgement falls squarely within its discretion. Indeed, in addition to this Trial Chamber, the *RUF* Trial Chamber and various ICTR Trial Chambers have also set out generalised credibility assessments relating to certain witnesses at the outset of their judgements.[59] This is a matter of style and not an error of law. Furthermore, it was not prejudicial to Taylor that 20 out of the 22 witnesses the Trial Chamber selected were Prosecution witnesses, given the burden of proof upon the Prosecution and the significance, in the Chamber's estimation, of these witnesses to the Prosecution case. (Moreover, in terms of numerical ratios, it is noteworthy that the Prosecution called 94 witnesses and the Defence only 21.)

29. The Prosecution agrees that in reaching its decision, the Chamber was required to evaluate the credibility of all witnesses, whether or not the parties raised specific challenges to their credibility. The Chamber's generalised credibility assessments of 22 significant witnesses at the outset of its Judgement, however, did not violate this requirement.[60] The justification for this Ground of Appeal is unclear, since the Chamber, having made general credibility findings with respect to these witnesses, nevertheless found certain of them to be unreliable in relation to the proof of specific facts.[61] It was unnecessary in such cases for the Chamber to revisit its generally favourable assessment of the witnesses' credibility.[62] Moreover, in light of the Chamber's findings of unreliability in relation to specific events,

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[58] Taylor Appeal, para. 45.

[59] *RUF* TJ, paras. 539-610; *RUF* AJ, para. 698, fn. 1804 referring to the overall credibility section of this witness at para. 552 of the TJ; *Bikindi* TJ, paras. 34-35. See also *Bizimungu* TJ, paras. 203, 712 where the Chamber recalled its general credibility concerns regarding Witness GJQ set out at Section II.6.I at paras. 491-94 of its Judgement; *RUF* AJ, para. 240.

[60] *Contra* Taylor Appeal, para. 45.

[61] Taylor Appeal, paras. 45-49.

[62] Taylor Appeal, paras. 44, 50-52. See, in particular, Taylor's reference to the fact that having found TF1-371 a generally credible witness and having relied extensively on his evidence, the Chamber found it was unable to accept his evidence as proving certain allegations beyond doubt, for example Gullit's presence at a meeting in December 1998 (Taylor Appeal, para. 51).

Taylor's argument that the general credibility categorisations were as a rule dispositive is untenable.

30. Furthermore, the Trial Chamber did not err by failing to revisit its "generally credible categorization" for witnesses it found to be unreliable in respect of specific events.[63] The law is clear: a Chamber can find a witness credible on some aspects of his testimony and not others.[64] The fact that a Trial Chamber does not believe a witness in respect of one aspect of his testimony does not mean that it should reject all of his testimony, or that it should "re-evaluate" its assessment of credibility in light of any negative findings.

(iii) Conclusion

31. In light of the above, the Trial Chamber did not err in law in its approach to the credibility of witnesses.

GROUND 4: The Trial Chamber did not reverse the burden of proof concerning material facts

(i) Overview

32. The Trial Chamber applied the criminal standard and incidence of proof correctly, and did not reverse the burden of proof concerning any material facts. Taylor has failed to demonstrate any error warranting appellate intervention. This issue is also addressed in the response to Ground 9 below.

(ii) Arguments

33. Contrary to Taylor's claim, the Chamber did not reverse the burden of proof in relation to any of Taylor's convictions.

34. First, Taylor often misunderstands or misinterprets the Trial Chamber's language and cites it out of context. As the ICTR Appeals Chamber has held, in determining whether or not a Trial Chamber reversed the burden of proof, the impugned language must be put or read in its proper context.[65]

35. Moreover, contrary to Taylor's claim, language used in a judgement is not the only way to determine whether the Judges applied the correct burden of proof.[66] Rather, it is only the starting point of any such analysis.[67]

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[63] Taylor Appeal, paras. 44, 50-52.
[64] *RUF* AJ, paras. 219, 259; *AFRC* AJ, para. 155; *Setako* AJ, para. 48; *Haradinaj* AJ, para. 201.
[65] *Rutaganda* AJ, paras. 173-84.
[66] Taylor Appeal, para. 55.
[67] *Musema* AJ, para. 209.

36. As the ICTR Appeals Chamber has held in the context of alibi evidence, language which on its face implies that the Chamber shifted the burden of proof, while inappropriate, is generally not fatal when viewed in the broader context of a Trial Chamber's findings. This is especially the case where the Trial Chamber accurately refers elsewhere in the Judgement to the appropriate burden of proof.[68] Consequently, Taylor's contention that the use of inappropriate language *automatically* reflects that the Trial Chamber has reversed the burden must be rejected. To the contrary, the Trial Chamber's findings must be viewed in their totality. Moreover, before any such analysis is embarked upon, the Appeals Chamber must be certain that the language referred to is actually inappropriate, as often it is not, as will be shown in response to each time the Defence raises this issue set out below. To this end, the Prosecution recalls that the Chamber did correctly set out the burden of proof at paragraphs 158 to 159 of its Judgement.

(iii) Conclusion

37. In light of the above, the Trial Chamber did not err in law in its approach to the burden of proof.

GROUND 5: The Trial Chamber was correct in its treatment of payments to witnesses and reasonable in its assessment of their evidence

(i) Overview

38. Taylor erroneously alleges that payments to witnesses TF1-360, TF1-362, TF1-532, TF1-337, TF1-334, TF1-579 and TF1-274 required the Trial Chamber to automatically view their evidence with caution,[69] and that, because it did not, every factual finding that relies on these witnesses should be rendered invalid in whole or in part.[70]

39. As the cases cited by Taylor show, when assessing credibility, the *ad hoc* courts have considered payments on a case-by-case assessment as one of several factors that might render a witness's testimony unreliable. In keeping with these cases, the *Taylor* Trial Chamber consistently and carefully considered payments and/or benefits to each of these witnesses as one of several factors in its credibility assessments. The Trial Chamber then appropriately exercised its discretion and reasonably found six of these seven witnesses to be generally credible.[71] Moreover, the so-called uncorroborated factual findings which Taylor alleges

[68] *Zigiranyarazo* AJ, para. 20.
[69] Taylor Appeal, paras. 63, 74.
[70] Taylor Appeal, para. 76.
[71] The Chamber decided to treat TF1-579's evidence with caution. See para. 49 below for detail.

should be overturned are in large part corroborated, often explicitly in the very paragraphs that he states are unsafe. For all of these reasons, this Ground of Appeal should be dismissed.

(ii) The Trial Chamber was correct in law when it addressed witness payments as one of several factors that could potentially affect credibility

40. Taylor incorrectly argues that the Chamber erred in law by disregarding the alleged principle that substantial payments to witnesses, in itself, automatically requires that their testimony be treated with caution.[72] The ICTY and ICTR cases he cites[73] actually show that caution was applied not to receipt of payments and/or benefits *per se*, but as a result of the Trial Chambers' careful analyses of numerous factors that could affect the witnesses' credibility, with receipt of payments and/or benefits one of the several factors considered.[74]

41. Taylor's assertion that the Trial Chamber should not have "subjectively" determined the extent to which payments and benefits "coloured the testimony" of the witnesses at issue[75] ignores the fact that witness credibility assessments involve numerous "subjective" determinations fully within the Trial Chamber's discretionary power. Such determinations include whether a witness's demeanour during testimony indicated truthfulness, the plausibility and clarity of the witness's testimony, and whether the witness had any motivations to lie.[76] Thus the "subjective" determination regarding whether payments and benefits affected a witness's credibility is properly within the Chamber's discretion. The jurisprudence recognises that the Trial Chamber enjoys an advantage by seeing and hearing the witnesses as they testify and so is best placed to determine issues of credibility.[77] The Appeals Chamber will therefore defer to the Trial Chamber that received the evidence,

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[72] Taylor Appeal, para. 64.
[73] Taylor Appeal, paras. 65-68.
[74] *Martić* TJ, paras. 36-37 (both MM-003 and MM-079 sought and received Prosecution assistance with their asylum cases; the Prosecution acknowledged their evidence should be viewed "with care"); *Karemera* TJ, paras. 175, 178, 735 (Witnesses T & G's evidence was treated with caution because of their high-ranking positions in the *Interahamwe*, Witness T had pleaded guilty to genocide charges, and both had received "extensive benefits" under the Prosecution witness protection program *in exchange for their testimony*); *Bizimungu* TJ, paras. 830-33, 1562-65 (in addition to the benefits noted in Taylor Appeal, para. 67, Witness D's evidence was treated with caution because in order to secure his testimony in another trial, the Prosecution did not open an investigation against him; there was also concern that his evidence was incomplete re. his own criminal conduct); *Zigiranyirazo* TJ, paras. 137-38 (the Chamber treated Bagaragaza's testimony with caution because his testimony was entirely hearsay, he was an accomplice who was also an accused before the ICTR, his indictment implicated him in some of the same crimes as Zigiranyirazo so he might try to shift blame away from himself when testifying, and the benefits discussed in Taylor Appeal, para. 68).
[75] Taylor Appeal, paras. 63-64.
[76] *Nchamihigo* AJ, para. 47; *Nahimana* AJ, para. 194.
[77] *Nahimana* AJ, para. 949; *Kupreškić* AJ, para. 32.

interfering only where no reasonable trier of fact could have reached the same finding or where the finding is wholly erroneous.[78] Here, no such error was made.

42. The *Taylor* Trial Chamber properly followed the procedure adopted by the Chambers in the cases cited by Taylor and followed by Trial Chamber I in *RUF*.[79] The Trial Chamber expressly considered the allegations of "improper incentives" for witness testimony and noted that the issue was raised by the Defence in its motions, Final Trial Brief, Closing Arguments and during cross-examination.[80] It took into account whether the benefits conferred went beyond that which was "reasonably required" as well as the cost of living in West Africa and station in life of the witness receiving the payment.[81] As demonstrated below, for each witness at issue, the Trial Chamber thoroughly explained its case-by-case credibility analysis, expressly considering the evidence of payments and any personal interest factors that may have influenced the witness's motivation to tell the truth. It also considered other factors that might impact the reliability of their evidence, including whether or not the witnesses were accomplices, the source of their evidence, and consistency in light of the extensive cross-examination to which each of these witnesses was subjected.[82] For example, Mongor's cross-examination took place over six days and covered 546 pages of the trial transcript.[83]

43. Only after considering all of the relevant factors did the Trial Chamber determine that the evidence of some witnesses for both the Prosecution and Defence should be treated with caution.[84] The Trial Chamber properly exercised its discretion after carefully considering all of the factors that might prevent the witnesses from testifying truthfully. It simply did not find that payments and other factors relating to the witnesses at issue (except for TF1-579) rose to a level that warranted their evidence to be treated with caution.

44. When assessing Perry Kamara's credibility (TF1-360), the Chamber considered the detail of his evidence, his demeanour and the consistency between his evidence-in-chief and cross-examination.[85] The Chamber extensively addressed issues the Defence had raised in

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[78] *Munyakazi* AJ, para. 8; *Karera* AJ, para. 10.
[79] As noted in fn. 74 above; *RUF* AJ, paras. 198, 200; *RUF* TJ, paras. 523-26.
[80] Judgement, paras. 184-98.
[81] Judgement, para. 195.
[82] TF1-360 - direct: 12 hrs., cross: 5 hrs.; TF1-362 - direct: 6.5 hrs., cross: 9.5 hrs.; TF1-532 - direct: 12 hrs. 10 mins., cross: 25.5 hrs.; TF1-337 - direct: 7.5 hrs., cross: 11 hrs. 50 mins; TF1-334 - direct: 21 hrs., cross: 15.5 hrs; TF1-579 - direct: 8.25 hrs., cross: 10 hrs.; TF1-274 - direct: 16 hrs., cross: 25 hrs.
[83] Mongor's cross-examination began on 31 March 2008 at p. 6230 and ended on 7 April 2008 at p. 6775.
[84] See, e.g., Judgement, paras. 268 (Joseph "Zigzag" Marzah) 303 (TF1-539), 312 (TF1-375), 345 (TF1-579), 372 (Issa Sesay), 380 (DCT-008), 4465 (John Vincent).
[85] Judgement, para. 228.

connection to Kamara, including payments he had been given by the Prosecution.[86] After detailed analysis and consideration of the totality of the evidence, the Chamber determined that Kamara was a generally credible witness, but noted aspects of his testimony that it would not rely upon because of credibility issues relating to those specific parts.[87] The Chamber properly assessed Kamara's evidence and, in effect, treated portions with caution.[88]

45. The Prosecution notes that the issue of benefits relating to witnesses TF1-362 and TF1-532 (Isaac Mongor) were not included in Taylor's Notice of Appeal for this Ground[89] and should therefore be dismissed. However, should the Appeals Chamber elect to consider these benefits, the Prosecution now addresses how the Trial Chamber treated their evidence. The Chamber considered numerous factors relating to TF1-362's credibility, including the witness's candour and detailed testimony, the explanations the witness gave for inconsistencies and why the witness had initially lied to the Prosecution.[90] It also comprehensively addressed the matter of benefits received, including the examples Taylor cited[91] which the Defence had already raised along with other allegations in its Contempt Motion.[92] The Chamber explicitly stated that in its view, the Defence had not established any impropriety with regard to the support the Prosecution gave the witness.[93] All of this demonstrates that the Chamber carefully assessed the reliability of TF1-362's evidence, properly exercised its discretion to reasonably conclude that the witness was generally credible[94] and thus, the testimony did not warrant caution.

46. In assessing Mongor's credibility, the Trial Chamber had the benefit of extensive cross-examination. It also carefully considered Mongor's immunity letter from the Prosecution, as well as his explanation as to why he was not fully forthcoming about Taylor's involvement in the Freetown invasion in initial interviews,[95] both of which were issues that

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[86] Judgement, paras. 229-235, payments issues discussed at para. 234.
[87] Judgement, paras. 229, 235.
[88] See, e.g., Judgement, paras. 2934-35, 2947, 4145-46, 6185-87.
[89] See Taylor Notice of Appeal, para. 22, fn. 31 referring to Judgement, paras. 234 (re. TF1-360, Perry Kamara), 260 (re. TF1-337, Mustapha Mansaray), 287 (re. TF1-334, Alimamy Bobson Sesay), 344 (re. TF1-579) and 357 (re. TF1-274, Dauda Aruna Fornie). Judgement, paras. 250-251 (re. TF1-362) and 270-271 (re. TF1-532, Isaac Mongor) were not included in this list.
[90] Judgement, paras. 244-53.
[91] Taylor Appeal, para. 62.
[92] Contempt Motion Corrigendum, Annex N, p. 1. The Defence had also alleged that TF1-362 was given $10,000 by the Prosecution to lie, which the Chamber found "not sufficiently credible" (see Contempt Motion, para. 28; Contempt Decision, paras. 128-134). The Chamber reserved consideration of these allegations in relation to credibility for the final Judgement (Contempt Decision, paras. 134), and recalled this at Judgement, paras. 192-95.
[93] Judgement, para. 252.
[94] Judgement, para. 253.
[95] Judgement, para. 270.

had been raised by the Defence in its Final Brief.[96] The Chamber specifically stated that it accepted Mongor's testimony that he did not testify for monetary gain.[97] Only after considering all of these factors did the Chamber conclude that his evidence did not require cautious treatment.

47. The Trial Chamber closely considered the Defence attacks on payments made to Mustapha Mansaray (TF1-337) or on his behalf[98] as well as Mansaray's detailed and forthright testimony when recounting the payments he received. It also noted that he provided consistent information throughout the interview process.[99] After weighing all of these factors, the Chamber acted within its discretion in concluding that the Defence had not established any impropriety regarding the support provided to the witness and his family.[100]

48. The Trial Chamber noted that Alimamy Bobson Sesay (TF1-334) provided coherent and detailed testimony and was generally consistent.[101] It considered his testimony on cross-examination about payments he received and noted that he was forthright and candid when questioned on the matter. It then concluded that the payments were not unreasonable, nor did they appear to influence Bobson Sesay's testimony.[102] The Chamber also considered the witness's involvement in numerous, serious crimes but noted his candour about his complicity and a lack of motivation to lie. After considering all of these factors, the Trial Chamber acted within its discretion in finding Bobson Sesay to be generally credible.[103]

49. Taylor has curiously included TF1-579 in this Ground of Appeal, alleging that the Trial Chamber should have automatically treated his evidence with caution because of payments and/or benefits.[104] In fact, the Trial Chamber held that his testimony must be considered with caution and could not be relied upon without corroboration, then acted accordingly.[105] While payments were not amongst the specific reasons cited as to why caution should be applied, the Chamber noted questions about his payments and considered it as one

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[96] Confidential Defence Final Brief, para. 1555 (13 & 14).
[97] Judgement, para. 271.
[98] Contempt Motion Corrigendum, Annex N, p. 1; Confidential Defence Final Brief, paras. 1476-80.
[99] Judgement, paras. 254-62, particularly paras. 255-57, 260.
[100] Judgement, para. 261.
[101] Judgement, para. 286.
[102] Judgement, para. 287.
[103] Judgement, para. 288-89.
[104] Taylor Appeal, para. 76.
[105] Judgement, para. 345; see also, e.g., paras. 2704, 2711, 4724, 4945-46, 5934, 6566. Taylor's own Appeal does not list any portions of the Judgement alleging TF1-579's evidence was uncorroborated in fn. 140 and the Judgement paras. cited in fn. 139 of his Appeal all show that his evidence was corroborated when the Chamber relied upon it.

of the factors in his credibility assessment before reaching its conclusion.[106] Taylor fails to show how the Chamber's cautious treatment of TF1-579's evidence renders the findings reliant upon his evidence invalid.

50. For Dauda Aruna Fornie (TF1-274), the Chamber addressed each of the numerous issues the Defence raised in its Final Brief regarding his evidence such as inconsistencies and misidentification,[107] as well as payments, demonstrating it had carefully considered all factors that might impact his credibility.[108] The Chamber also cited to testimony adduced in cross-examination showing the nature of the payments.[109] Acting within its discretion, the Trial Chamber found that the payments did not appear to be unreasonable, nor did they influence Fornie's testimony.[110]

51. The Trial Chamber correctly and carefully analysed all of the relevant factors which might affect the credibility of each witness at issue. It then acted within its discretion in determining not to treat their evidence with caution, except for TF1-579, whose evidence was treated with caution. This determination was within its discretion, reasonable and should be given deference by the Appeals Chamber.

(iii) The Trial Chamber's factual findings should not be overturned

52. Taylor erroneously alleges that the Trial Chamber failed to treat the evidence of the witnesses at issue with <u>any</u> caution despite the payments and/or benefits they received.[111] As discussed above, the Chamber was thorough and reasonable in making its credibility assessments, and, indeed, did treat the evidence of TF1-579 with caution. Just because the Chamber did not use the words that this evidence had to be treated "with caution" in relation to the other witnesses does not mean it accepted everything they said without scrutiny. In its Judgement the Chamber consistently evaluated the detail, quality and circumstances of their evidence, looking for corroboration and considering the totality of the evidence when evaluating whether particular evidence was reliable. In some cases, it concluded it was not.[112]

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[106] Judgement, paras. 344-45.
[107] Confidential Defence Final Brief, paras. 1503-23.
[108] Judgement, paras. 346-58.
[109] Judgement, para. 357, fn. 848.
[110] Judgement, para. 357.
[111] Taylor Appeal, para. 74 (emphasis was added by Taylor).
[112] See, e.g., Judgement, paras. 2256 (TF1-362's evidence was third-hand and lacked detail regarding the alleged agreement between Sankoh and Taylor); 3096 (the Chamber declined to rely on Fornie's evidence on the meeting after Bockarie arrived from Monrovia and Burkina Faso because his knowledge of it was based on a radio message and there was no explanation as to how he knew the content of the meeting); 3119 (no other witnesses testified to the agreement that Mongor testified to, which contradicted Kanneh's evidence. Mongor's source was second-hand, and the Trial Chamber deemed his account on that point to be inaccurate); 4169, 4171 (because TF1-362's evidence was "vague and inconsistent" and contradicted the evidence of TF1-371, the

The Chamber acted as a reasonable fact finder both when it assessed the credibility of these witnesses and when it cautiously assessed the evidence that they gave.[113]

53. Taylor erroneously analogises this case to *Nchamihigo*[114] to support his assertion that the findings relating to the witnesses who received what he—not the Trial Chamber—deems "substantial" payments are unsafe and should be reversed in whole or in part because the Chamber did not exercise "any" caution.[115]

54. Taylor's reliance on *Nchamihigo* is misplaced. As discussed above, there is no principle on par with accomplice evidence that payments *per se* mean a Chamber must treat a witness's evidence with caution. Further, as Judge Pocar rightly pointed out in his Partly Dissenting Opinion, it was unwise for the Appeals Chamber to conduct a *de novo* assessment of the accomplice witness's credibility without having heard his testimony. Judge Pocar called this an "incorrect intrusion" on a prudent and cautious and therefore correctly made assessment by the Trial Chamber. As such, it violated the appellate standard of review that accords deference to a Trial Chamber's credibility assessment.[116]

55. The Prosecution recalls that it is within a Trial Chamber's discretion to rely on uncorroborated, but otherwise credible, witness testimony.[117] Even uncorroborated accomplice evidence may be relied upon, provided such evidence was first considered cautiously.[118] The Prosecution notes that Taylor has merely listed witnesses of "doubtful credibility" and enumerated paragraphs which purportedly erroneously rely on these witnesses.[119] This is insufficient to substantiate an error of the Trial Chamber.[120] Nonetheless, a close examination of the alleged "uncorroborated" findings Taylor lists in footnote 140 of his Appeal Brief actually shows how cautious the Trial Chamber was in its assessment of the evidence. Most of the evidence in the paragraphs cited is either corroborated, often explicitly in the very paragraph Taylor states is unsafe, or demonstrates that the Chamber first looked

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Chamber found that the Prosecution had not proved that the Accused ordered the RUF to retreat to Liberia); 4853 (the Chamber said it could not rely solely on Fornie's testimony because it was uncorroborated hearsay); 6184-87 (Kamara's evidence on the circumstances of the External Delegation's departure was deemed inaccurate in light of more direct evidence).

[113] *Krajišnik* AJ, para. 150 (a cautious approach in assessing the reliability of a witness's testimony was evidenced by the Trial Chamber's correct exercise of its discretion to rely on specific parts of the testimony while rejecting other parts as not credible).

[114] Taylor Appeal, para. 75.

[115] Taylor Appeal, paras. 73, 74, 76.

[116] *Nchamihigo* AJ, Partly Dissenting Opinion of Judge Pocar, paras. 1-8.

[117] *Nchamihigo* AJ, para. 42; *Karera* AJ, para. 45; *Kupreškić* AJ, para. 33.

[118] *AFRC* AJ, para. 129; *Nchamihigo* AJ, paras. 42, 45, 48.

[119] Taylor Appeal, para. 76.

[120] *Krajišnik* AJ, para. 149.

for factors that would indicate veracity before it relied on such evidence.[121] The Prosecution notes that Taylor cites no uncorroborated findings for TF1-337 or TF1-579.[122]

[121] **Perry Kamara (TF1-360):** Corroborated by other witnesses within the para. range: Judgement, paras. 2626, 3394-97, 3399-3401, 3404, 3408-09 (see also para. 3410 showing additional corroboration), 3413, 3416-17, 3445, 3449-50, 3664-66 (also corroborated by evidence in paras. 3654-63), 5587-88, 5591, 5718. Findings based on evidence discussed in other paras., not just Kamara's evidence: Judgement, paras. 2629 (see paras. 2621-28), 3481-86 (see paras. 3394-3480), 5593 (see paras. 5581-92), 5719-21 (see paras. 5706-18). Paras. relating to the External Delegation showing that Kamara's evidence was corroborated by Kallon, Musa, TF1-168 and others: Judgement, paras. 6183-87, 6189, 6191-92 (as mentioned above in fn. 112, Kamara's evidence on one aspect was not relied upon in light of more direct evidence). **TF1-362:** Here, the Trial Chamber evaluated the nature of the evidence and indicators that it was truthful before relying on the evidence. Judgement, para. 5717 refers back to the earlier finding at para. 1424 that previously found TF1-362's account of the training of children at various bases in Sierra Leone was credible. The previous finding referenced in para. 1424 refers to para. 1377, which notes that TF1-362's evidence about the training of children at Bunumbu was "first-hand" and "unequivocal". The other para. 5717 finding (re. Yengema) refers back to the finding at para. 1694, which is premised on the evidence stated in paras. 1692-93. Although not specifically corroborated as to location, it is corroborated by the totality of the evidence that civilians died during training and those who attempted to escape were killed. **Isaac Mongor (TF1-532):** Corroborated by other witnesses within the para.: Judgement, paras. 3125, 3399, 3664, 5587-88, 5591, 6792. Findings based on evidence discussed in other paras., not just Mongor's evidence: Judgement, paras. 3129-30 (see paras. 3089-3128), 3481-86 (see paras. 3394-3480), 3665-66 (see paras. 3654-64), 5593 (see paras. 5581-92). Judgement, para. 3383 is a recitation of Mongor's evidence that should be read with paras. 3379-93, which support the para. 3393 finding. Judgement, para. 3447 should be read with paras. 3445-48, which show corroboration of Mongor's evidence by eight other witnesses. **Alimamy Bobson Sesay (TF1-334):** Three of the challenged findings do not rely on TF1-334's evidence: Judgement, paras. 4579 (see paras. 4566-4573), 4583 (see paras. 4574-78), 5666 (see paras. 5660-65). Corroborated by other witnesses: Judgement, paras. 3394-96, 3398, 3400-01, 3403-04, 3462 (corrob. in part by Kamara; note, however, that Kamara's evidence was deemed to be more direct and his evidence was accepted in regard to Bockarie being the one who gave the order); 4388-93, 4556-60, 4562-64, 4581-82, 5581-86 (see also paras. 5587-93 which show further corroboration), 5652-59 and 5667 and 5711 (must be read with paras. 5709-10 as well as 3465-77 which show that his evidence was compatible with the totality of the evidence the Chamber had earlier accepted), 5718 (must be read with paras. 1157-63 showing corrob. in part by TF1-375, Kamara and TF1-029), 6344 (must be read with paras. 6340-43 which support that Taylor did have influence on the AFRC and RUF, also corrob. in part by Exh. D-24). Findings based on evidence discussed in other paras., not just Bobson Sesay's evidence: Judgement, paras. 3481-86 (see paras. 3394-3480), 4394-96 (see paras. 4365-93), 6345 (see paras. 6340-44). Findings which discuss additional indicators of truthfulness that the Chamber considered in relation to Bobson Sesay's evidence: Judgement, paras. 4562-65 and 4581-82 (see particularly para. 4565, the Chamber evaluated the quality of the evidence and declined to rely on it to determine the impact the SLA men had on the commission of crimes in Kono), 5581-93 (particularly paras. 5582-85), 5652-59 and 5667 (see particularly para. 5654 which considered Defence allegations and para. 5656-57); 5713 (the Chamber did not rely on this aspect of his evidence); 6343. **Dauda Aruna Fornie (TF1-274):** Corroborated by other witnesses within the para. range: Judgement, paras. 2626; 2765 and 2769 (must be read with paras. 2754-68); 3384 (must be read with para. 3385, partly corrob.); 3394-3400; 3405, 3410 and 3413 (must be read with paras. 3403-04 and 3411 which show corrob. in part); 3416-18; 3419 (must be read with subsequent paras. incl. 3420); 3445-47; 3449; 3456 (must be read with paras. 3454-57); 3554-56; 3801, 3804-05 (must be read with paras. 3783-3803, which show extensive corroboration); 3936-37, 5325, 5330 (must be read with paras. 5312-30); 4612-13 (must be read with paras. 4614-15); 4800, 4802 (must be read with paras. 4789-4801, and the Arms and Ammunition section, esp. re. the Burkina Faso shipment evidence, all of which corroborate that Taylor did what he could to support the RUF even if he did not have much ammunition); 5587-88, 5591, 5593 (must be read together). Findings based on evidence discussed in other paras., not just Fornie's evidence: Judgement, paras. 2629 (see paras. 2621-28); 3481-86 (see paras. 3394-3480); 3606 and 5126 (see paras. 3554-64 and 3568-72); 3609 (see paras. 3586-91). Judgement, paras. 3440-42 analyse the reliability of Fornie's evidence in light of allegations raised by the Defence as discussed in para. 3438; the Chamber made no specific finding from Fornie's evidence and in para. 3444, stated it would consider the general evidence in the context of specific orders Bockarie allegedly made). The Chamber was cautious with Fornie's evidence re. communication with Yeaten and Taylor during the Freetown operation (see Judgement, paras. 5122-29) before making its findings at Judgement, paras. 5126, 5128 and 5130.

[122] Taylor Appeal, fn. 140.

(iv) Conclusion

56. The Chamber acted within the proper exercise of its discretion in conducting careful credibility assessments of witnesses TF1-360, TF1-362, TF1-532, TF1-334, TF1-274, TF1-337 and TF1-579, which included considering payments as one of numerous factors that could potentially impact their credibility. Taylor has failed to demonstrate a legal error or that the Trial Chamber was unreasonable in its assessments. Further, the findings are well corroborated and reliable due to other factors that show cautious treatment of the evidence. For all of these reasons, the Appeals Chamber should defer to the Trial Chamber's assessment of the evidence as no basis has been established to overturn the factual findings which rely in whole or in part on these witnesses.

PART II: NO ERRORS IN THE PLANNING CONVICTION

57. The Trial Chamber correctly convicted Taylor of planning the crimes committed during the late 1998 attacks on Kono and Makeni and during the invasion of and retreat from Freetown as a result of a proper application of the law to its reasonable factual findings.

58. Taylor's three broad challenges to his planning conviction focus on the Trial Chamber's alleged misunderstanding of the *actus reus* of planning, its alleged factual errors concerning whether the "Bockarie/Taylor plan" was actually carried out and its alleged failures to find that Taylor had the requisite *mens rea*. These challenges are without merit. They are based on an erroneously narrow view of the applicable law and a fragmented view of the facts. Taylor seeks to impermissibly relitigate arguments made and rejected at trial and to substitute alternative interpretations of the evidence.[123] In the context of the Sierra Leonean conflict,[124] the Trial Chamber correctly and reasonably found that the "Bockarie/Taylor plan" was criminal[125] involving the commission of the crimes charged in Counts 1-11 of the Indictment.[126]

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[123] Taylor Appeal, paras. 78-82. In para. 78, Taylor states there "two overarching errors". However, it is clear from paragraphs 79 to 82 that three criticisms are made.

[124] See the responses to Grounds 11, 15 below for a full discussion of the particular meaning of the terms "fearful" and "all means" in the Sierra Leonean conflict.

[125] As discussed more fully in the response to Ground 11 below, an accused need only design an act or omission and not necessarily a crime or underlying offence *per se* if he has the intent that a crime or underlying offence be committed in the execution of the plan, or if he is aware of the substantial likelihood that a crime or underlying offence will be committed (see Judgement, fn. 1105; *Kordić & Čerkez* AJ, paras. 31, 976). The objective of a plan is irrelevant if it is to be achieved by an act that constitutes a crime, or if an accused is aware of the substantial likelihood a crime will be committed in achieving the plan (see *Boškoski & Tarčulovski* AJ, paras. 169-172; *Kordić & Čerkez* AJ, paras. 26, 30). As discussed in the response to Grounds 14 and 15, an accused must have directly intended that crimes be committed pursuant to the plan, or must have been aware of the

GROUND 6: The Trial Chamber did not err in finding that the Prosecution had successfully challenged the truth of Adjudicated Fact 15 from the AFRC trial

(i) Overview

59. Taylor has failed to show that the Trial Chamber erred in law or in fact when it found that the Prosecution had successfully challenged the truth of Adjudicated Fact 15[127] with credible and reliable evidence. This Ground of Appeal should therefore be dismissed.

(ii) Taylor distorts the meaning of Adjudicated Fact 15

60. Taylor's submissions attempt to expand the meaning of Adjudicated Fact 15 far beyond any reasonable interpretation to mean that "the RUF had not been part of the AFRC operation in Freetown of January 1999."[128] Taylor cites to paragraphs from the AFRC and RUF Trial Judgements that are not part of the evidence in this case to support his position. Nowhere in the AFRC Adjudicated Facts Decision or at any other time in the *Taylor* trial, did the Trial Chamber find that the RUF was not part of the January 1999 Freetown invasion. In fact, after the AFRC Adjudicated Facts Decision, the Defence made the same incorrect arguments about Adjudicated Fact 15 in its Rule 98*bis* Motion,[129] arguments contested by the Prosecution[130] and rejected by the Trial Chamber in its Rule 98*bis* Decision of 4 May 2009. In that Decision, the Chamber did not dismiss any of the charges against Taylor related to the 1999 attack on Freetown.[131] Thus, over two months before the start of the Defence case, Taylor was again on notice that, despite his inaccurate interpretation of Adjudicated Fact 15, his responsibility for the Freetown invasion was still a very live issue in the case.

61. Moreover, this inaccurate interpretation of Adjudicated Fact 15 is inconsistent with Agreed Fact 31, never withdrawn by the Defence, that "[O]n or about 6 January 1999, *inter alia*, RUF and AFRC forces attacked Freetown."[132] Taylor is now taking a position contrary to the Agreed Fact which was operative throughout the trial and before the Trial Chamber at the time it wrote the Judgement.

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substantial likelihood that a crime would be committed in the execution of that design (see Judgement, para. 469(ii), *Kordić & Čerkez* AJ, paras. 29, 31; *Nahimana* AJ, para. 479).

[126] Taylor's challenges to the Trial Chamber's factual findings are baseless for the reasons more fully discussed in the response to Grounds 6-15 below.

[127] AFRC Adjudicated Facts Decision, Annex A, Fact 15 (Adjudicated Fact 15).

[128] Taylor Appeal, para. 85.

[129] T. 6 April 2009 pp. 24096-97.

[130] T. 9 April 2009 pp. 24151-57.

[131] T. 4 May 2009 p. 24211.

[132] Joint Filing by the Prosecution & Defence Admitted Facts and Law, p. 6, para. 31 (Agreed Fact 31). See also Defence Reply to Prosecution Response Regarding AFRC Adjudicated Facts, para. 15; Judgement, para. 3374.

62. In his Reply to Prosecution Response Regarding AFRC Adjudicated Facts, Taylor noted that:

> ... a certain volume of evidence has already been led in respect to the issues contained in the proposed adjudicated facts. This evidence could be used to challenge any rebuttable presumption created. Therefore, the Prosecution is not prejudiced by the admission of these facts even though it has essentially closed its case.[133]

63. Thus, Taylor's current argument that the Trial Chamber improperly relied on evidence from the Prosecution case is exactly contrary to what he argued in convincing the majority of the Trial Chamber to take notice of Adjudicated Fact 15. Indeed, his concession in the Reply makes clear that his current arguments that he was deprived of any notice that Adjudicated Fact 15 was in issue,[134] and that the Prosecution first challenged it in its Closing Brief, [135] are mistaken and provide no basis for any claim of prejudice.

64. Contrary to Taylor's current position,[136] the Prosecution did not wait until its Closing Brief to challenge Adjudicated Fact 15. The Prosecution put Taylor on notice that it objected from the outset by opposing the Defence Motion seeking its admission as it was central to the charges against Taylor and because there was already contrary evidence on the record.[137] Throughout the trial, the Prosecution continued to challenge any suggestion that the RUF played no role in the Freetown invasion, including in the evidence it introduced in its case-in-chief, its Response to the Defence Rule 98*bis* Motion[138] and the cross-examination of Defence witnesses on the involvement of the RUF in the Freetown invasion.[139] The Prosecution's submissions in its Closing Brief simply summarised its position.

65. Facts judicially noticed under Rule 94(B) are only presumptions that may be rebutted by the introduction of credible and reliable evidence at trial.[140] An adjudicated fact is not irrebuttable proof of a fact as seems to be implied by Taylor.[141] Rather, it is a time-saving

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[133] Defence Reply to Prosecution Response Regarding AFRC Adjudicated Facts, para. 7 (citations omitted), see also para. 14.
[134] Taylor Appeal, para. 101.
[135] Taylor Appeal, paras. 86-87, 97-99.
[136] Taylor Appeal, paras. 86-87, 97-99.
[137] Prosecution Response to Motion regarding AFRC Adjudicated Facts, para. 7.
[138] T. 9 April 2009, pp. 24151-57. Indeed, this Response also put Taylor on notice that the Prosecution challenged the Adjudicated Fact.
[139] See, e.g., Sesay, T. 19 August 2010 pp. 46750-51, 46793-94, 46803-04; Ngebeh, T. 12 April 2010 p. 38682.
[140] *Karemera* 29 May 2009 Judicial Notice Appeal Decision, para. 13; *Karemera* 16 June 2006 Judicial Notice Appeal Decision, para. 42; *D. Milošević* Judicial Notice Appeal Decision, 26 June 2007, para. 16.
[141] Taylor Appeal, para. 88. See also Taylor Appeal, para. 101.

measure that simply relieves the moving party of the *initial* burden to provide evidence on the point, but does not prove the point over contrary evidence.[142]

66. Admission of adjudicated facts from previous proceedings does not affect the Chamber's function of assessing their relevance and weight *in light of the totality of the evidence* in the trial.[143] Facts that are judicially noticed are accepted conditionally and:

> remain to be assessed by the Trial Chamber to determine what conclusions, if any, can be drawn from them when considered together with all the evidence brought at trial. The Rule 94 (B) mechanism does not allow a Trial Chamber to simply defer to the assessment of the evidence by another Chamber on the ground that this mechanism was fashioned to favour consistency and uniformity in the Tribunal's case-law.[144]

67. Indeed, Taylor himself recognised this in his Reply to Prosecution Response Regarding AFRC Adjudicated Facts in the first place, noting that "[a] presumption of accuracy for adjudicated facts is only one more factor to consider when weighing *all* the evidence at the conclusion of the case."[145] Consequently an adjudicated fact can be challenged by evidence admitted *before* judicial notice was taken. By taking judicial notice of an adjudicated fact after the close of the Prosecution case, the Trial Chamber was therefore not rejecting the relevant Prosecution evidence that had been brought as Taylor suggests.[146]

68. Critically, as stated above, Taylor expressly recognised before the Chamber took notice of Adjudicated Fact 15 that the Prosecution had previously led contrary evidence,[147] and that this evidence from the Prosecution case could be used to challenge the Adjudicated Fact, notwithstanding that it had been led prior to judicial notice being taken.[148] Therefore, Taylor's current position that the Prosecution could only challenge it by calling evidence *after* judicial notice, contradicts what he argued in order to gain admission of the Adjudicated Fact.[149]

69. Taylor relies on the pronouncement by the Trial Chamber in its AFRC Adjudicated Facts Decision that the Prosecution may challenge the adjudicated facts by "cross-examining Defence witnesses or by calling rebuttal evidence"[150] as indicating to him that these were the only two ways the Prosecution could do so and therefore, as the Prosecution did not call

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[142] *Karemera* 16 June 2006 Judicial Notice Appeal Decision, para. 42.
[143] *Krajišnik* Adjudicated Facts Decision, 24 March 2005, para. 17.
[144] *Karemera* 29 May 2009 Judicial Notice Appeal Decision, para. 21.
[145] Defence Reply to Prosecution Response Regarding AFRC Adjudicated Facts, para. 8 (emphasis added).
[146] Taylor Appeal, para. 109.
[147] Judicial notice was taken on 23 May 2009 while the Prosecution had rested its case 27 February 2009.
[148] Defence Reply to Prosecution Response Regarding AFRC Adjudicated Facts, paras. 7, 14; Defence Application for Judicial Notice of Adjudicated Facts from the AFRC Trial Judgement, paras. 9-10.
[149] Taylor Appeal, paras. 89-90, 99-100.
[150] AFRC Adjudicated Facts Decision, para. 32.

rebuttal evidence, he had no notice that Adjudicated Fact 15 was in issue and was prejudiced when the Trial Chamber found that the Prosecution had successfully challenged it.[151] These arguments must fail for the following reasons.

70. First, in its AFRC Adjudicated Facts Decision, the Trial Chamber did not state that the Defence had proven Adjudicated Fact 15 such that it was no longer at issue. Rather, while noting that the Defence motion was "intended to streamline the Defence case", it held that the Prosecution "may have the option to challenge [any adjudicated facts judicially noticed] by cross-examining Defence witnesses or by calling rebuttal evidence."[152] Indeed, the Trial Chamber expressly noted that facts judicially noticed under Rule 94(B), like all rebuttable evidence, could be challenged at trial unlike those under Rule 94(A) which need not be proven again.[153]

71. Secondly, Taylor ignores his own argument that the Prosecution could challenge Adjudicated Fact 15 by cross-examining Defence witnesses on the issue, which it did.[154]

72. Thirdly, the AFRC Adjudicated Facts Decision cannot be interpreted as indicating that the only two ways to challenge an adjudicated fact are by calling rebuttal evidence or by cross-examining Defence witnesses. As recognised by Taylor at the time he sought its admission, in the unusual circumstance that an adjudicated fact is admitted mid-trial, it can also be challenged by evidence led before judicial notice is taken. Taylor's reliance on the *Mladić* case is misplaced,[155] since it does not hold that the non-moving party can only challenge an adjudicated fact with evidence admitted *after* it has been judicially noticed. Rather, *Mladić* concerns the more usual situation where judicial notice is taken of adjudicated facts at the pre-trial phase, which was not the case here.

73. Furthermore, the Prosecution was not obliged to expressly indicate its intention to challenge an adjudicated fact.[156] A party *requests* the Chamber to entertain a challenge to an adjudicated fact by introducing credible evidence to the contrary; there is no requirement to state on the record that this is being brought to challenge the adjudicated fact in question.[157]

74. Finally, Taylor has not shown that the Trial Chamber erred by citing paragraph 540 of the Prosecution Closing Brief when it found that the Prosecution had sufficiently challenged

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[151] Taylor Appeal, paras. 90, 94, 100-102.
[152] AFRC Adjudicated Facts Decision, para. 32.
[153] AFRC Adjudicated Facts Decision, para. 27.
[154] See, e.g., Sesay, T. 19 August 2010 pp. 46750-51, 46793-94, 46803-04; Ngebeh, T. 12 April 2010 p. 38682.
[155] Taylor Appeal, paras. 92-93.
[156] Taylor Appeal, paras. 87, 89.
[157] *Karemera* 29 May 2009 Judicial Notice Appeal Decision, para. 13; *Karemera* 16 June 2006 Judicial Notice Appeal Decision, para. 42.

the truth of Adjudicated Fact 15 so as to require the Chamber to reconsider the matter. This paragraph refers to the evidence of TF1-375 which the Trial Chamber relied on as rebutting the adjudicated fact[158] and to the testimony of Issa Sesay, whom Taylor chose to call. Sesay confirmed that RUF fighters were with Rambo Red Goat,[159] who led them into Freetown.[160] Moreover, the Chamber's deliberations and findings on the role of the RUF in the Freetown invasion (see below) make it very clear that the Chamber did not only rely on the evidence cited in this paragraph of the Prosecution Closing Brief to find that the RUF, and specifically Rambo Red Goat and his troops, were involved in the Freetown invasion.[161]

75. In light of the above, Taylor has not demonstrated any error in the Trial Chamber's finding that the Prosecution evidence led before Adjudicated Fact 15 was judicially noticed could successfully rebut it. The Trial Chamber correctly held that adjudicated facts judicially noticed under Rule 94(B) are merely presumptions that may be rebutted by evidence at trial. Moreover, as shown below, the Trial Chamber reasonably relied on all the evidence it heard to find that the Prosecution had successfully rebutted Adjudicated Fact 15.

(iv) No error of fact in the Chamber's finding that the RUF was involved in the Freetown invasion

76. The Trial Chamber's finding that the RUF was involved in the Freetown invasion is based on a careful and reasonable assessment of the totality of the evidence.[162] This included its finding that Taylor planned the operation with Sam Bockarie,[163] that the commander of the troops in the city, Gullit, was taking orders from Bockarie,[164] the 448 jet warnings that helped the attacking forces avoid being caught in the open by air attacks,[165] and the presence of RUF and Liberian forces, including those led by Rambo Red Goat, among the attackers in the city.[166] Taylor's attempts to challenge this finding[167] are without merit because they fail to establish that no reasonable trier of fact could have reached the same conclusion. All of the arguments he advances are simply inappropriate attempts to relitigate arguments reasonably

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[158] Judgement, paras. 3427-28, 3435.
[159] Sesay, T. 9 July 2010 p. 44167.
[160] Sesay, T. 19 August 2010, pp. 46793-94.
[161] Judgement, paras. 3419-35.
[162] Judgement, paras. 3435, 3480, 3483, 3611(x), 6962. In reaching this conclusion the Trial Chamber relied in part on the evidence of Bobson Sesay and TF1-375, see Judgement, para. 3435. Both of these witnesses testified that there were RUF fighters amid the forces led by Rambo Red Goat into Freetown, Judgement, paras. 3159, 3223-25. The Chamber found Bobson Sesay generally credible and TF1-375 credible when corroborated, Judgement, paras. 312, 3428.
[163] Judgement, para. 3611(vi).
[164] Judgement, paras. 3485, 3611(xii), 6758.
[165] Judgement, paras. 3914. See also Judgement, paras. 3893, 3897.
[166] Judgement, paras. 3374, 3611(x), 4394-96.
[167] Taylor Appeal, paras. 103-110.

rejected at trial. At no time does Taylor address the standard for appellate review and identify why the Trial Chamber's findings are unreasonable or wholly erroneous.

77. Taylor's reliance on the evidence of TF1-567 and Exhibit P-149 is completely misleading.[168] This evidence concerns RUF forces under Boston Flomo (aka "Rambo" or "RUF Rambo") attacking Waterloo in an unsuccessful attempt to enter Freetown.[169] This does not contradict the Trial Chamber's later findings that a smaller group of fighters led by Rambo Red Goat managed to enter Freetown despite the main RUF group under Boston Flomo being unable to bypass the Nigerian forces.[170]

78. Taylor erroneously argues that, as TF1-375, Kamara, Bobson Sesay and TF1-371 gave vastly inconsistent accounts of events, no reasonable trial chamber could have concluded that Rambo Red Goat entered Freetown.[171] The Trial Chamber very carefully and reasonably assessed the evidence of these witnesses before finding them corroborative. Contrary to Taylor's submission, Bobson Sesay's evidence was far from being diametrically opposed to Perry Kamara's. While there may have been minor differences in the testimony of these two witnesses, whom the Chamber found to be generally credible,[172] Taylor has failed to show that the key facts they describe are not compatible.[173] To the contrary, both recounted exactly the same events. Both testified that Boston Flomo was unsuccessful in his attempt to reinforce Gullit's troops in Freetown but one former SLA member called Rambo Red Goat managed to enter Freetown with a group of fighters,[174] which Bobson Sesay testified included RUF fighters.[175] The Chamber carefully and reasonably considered the Defence argument at trial about why Bobson Sesay's evidence about Rambo Red Goat should not be believed before dismissing it.[176] Moreover, the Trial Chamber found that both witnesses were in Freetown during the invasion where they each saw Rambo Red Goat.[177] The Trial Chamber also noted that Bobson Sesay was ordered to receive Rambo Red Goat in Freetown[178] and found that he

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[168] Taylor Appeal, para. 104.
[169] The Chamber found this at Judgement, para. 3422.
[170] Judgement, paras. 3423-35.
[171] Taylor Appeal, paras. 105-07.
[172] Judgement, paras. 236, 289.
[173] *Nahimana* AJ, para. 428. See also *Rukundo* AJ, para. 201.
[174] Judgement, paras. 3424-25.
[175] Judgement, para. 3159. The Chamber found Bobson Sesay credible both generally and in respect of this allegation, Judgement, paras. 289, 3435. TF1-375 also testified that this force included RUF fighters, see para. 79 of this Response Brief.
[176] Judgement, para. 3426.
[177] Judgement, paras. 3424-25, 3428. See also Kamara, T. 6 February 2008 pp. 3237-39, 3241-43.
[178] Judgement, para. 3159.

was present during the conversation when Boston Flomo told Gullit he was sending Rambo Red Goat upon Bockarie's instruction.[179]

79. Furthermore, contrary to Taylor's position, the testimony of TF1-375 corroborates Kamara and Bobson Sesay's evidence concerning Rambo Red Goat.[180] The Trial Chamber never found these three accounts were identical on every detail[181] but that their description of key facts was compatible.[182] In this regard, the Prosecution recalls that TF1-375 corroborates Bobson Sesay's testimony that the fighters with Rambo Red Goat included RUF.[183] Recalling its concerns about TF1-375's testimony, the Trial Chamber only relied on his evidence to the extent it was corroborated by Perry Kamara and Bobson Sesay.[184] Taylor has not shown any reversible error by the Chamber in this regard.

80. Taylor misstates TF1-371's evidence when he argues that this witness contradicted Kamara and Bobson Sesay's testimony about the movement of Rambo Red Goat's group. Contrary to Taylor's submissions, the Trial Chamber correctly found that TF1-371 testified about Boston Flomo, "RUF Rambo", rather than Rambo Red Goat.[185] However, as Rambo Red Goat was part of Flomo's group, the Trial Chamber reasonably found that part of Flomo's group successfully managed to link up with Gullit through Rambo Red Goat.[186] Moreover, TF1-371[187] also corroborated Bobson Sesay and Kamara's testimony[188] when he said that Flomo received the order to reinforce Gullit's troops from Bockarie.

81. Taylor has failed to show that the Trial Chamber erred by finding the evidence of these four witnesses corroborative of the fact that Rambo Red Goat entered Freetown with a small number of RUF troops during the invasion of the city. The testimony of Komba Sumana, cited by the Trial Chamber in its findings about Rambo Red Goat's entry into Freetown, provides further corroboration that indeed some fighters sent from behind the RUF lines managed to enter Freetown during the invasion in January 1999.[189]

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[179] Judgement, para. 3428.
[180] Judgement, paras. 3427-28.
[181] Judgement, paras. 3159, 3426.
[182] Judgement, para. 3428.
[183] Judgement, paras. 3223-25.
[184] Judgement, para. 3428.
[185] Judgement, para. 3428, fn. 7742.
[186] Judgement, paras. 3423-24.
[187] Judgement, para. 3428.
[188] Judgement, paras. 3423-25.
[189] Judgement, para. 3421. See also Judgement, para. 3231.

82. Taylor misstates the evidence when he argues that Bobson Sesay was the only witness to testify that Rambo Red Goat's troops committed crimes charged in the Indictment.[190] Kamara, who the Chamber found generally credible,[191] testified that "Gullit ordered Red Goat to make the area fearful after leaving him in charge of Freetown. The group that had remained in Freetown did not have a radio but the witness heard on commercial radio that 'these rebels' were amputating and killing civilians, raping, and burning houses."[192]

(v) Conclusion

83. Taylor has failed to show that Chamber erred in law or in fact when it found that the Prosecution had successfully challenged the truth of Adjudicated Fact 15 by introducing credible and reliable evidence to the contrary. Moreover, Taylor has not shown that no Trial Chamber could have reasonably relied upon this evidence to find that the RUF was involved in the Freetown invasion. This Ground of Appeal should therefore be dismissed.

GROUND 7: The Trial Chamber properly found that Charles Taylor and Sam Bockarie jointly planned an attack on Kono, Makeni and Freetown

(i) Overview

84. The Trial Chamber did not err in law or in fact by relying on the evidence of TF1-371, Isaac Mongor and Karmoh Kanneh to find that Taylor and Bockarie jointly planned an attack on Kono, Kenema and Freetown labelled the "Bockarie/Taylor plan". Accordingly, Ground 7 of Taylor's appeal should be dismissed.

(ii) The Chamber properly relied on the testimony of TF1-371, Kanneh and Mongor

(a) Introduction

85. Taylor argues throughout this Ground that although the Chamber criticised various aspects of TF1-371, Karmoh Kanneh and Isaac Mongor's evidence, it did not refer to such criticism whenever it accepted their testimony.[193] Contrary to the implication that a Trial Chamber should explicitly repeat what it has found elsewhere in the Judgement each time it addresses a witness's evidence, the fact finder need not articulate every step of its reasoning for each particular finding,[194] nor must it set out in detail why it accepted or rejected particular testimony.[195] The fact that the deliberations and findings at issue do not repeat other

[190] Taylor Appeal, para. 108.
[191] Judgement, para. 236.
[192] Judgement, para. 3191.
[193] Taylor Appeal, paras. 114-18, 121, 124, 127, 139-40, 149.
[194] *RUF* AJ, para. 345; *Krajišnik* AJ, para. 139; *Musema* AJ, para. 18.
[195] *RUF* AJ, para. 345; *Musema* AJ, para. 20; *Krajišnik* AJ, para. 139; *Nchamihigo* AJ, para. 165.

deliberations and findings does not indicate the Trial Chamber accepted the testimony of all three witnesses regarding the plan without careful consideration.[196]

(b) The Chamber properly assessed the evidence of TF1-371, Kanneh and Mongor

86. Taylor erroneously claims that the Trial Chamber failed to assess the testimony of TF1-371, Kanneh and Mongor with appropriate caution in light of their status as accomplices.[197] The Trial Chamber expressly noted its obligation to treat accomplice evidence with caution and the factors to take into account in assessing the reliability of such evidence.[198] The Chamber correctly stated that TF1-371 and Mongor were accomplice witnesses[199] and recalled Kanneh's senior status in the RUF on more than one occasion in the Judgement.[200]

87. The Chamber carefully assessed these witnesses, considering: TF1-371's testimony, his prior statements and prior testimony before this Tribunal;[201] Mongor's testimony, his prior statements, the fact that originally he was not forthcoming regarding Taylor's role in the Freetown invasion, money he received, the letter of immunity he received from the Prosecution and his calm demeanour throughout cross-examination, despite being pressed heavily and repeatedly accused of lying;[202] and Kanneh's clear and calm testimony and his candidness about failing to correct his prior statements.[203] Having considered all of these factors, the Chamber found TF1-371, Mongor and Kanneh to be credible witnesses generally, providing extensive reasons for such conclusions.[204]

88. Taylor's complaint that in other parts of the Judgement, the Chamber declined to rely on these witnesses' evidence[205] actually counters his complaint that the Chamber did not treat their evidence with caution.[206] As the ICTY Appeals Chamber found in *Krajišnik*, relying on specific parts of testimonies while rejecting other parts as not credible indicates the Chamber's use of caution when assessing the reliability of witness testimonies.[207]

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[196] *Contra* Taylor Appeal, paras. 115-17.
[197] Taylor Appeal, para. 115.
[198] Judgement, paras. 182-83. This Appeals Chamber has recognised that such a statement by a Trial Chamber at the beginning of its judgement is sufficient to demonstrate the exercise of caution whenever it considered such evidence (see *RUF* AJ, para. 629, fn. 1570 referring to *RUF* TJ, para. 539 (see also *RUF* TJ, para. 540).
[199] Judgement, paras. 220, 270, respectively.
[200] See, e.g., Judgement, paras. 623 (an RUF insider closely associated with Sam Bockarie), 2881 (senior commander in the RUF), 2971, 3879, 4978.
[201] Judgement, paras. 220-26.
[202] Judgement, paras. 269-74.
[203] Judgement, para. 2704.
[204] Judgement, paras. 220-26 (TF1-371), 269-74 (Mongor), 2704 (Kanneh).
[205] Taylor Appeal, para. 117.
[206] Taylor Appeal, para. 115.
[207] *Krajišnik* AJ, para. 150.

(c) The Chamber considered inconsistencies and reasonably relied on corroborated evidence in relation to the meeting held before Sam Bockarie left Buedu

89. Taylor's argument that seemingly indicates the Chamber erred by relying solely on "inconsistent accounts" of TF1-371, Mongor and Kanneh to find that he planned the December 1998 offensive is misguided.[208] The evidence of these three witnesses does not exist in a vacuum. The Trial Chamber also relied on the evidence of Augustine Mallah, Abu Keita, Albert Saidu, TF1-585, Dauda Aruna Fornie, TF1-367 and TF1-567 to make the findings Taylor disputes.[209] Where there were inconsistencies, the Trial Chamber properly considered them in light of the totality of the evidence.

90. Kanneh's testimony about a meeting at Waterworks in spring 1998 is indeed inconsistent, as Taylor alleges, with Mongor's evidence that the meeting took place in November 1998.[210] The Trial Chamber assessed Kanneh's confusion with dates elsewhere in the Judgement and found it was not detrimental to his overall credibility.[211] It is clear, however, that the Trial Chamber did not rely on Kanneh's evidence to establish the date of the meeting, as it did not mention his evidence in its Deliberations section discussing this particular meeting,[212] preferring instead to rely on Mongor's date, which was corroborated in part by other evidence.[213] As a matter of law, "[i]f the Trial Chamber did not refer to the evidence given by a witness, even if it is in contradiction to the Trial Chamber's finding, it is to be presumed that the Trial Chamber assessed and weighed the evidence, but found that the evidence did not prevent it from arriving at its actual findings."[214] The Trial Chamber used caution and exercised its discretion to reasonably reject Kanneh's evidence on the date of the

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[208] Taylor Appeal, para. 118, citing in fn. 231 to the findings in paras. 3090, 3099, 3112 and 3129 of the Judgement.

[209] See Judgement, para. 3090 considering Mallah's testimony; the finding in para. 3099 is "based on the aforementioned evidence" that includes paras. 3092 (Mallah, Keita and Saidu) and 3093 (TF1-585); the finding in para. 3112 is based on the evidence discussed in paras. 3100-11, which considers the evidence of Fornie (para. 3100), TF1-367 (para. 3108), TF1-567 (para. 3110) and Keita (para. 3110); the finding in para. 3129 encompasses all of these preceding findings.

[210] Taylor Appeal, para. 119.

[211] Judgement, para. 2704 (the Trial Chamber said Kanneh's "occasional confusion regarding specific dates" was not detrimental to his overall credibility), fn. 5930 (the Trial Chamber cited some of the same passages with incorrect dates cited by the Defence in Taylor Appeal, fn. 232), para. 2941 (Kanneh's recollection of the meeting may have become confused with other events occurring in 1998).

[212] Judgement, paras. 3089-90.

[213] Judgement, para. 3090. The Trial Chamber also relied upon the evidence of TF1-371 and Augustine Mallah in regard to the meeting prior to Bockarie's trip to Monrovia.

[214] *Kvočka* AJ, para. 23. As Kanneh's evidence was summarised in the section preceding the "Deliberations" section of the findings at issue, this bolsters the presumption that the Trial Chamber considered his evidence and reasonably rejected it for more credible evidence, displaying its cautious treatment of his evidence.

meeting. Contrary to Taylor's assertion,[215] the Trial Chamber is not required to set out in detail why it accepted or rejected a particular testimony.[216]

91. Similarly, Taylor asserts that Mongor and TF1-371's evidence regarding the motivations and circumstances leading up to Bockarie's trip to Liberia and Burkina Faso cannot be reconciled with Kanneh's account of the Waterworks meeting.[217] It is clear the Trial Chamber did not rely on Kanneh's evidence in this regard. The Deliberations section of the Judgement regarding the meeting prior to Bockarie's trip clearly shows that the Trial Chamber relied on the evidence of TF1-371, Mongor and Augustine Mallah, *not Kanneh*, for its findings regarding that particular meeting,[218] and, as noted above, it is to be presumed that the Trial Chamber assessed and weighed Kanneh's evidence but found it did not prevent the Chamber from arriving at its actual findings.[219]

92. The Judgement paragraph cited by Taylor that allegedly "brushed over" inconsistencies between the account of Kanneh with those of Mongor and TF1-371[220] mentioned Kanneh's evidence relating to the meeting *only when* it was corroborated by TF1-371's evidence.[221] In the same section of the Judgement, the Chamber explicitly recognised that TF1-371, Mongor, Saidu and Kanneh's accounts regarding the events in Liberia and Burkina Faso did not "coincide on every particular point",[222] but found that these witnesses and others effectively complemented each other on the critical elements of the allegations, and were also corroborated by reliable contemporary documentary evidence.[223] In light of all of the above, the Judgement clearly demonstrates that the Trial Chamber did in fact consider the inconsistencies at issue, and it reached a reasonable conclusion in light of the totality of the evidence.

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[215] Taylor Appeal, paras. 118-21.
[216] *RUF* AJ, para. 345; *Nchamihigo* AJ, para. 165; *Musema* AJ, para. 20, *Krajišnik* AJ, para. 139. Taylor complained that the Chamber brushed over inconsistencies between the accounts and failed to address them properly or at all (see Taylor Appeal, paras. 118-21).
[217] Taylor Appeal, para. 120.
[218] See Judgement, paras. 3089-90.
[219] *Kvočka* AJ, para. 23. Further proof that the Trial Chamber considered Kanneh's evidence about the meeting prior to Bockarie's departure is the Trial Chamber's inclusion of a summary of Kanneh's evidence on the matter in para. 2971 of the Judgement, preceding the "Deliberations" section where the findings at issue were made.
[220] Judgement, para. 5511, cited in Taylor Appeal, fn. 242.
[221] Judgement, para. 5511 ("both TF1-371 and Kanneh testified to the Accused's involvement in the facilitation of the ammunition from Burkina Faso").
[222] Judgement, para. 5513.
[223] Judgement, paras. 5513-14.

(d) The Chamber correctly evaluated Isaac Mongor's evidence on his meeting with Sam Bockarie

93. The three "inconsistencies" in Mongor's evidence that Taylor alleges the Trial Chamber failed to consider[224] were not inconsistencies at all. Mongor's evidence was properly considered by the Trial Chamber in the context of the totality of the evidence.

94. First, Taylor incorrectly asserts that Mongor's account of the plan that included attacks on Joru and Zimmi "encompasses three separate phases" and is thus inconsistent[225] with the two-prong attack on Kono, Kenema and Freetown which was accepted by the Chamber.[226] The argument confuses the main targeted locations with locations situated on the way toward those targets that were also to be attacked. Joru is located in Kenema District and is therefore compatible with the plan to attack locations in and around Kenema as part of the Kenema target. In fact, the Trial Chamber specifically referred to Joru and Zimmi as part of the unsuccessful attacks on the Segbwema-Daru axis towards Kenema.[227] The Trial Chamber reasonably considered Joru and Zimmi to be part of the Kenema part of the two-prong attack so the alleged inconsistency of a "third phase" does not exist.

95. Second, Kanneh did not testify that Bockarie said he would "explicitly reject" obtaining manpower support from Liberia as alleged by Taylor.[228] Kanneh testified that Bockarie did not want manpower support from the NPFL because of problems they'd had in the early part of the war when the NPFL dominated the RUF; rather, he preferred assistance from former ULIMO-K fighters.[229] While this may at first seem to contradict Mongor's evidence that Bockarie was discussing a plan to receive NPFL reinforcements from Liberia,[230] in 1998, the NPFL no longer existed.[231] Mongor clarified that when he said "NPFL fighters" he meant Charles Taylor's men who were in Liberia.[232] In light of this clarification, Mongor's evidence did not actually contradict Kanneh's account. The Trial Chamber reasonably exercised its discretion in accepting Mongor's testimony that the plan would involve attacks

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[224] Taylor Appeal, paras. 122-24.
[225] Taylor Appeal, para. 123.
[226] Judgement, para. 3112.
[227] Judgement, para. 3369, fn. 7507.
[228] Taylor Appeal, para. 123.
[229] Kanneh, T. 13 May 2008 pp. 9726-27.
[230] Mongor, T. 11 March 2008 p. 5796.
[231] See, e.g., Taylor, T. 23 July 2009 p. 25150 ("By January of 1997 the NPFL and all the warring factions are disbanded. We then begin the process of forming political parties.")
[232] Mongor, T. 11 March 2008 p. 5798.

on Kenema and Joru.[233] The fact that the Chamber did not mention Kanneh's evidence about manpower support in reaching this finding is not an error.[234]

96. Third, while the Trial Chamber considered Mongor's evidence in relation to the events in Burkina Faso,[235] it did not rely on Mongor in relation to the origin of the materiel, choosing instead to rely on the evidence of Kanneh, TF1-371, TF1-338, Dauda Aruna Fornie, Issa Sesay's evidence from his own trial, and Exhibits P-63 and P-67 to support the finding that the shipment came from Burkina Faso.[236] This finding was reasonable based on the totality of the evidence.

97. The Chamber is not required to set out in detail why it accepted or rejected a particular testimony.[237] However, contrary to Taylor's submission,[238] Mongor's testimony supports rather than contradicts the Chamber's finding that "around November/December 1998, the Accused was instrumental in procuring a large quantity of arms and ammunition for the RUF from Burkina Faso."[239] Mongor testified that Bockarie had brought Taylor diamonds,[240] Taylor had made a connection for Bockarie with the Burkina Faso President,[241] and in Burkina Faso, Bockarie had met with the President so they would "be able to buy ammunition from there"[242] but he "did not immediately get the arms and ammunition from there"[243] and had brought the ammunition from Liberia.[244] This accords with the evidence of witnesses TF1-371, Marzah and Sherif that the ammunition was brought back by plane from Burkina Faso to Monrovia and then stored for a time at White Flower before being distributed.[245] There is no contradiction between the Chamber's finding and Mongor's evidence.

98. The Trial Chamber acted reasonably in evaluating Mongor's evidence on his meeting with Sam Bockarie and its findings should not be disturbed.

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[233] Judgement, para. 3093.
[234] As stated previously, if the Trial Chamber did not refer to the evidence given by a witness, even if it is in contradiction to the Trial Chamber's finding, it is to be presumed that the Trial Chamber assessed and weighed the evidence, but found that the evidence did not prevent it from arriving at its actual findings (*Kvočka* AJ, para. 23). See also *Nchamihigo* AJ, para. 166; *Zigiranyarazo* AJ, para. 45; *Krajišnik* AJ, para. 141.
[235] As evidenced by Judgement, paras. 5513, 5515.
[236] Judgement, para. 5519, fns. 12304-05, para. 5527.
[237] *Nchamihigo* AJ, para. 165; *Musema* AJ, para. 20; *Krajišnik* AJ, para. 139.
[238] Taylor Appeal, para. 123.
[239] Judgement, para. 5527.
[240] Judgement, para. 5432.
[241] Judgement, para. 5433.
[242] Mongor, T. 11 March 2008 p. 5794.
[243] Mongor, T. 4 April 2008 p. 6662.
[244] Mongor, T. 11 March 2008 pp. 5794-95.
[245] Judgement, para. 5515.

(e) The Chamber was reasonable in its findings regarding the Waterworks and "inner core" meetings after Sam Bockarie returned

99. Taylor misstates the evidence on which the Trial Chamber relied regarding the meetings held upon Sam Bockarie's return,[246] claiming a discrepancy where none exists.[247] TF1-371 testified about three meetings: the Waterworks forum, a senior officers' meeting at Sam Bockarie's house, and an "inner core" meeting of a few commanders in Bockarie's bedroom at lunchtime during the senior officers' meeting.[248] TF1-371's evidence reflects that the senior officers' meeting was the meeting convened immediately after the Waterworks forum, not the "inner core" meeting, and the "inner core" meeting was convened halfway through the senior officers' meeting,[249] not the Waterworks forum as alleged by Taylor.[250] The Trial Chamber summarised this evidence correctly.[251] Taylor did not.

100. Contrary to Taylor's submission, Mongor's "failure" to mention a particular meeting is not a crucial error that undermines the reliability of his evidence.[252] Mongor did not specify that he attended the meeting at Waterworks,[253] nor was he asked where the meeting he attended was held.[254] However, Mongor's evidence suggests he was at both the Waterworks forum and at the senior officers' meeting, as he testified about SYB Rogers speaking at the meeting[255] (documented in the minutes of the Waterworks forum)[256] and of Sam Bockarie showing the ammunition to the attendees.[257] This ammunition was stored at Bockarie's house[258] where the senior officers' meeting was held.[259] Further, Mongor testified that at the end of the meeting he received ammunition to use to go to his assigned target,[260] which aligns

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[246] Taylor Appeal, paras. 125-27.
[247] Taylor Appeal, para. 125.
[248] TF1-371, T. 28 January 2008 pp. 2405-15 (CS) (specifically: p. 2405 – Waterworks forum; p. 2410 – senior officers' meeting; pp. 2410, 2412 – inner core meeting).
[249] Judgement, paras. 2962-63, 5419-20; TF1-371, T. 28 January 2008 pp. 2405, 2409-10 (CS).
[250] Taylor Appeal, para. 125.
[251] Judgement, paras. 5419 (Waterworks forum, senior officers' meeting), 5420 (inner core meeting), 2961 (Waterworks forum), 2962 (senior officers' meeting), 2963 (inner core meeting).
[252] Taylor Appeal, paras. 126-27.
[253] *Contra* Taylor Appeal, para. 126.
[254] Note that Mongor testified he attended a meeting at Waterworks prior to Bockarie's departure for Liberia and Burkina Faso, but he did not specify where the meeting was held after Bockarie's return. See Mongor, T. 11 March 2008 pp. 5780-5783 (Waterworks mentioned at p. 5782), 5797-5801.
[255] Mongor, T. 11 March 2008 pp. 5797.
[256] Exh. P-63, pp. 00015487-88.
[257] Mongor, T. 11 March 2008 p. 5797.
[258] Mongor, T. 11 March 2008 pp. 5791-92. See also Judgement, para. 5019 (Jaward explained there were two stores in Buedu, one attached to Bockarie's house).
[259] See TF1-371, T. 28 January 2008 p. 2410 (CS). Note also on the same page, TF1-371 listed the attendees at the officer meeting, including Mongor, and Mongor's list of attendees is largely the same: Mongor, T. 11 March 2008 pp. 5797-98.
[260] Mongor, T. 11 March 2008 p. 5801.

with TF1-371's account of events at the senior officers' meeting.[261] As the Waterworks forum and officers' meetings took place consecutively,[262] Mongor may not have made the distinction of separate meetings and viewed them as a continuation of the same meeting, especially after the passage of ten years. This was not clarified during testimony but is a reasonable conclusion to make and is compatible with the totality of the evidence. In any event, it does not follow that Mongor must have known that a subset of the commanders present at the senior officers' meeting met privately with Bockarie, as he neither testified to attending the "inner core" meeting, nor did TF1-371 or Kanneh place him there.[263]

101. Neither does Kanneh's "failure" to mention the Waterworks meeting undermine the reliability of his evidence.[264] It cannot be assumed that all attendees at the smaller meeting at Bockarie's house must have attended or even known about the Waterworks forum. Kanneh never said he attended the Waterworks forum, no one else placed him there, and to say he must have known about it because it immediately preceded the smaller meeting is without basis.

102. In light of the above, Taylor has failed to show a crucial error that warrants appellate intervention.

(f) The Chamber was reasonable in finding that TF1-371 and Karmoh Kanneh were testifying about the same "inner core" meeting

103. The Trial Chamber recognised the inconsistencies Taylor highlights in his argument regarding the "inner core" meeting[265] and weighed them carefully.[266] As stated elsewhere in this Response, many inconsistencies between witness accounts may be reasonably explained by varying vantage points and the passage of time.[267] It is within the Chamber's discretion to evaluate inconsistencies and to accept or reject "fundamental features" of the evidence.[268] Here, the Trial Chamber reasonably found the similarities between the accounts, including who attended the meeting, where it was, and the satellite phone call between Bockarie and Taylor,[269] to be compelling. It expressly considered the inconsistencies regarding the meeting time and whether the attendees were present during the phone call and found the differences

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[261] TF1-371, T. 28 January 2008 p. 2414 (CS).
[262] TF1-371, T. 28 January 2008 pp. 2409-10 (CS).
[263] See also para. 105 of this Response.
[264] Taylor Appeal, paras. 126-27.
[265] See, e.g., Taylor Appeal, paras. 129, 134.
[266] Judgement, para. 3104.
[267] *Setako* AJ, para. 97, citing *Setako* TJ, para. 341.
[268] Judgement, para. 172, citing *AFRC* TJ, para. 110, *Kupreškić* AJ, para. 31. See also *Setako* AJ, para. 31; *Munyakazi* AJ, para. 71.
[269] Judgement, para. 3104.

"insignificant"[270] in light of the compelling fundamental features that were consistent between the accounts. Such differences can be reasonably explained by the passage of time and do not render the Chamber's findings unreasonable.

104. The Trial Chamber's use of inclusive language in the Judgement[271] indicates that the three inconsistencies it enumerated were not the only inconsistencies it considered.[272] The discrepancies regarding the meeting's format[273] and the number of attendees[274] are also reasonably explained by the passage of time. A Trial Chamber must consider all inconsistencies but need not specifically address each in the Judgement,[275] and it is presumed the Chamber took such into account even if they were not specifically mentioned.[276]

105. Taylor's misstatement of the evidence regarding the meetings as discussed in paragraph 99 above leads him to create inconsistencies where none exist regarding the "inner core" meeting attendees.[277] TF1-371 testified that Isaac Mongor was present at the senior officers' meeting but did not name him as one of the commanders at the "inner core" meeting in Bockarie's bedroom;[278] Kanneh said Mongor was not at the "inner core" meeting; [279] and Mongor *never said* he attended such a meeting.[280] Thus, all three accounts reflect that Mongor was not in attendance at the inner core meeting, explaining why Mongor would neither have mentioned such a meeting nor said Kanneh attended it.[281] Similarly, TF1-371's testimony that "one or two others" were also present, without stating that Kanneh was present, does not contradict Kanneh's testimony that he (Kanneh) was there.[282]

106. Taylor also misstates Kanneh's testimony regarding the phone call. Kanneh did not say that Bockarie and Jungle told Taylor the plan was *made* and accepted by the senior RUF officers at the meeting.[283] Rather, Kanneh testified that Bockarie and Jungle told Taylor that Bockarie had put the plan they had discussed in Monrovia to the senior officers at the meeting

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[270] Judgement, para. 3104.
[271] Judgement, para. 3104.
[272] Taylor Appeal, para. 137.
[273] Taylor Appeal, paras. 131-32.
[274] Taylor Appeal, para. 134.
[275] *Muhimana* AJ, para. 58.
[276] *Kvočka* AJ, para. 23. See also *Nchamihigo* AJ, para. 166; *Zigiranyarazo* AJ, para. 45; *Krajišnik* AJ, para. 141.
[277] Taylor Appeal, paras. 130, 132.
[278] TF1-371, T. 28 January 2008 pp. 2410 (CS) (listing the senior officers' meeting attendees), 2412 (CS) (listing the "inner core" meeting attendees).
[279] Kanneh, T. 13 May 2008 p. 9707.
[280] See also the related arguments at para. 100 of this Response.
[281] Taylor Appeal, para. 130.
[282] TF1-371, T. 28 January 2008 p. 2412 (CS).
[283] Taylor Appeal, para. 135 (emphasis added).

and they had discussed it.[284] In this context, Kanneh's testimony that at the meeting they discussed re-attacking Kono and going up to Freetown to free their leader and take over power[285] indicates this was the plan given by Taylor. This is not incompatible with TF1-371's evidence that Taylor instructed Bockarie on the phone to "by all means capture Freetown" and this was Operation No Living Thing – the target was to capture Freetown and nobody, including commanders who tried to contest Bockarie's authority – should stand in their way.[286]

107. Taylor incorrectly argues that Mohamed Kabbah's evidence about a phone call on 6 January undermines Kanneh and TF1-371's evidence about Bockarie's satellite phone call with Taylor at his house before the December attack on Kono.[287] Kabbah did not testify that the only place in Buedu where Bockarie could ever get satellite coverage was up "the hill".[288] He testified that network coverage changed depending on the weather—sometimes there would be no coverage in a house and the next day there would be coverage.[289] Kabbah's evidence does not undermine the satellite phone call evidence nor warrant mention by the Trial Chamber.[290]

108. The Trial Chamber did not treat Prosecution and Defence evidence differently as alleged by Taylor. The sole example given by Taylor to demonstrate this disparate treatment, Martin George, provides an incomplete picture of why the Trial Chamber found his evidence about the Waterworks meeting not credible.[291] The Trial Chamber reasonably rejected George's evidence for several reasons and gave a detailed explanation as to why it did so.[292] This issue is discussed in the Response to Ground 9 at paragraph 132 and the Prosecution incorporates those submissions here in full. Taylor fails to demonstrate disparate treatment by the Trial Chamber.

109. Based on the foregoing reasons, the Trial Chamber reasonably assessed the evidence about the "inner core" meeting and its findings should not be disturbed.

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[284] Kanneh, T. 9 May 2008 p. 9436.
[285] Kanneh, T. 9 May 2008 p. 9423.
[286] TF1-371, T. 28 January 2008 pp. 2412-14 (CS).
[287] Taylor Appeal, para. 136.
[288] Kabbah, T. 15 September 2008, pp. 16176-77.
[289] Kabbah, T. 16 September 2008 p. 16333.
[290] Taylor Appeal, para. 136.
[291] Taylor Appeal, para. 138.
[292] Judgement, para. 3094.

(iii) The Chamber reasonably considered the totality of the evidence to determine which testimony was credible when faced with inconsistencies and contradictions

110. Contrary to Taylor's assertion,[293] the Trial Chamber relied on corroborated evidence to determine who was commanding attacks in the southern prong of the offensive, citing Augustine Mallah and Albert Saidu's evidence in support of Kanneh's testimony that he was assigned to capture Segbwema and Daru.[294] The Chamber found Mongor's testimony that he was tasked to take Joru and Zimmi credible in light of the totality of the evidence, citing several contemporaneous news reports in support of the "undisputed facts" of the RUF and AFRC's military movements toward Kenema in December 1998 and January 1999.[295] Taylor offers no support to substantiate his position that TF1-371's testimony contradicts Mallah's evidence regarding Akim's assignment.[296]

111. The disputed accounts regarding manpower support raised by Taylor in paragraph 142 of his Appeal have been addressed in paragraph 95 above.

112. Contrary to Taylor's assertion,[297] the Trial Chamber made a well-reasoned decision when faced with a contradiction between Kanneh and Mongor's evidence about contact with SAJ Musa.[298] It first considered that Kanneh's testimony on the matter was "direct, detailed and consistent" and therefore "credible and reliable".[299] It then contrasted Mongor's testimony, noting his knowledge was second-hand rather than direct, there was no corroboration of an agreement for Johnny Paul Koroma to contact SAJ Musa, and "evidence concerning related events" indicated Mongor's testimony was inaccurate.[300] Such a determination as to which witness account was more credible was entirely within the Trial Chamber's purview,[301] and the articulated reasoning shows it considered the quality and source of the information as well as the totality of the evidence. The fact that TF1-371 did not mention the issue of SAJ Musa in his testimony about the meeting[302] does not prove the topic was not discussed, as the lack of mention could be due to a myriad of reasons including the passage of time.

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[293] Taylor Appeal, para. 141.
[294] Judgement, para. 3369, fn. 7508 citing Mallah, T. 13 November 2008 pp. 20222-24, Saidu, T. 5 June 2008 pp. 11082-85; see also Saidu, T. 5 June 2008 pp. 11093-94.
[295] See Judgement, paras. 3368, 3369, fn. 7507.
[296] Taylor Appeal, para. 141. A citation for Mallah's evidence was given, but not TF1-371's.
[297] Taylor Appeal, para. 143.
[298] See Judgement, paras. 3118-19.
[299] Judgement, para. 3118.
[300] Judgement, para. 3119.
[301] *AFRC* AJ, para. 121.
[302] Taylor Appeal, para. 143.

113. Taylor provides no basis for his assertion that "serious doubts arise" because of the various names given to the operation by witnesses.[303] The RUF/AFRC often used multiple names to describe one person, place or thing. For example, the RUF area at Camp Naama was called Crab Hole and Sokoto;[304] Foday Sankoh's radio code names included "The Lion",[305] "Smile",[306] and "Toyota",[307] while Charles Taylor was "Ebony"[308] or "047".[309] Most importantly, the Trial Chamber noted Augustine Mallah's testimony that "Operation Spare No Soul", "Operation Free Foday Sankoh" and "Operation No Living Thing" were the same operation and found that this did not undermine TF1-371's evidence that Bockarie coined the name "Operation No Living Thing" after Taylor instructed Bockarie over the phone to capture Freetown "by all means".[310] The examples that Taylor cites fail to undermine this evidence.

114. Similarly, the unsubstantiated argument that a military plan cannot exist only in oral form[311] has no basis in law or fact. Interestingly, it contradicts the evidence of Taylor's own witness, Issa Sesay, who testified that the RUF held meetings where they planned operations and gave orders to the commanders who would carry out the operation, but they did not have a system of writing things down before the operation.[312] In reality, members of the RUF/AFRC relied heavily on oral communication for a number of reasons, including the remoteness and distance between locations and literacy issues. The absence of real evidence (such as a written account of the plan) does not diminish the probative value of the evidence provided to the Chamber.[313]

(iv) The Chamber was correct in its assessment of the reliability of hearsay evidence

115. The Trial Chamber was conscious that Isaac Mongor, TF1-371 and Karmoh Kanneh's evidence on Taylor's role in creating the plan was hearsay, as it noted in its deliberations that "Bockarie told them" that the plan was a plan he had discussed with Taylor and had brought back from Monrovia.[314] Further, the Chamber said Mongor's testimony was "based on

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[303] Taylor Appeal, para. 144.
[304] Judgement, para. 2320. The Trial Chamber did not make a finding that Sokoto and Crab Hole were different names for the same place, but the Prosecution and Defence both introduced evidence in support, see, e.g., Judgement paras. 26, 2275, 2291, 2296, 2309, 2312.
[305] Judgement, para. 3958, fn. 8980.
[306] See, e.g., Judgement, paras. 3551, 3736, 4705, 5825, fn. 13015, para. 6122, fn. 13896.
[307] Judgement, para. 6222, fn. 14096.
[308] Judgement, para. 6222, fn. 14096.
[309] Judgement, paras. 375, 2626, fn. 5668.
[310] Judgement, paras. 3114-15; see also para. 3130.
[311] Taylor Appeal, para. 145.
[312] Sesay, T. 6 August 2010 p. 45627.
[313] *Musema* TJ, para. 52.
[314] Judgement, para. 3100.

Bockarie's description of a conversation Bockarie had with the Accused".[315] The Trial Chamber weighed the probative value of their evidence, and concluded that it was reliable for the purpose of proving the truth of its contents, in the sense of being voluntary, truthful and trustworthy.[316]

116. Taylor's claim that the Trial Chamber erred by failing to assess the veracity of the source of the hearsay regarding the 'plan', is misguided.[317] In relying on hearsay evidence, a Trial Chamber must take into consideration the indicia of reliability.[318] A party tests the probative value of a hearsay statement and its source's motive through cross-examination.[319] Here, the Trial Chamber was sensitive to circumstantial indications of trustworthiness in its assessment of hearsay evidence.

117. In this case, the Prosecution notes that the Defence extensively cross-examined Mongor, TF1-371 and Kanneh regarding the information told to them by Bockarie about Taylor's role in planning the invasion of Freetown[320] and notwithstanding, having considered all the factors set out in paragraphs 168-169, found this evidence reliable.

118. The Judgement and trial record are replete with circumstantial guarantees of the trustworthiness of this hearsay evidence,[321] as the evidence of Mongor, TF1-371 and Kanneh does not exist in isolation. Taylor's role in planning the Freetown operation is reasonable in light of other findings by the Trial Chamber that establish the context. This includes findings that after the Intervention in February 1998, Taylor gave key tactical instructions for the AFRC/RUF to implement, instructing to them to capture and maintain Kono,[322] and recapture Kono, which resulted in the unsuccessful Fitti-Fatta attack in mid-June 1998.[323] Taylor sent materiel to the AFRC/RUF[324] and met several times with Bockarie, giving him sizeable

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[315] Judgement, para. 3101.
[316] The Chamber's methodology in assessing all the hearsay evidence it heard was clearly set out at paragraphs 168 to 169 of its Judgement.
[317] Taylor Appeal, paras. 112, 146, 148.
[318] See Judgement paras. 168-69.
[319] See the response to Ground 2.
[320] Mongor, T. 7 April 2008 pp. 6720-21, 6735-45, 6754-68 (The Trial Chamber explicitly noted that it accepted Mongor's explanation as to why he had not been truthful in his prior statements regarding Taylor's role in the Freetown invasion (Judgement, para. 3101)); TF1-371, T. 30 January 2008 pp. 2640-49 (CS); Kanneh, T. 13 May 2008 pp. 9693-9730, T. 14 May 2008 pp. 9753-57 (The Trial Chamber specifically addressed Kanneh being confronted on cross-examination with a prior statement allegedly showing he did not mention that Taylor had planned the takeover of Freetown (Judgement, para. 3110)).
[321] See the response to Grounds 1 and 2 and in particular fn. 50, see also the response to Ground 23, para. 453, in respect of the fact that there is nothing to support Taylor's general allegation that Bockarie had a motivation to exaggerate or lie about Taylor's backing.
[322] Judgement, paras. 2769, 2855, 2863-64.
[323] Judgement, paras. 2927, 2951.
[324] Judgement, para. 4965.

amounts of arms and ammunition[325] which were used by AFRC/RUF troops in Kono as well as in operations led by AFRC commanders throughout Sierra Leone.[326] After months of such intense interaction between Taylor and the AFRC/RUF leadership, especially Bockarie, a trip to Monrovia to plan a major military offensive with Charles Taylor was a logical link in a long chain of events. Taylor himself testified that he met Bockarie on his way to Burkina Faso,[327] and the Chamber found that Taylor had been instrumental in providing the RUF with that large ammunition shipment.[328] It is obvious that Taylor would be interested in how the shipment would be used and would discuss this with Bockarie, the person receiving the shipment. In this larger framework, Bockarie's statements about the plan were rational, credible, logical and sensible, and the Trial Chamber was reasonable in evaluating the hearsay statements attributed to him as reliable and truthful.

119. The reliability of these statements is further corroborated by other evidence. Several witnesses testified that when he came back to Buedu after his trip to Liberia, Bockarie and Issa Sesay said that Bockarie had met Taylor in Monrovia, brought back a large shipment of arms and ammunitions, and that the AFRC/RUF were going to launch a major military offensive.[329] Witnesses also testified that Bockarie and Issa Sesay reported concrete examples of what Taylor had said during the meeting Bockarie had with him in Monrovia.[330]

120. The Trial Chamber correctly instructed itself on the law regarding hearsay and assessed Bockarie's statements to Mongor, TF1-371 and Kanneh reasonably and with the appropriate caution in light of the totality of the evidence. Taylor has failed to show that the Trial Chamber's approach was incorrect or that no reasonable trier of fact could have reached these conclusions. Consequently these findings should not be disturbed.

(v) Conclusion

121. For all of the above reasons, Ground 7 of Taylor's Appeal should be dismissed as Taylor has failed to demonstrate any legal or factual error warranting appellate intervention.

[GROUND 8 follows GROUND 9 to mirror the order of the Taylor Appeal.][331]

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[325] Judgement, paras. 5029-31.
[326] Judgement, para. 5667.
[327] Judgement, para. 5514.
[328] Judgement, para. 5527.
[329] Judgement, paras. 3003-04 (Mallah), 3012-14 (Saidu), 3016-17 (TF1-567), 3020-21 (Keita), 3022-23 (Kabbah), 3035-36 (TF1-367).
[330] Judgement, paras. 3016-17 (TF1-567), 3021 (Keita).
[331] This is in keeping with para. 13 of the Appeals Practice Direction.

GROUND 9: The Trial Chamber committed no factual or legal error in finding that the Bockarie/Taylor plan had Freetown as the "ultimate destination"

(i) Overview

122. The Trial Chamber reasonably found that the Bockarie/Taylor plan included an attack on Freetown. Taylor's challenges to the reasonableness of this finding, including whether the evidence regarding locations targeted by the plan was sufficiently corroborative, have no merit. Equally without merit is his assertion that acceptance of evidence from witnesses who did not mention Freetown as part of the plan precludes the Chamber from being satisfied beyond a reasonable doubt that Freetown was the plan's ultimate goal. Finally, Taylor fails to demonstrate that the Chamber shifted the burden of proof when considering the evidence. Taylor raised this argument in Ground 4 of his Appeal but it is addressed in this Response Ground as it relates to Freetown's inclusion in the plan. For all of the reasons set forth below, this Ground of Appeal and the Ground 4 argument relating to the plan should be dismissed.

(ii) The evidence the Chamber relied on as to the targets of the plan was corroborative

123. Taylor raises what he calls "key differences" in the evidence relied upon by the Chamber regarding the targets of the plan, erroneously alleging that they are insufficiently corroborative to show that Freetown was the plan's ultimate destination.[332] Whether evidence is corroborative is a fact-driven inquiry. Corroboration does not require witness accounts to be identical in all aspects since "[e]very witness presents what he has seen from his own point of view at the time of the events, or according to how he understood the events recounted by others".[333] Details may differ between witnesses and still be corroborative, provided that the accounts are each credible and not incompatible.[334] Many inconsistencies between witness accounts may be reasonably explained by varying vantage points and the passage of time.[335] It is within the Chamber's discretion to evaluate inconsistencies and to accept or reject "fundamental features" of the evidence.[336]

124. Here, the Trial Chamber closely examined the evidence of TF1-371, Isaac Mongor, Karmoh Kanneh and TF1-585 regarding the plan Bockarie had designed with Taylor and then discussed with his commanders.[337] All four witnesses testified that Kono was to be

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[332] Taylor Appeal, paras. 154-156.
[333] *Nahimana* AJ, para. 428. See also *Rukundo* AJ, para. 76; *Munyakazi* AJ, para. 103.
[334] *Nahimana* AJ, para. 428; *Munyakazi* AJ, para. 103; *Setako* AJ, para. 31.
[335] *Setako* AJ, para. 97, citing *Setako* TJ, para. 341.
[336] Judgement, para. 172, citing *AFRC* TJ, para. 110, *Kupreškić* AJ, para. 31. See also *Setako* AJ, para. 31; *Munyakazi* AJ, para. 71.
[337] Judgement, paras. 3092 (TF1-371), 3093 (Mongor, Kanneh, TF1-585).

attacked.[338] Three said that the plan was to proceed to Makeni,[339] which is located between Kono and Freetown. All four named Kono as the first target and Freetown as the last.[340] Three testified that Kenema was a target for a second group of fighters.[341] TF1-371 detailed that the two-pronged approach involved one group attacking Koidu, moving to Makeni and then combining with the group that had attacked Kenema to attack Freetown.[342] As discussed in section (iii) below, witnesses Mallah, Keita and Saidu further corroborated material aspects of this plan regarding the target locations and the two-prong approach.

125. Taylor is correct that TF1-371, Mongor, Kanneh and TF1-585 differ on the details of the plan,[343] but these inconsistencies do not render their evidence unreliable.[344] The additional details that were mentioned were locations on the way to the main targets of Kono, Makeni, Kenema and Freetown, given by witnesses from different vantage points. TF1-585's lack of detail on the intricacies of the two-prong plan is explained by the fact that she overheard Bockarie talking about the plan but was not taking part in the meeting where it was being discussed.[345] Kanneh's account includes details of the locations he was assigned to attack,[346] as does Mongor's,[347] so naturally they would mention such details where others might not. The allegation that Mongor described a third phase of the plan has been addressed in the response to Ground 7[348] and is without merit. TF1-371's account of the plan provides more detail than the others,[349] but that is understandable given his position in the RUF and does not render the Trial Chamber's finding unreasonable.

126. In addition, there is abundant evidence that corroborates the finding that Freetown was the ultimate destination of the Bockarie/Taylor plan.[350] In November 1998, Bockarie himself

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[338] TF1-371, T. 28 January 2008 p. 2411(CS) (technically, TF1-371 stated Koidu was a target, but elsewhere in the Judgement it is acknowledged that Koidu and Kono are interchangeable, see, e.g., Judgement, fn. 6259); Mongor, T. 11 March 2008 p. 5795; Kanneh, T. 9 May 2008 p. 9424; TF1-585, T. 8 September 2008 p. 15700.
[339] TF1-371, T. 28 January 2008 p. 2411(CS); Mongor, T. 11 March 2008 p. 5975; Kanneh, T. 9 May 2008 p. 9424.
[340] TF1-371, T. 28 January 2008 p. 2411(CS); Mongor, T. 11 March 2008 p. 5795; Kanneh, T. 9 May 2008 p. 9424; TF1-585, T. 8 September 2008 p. 15700.
[341] TF1-371, T. 28 January 2008 p. 2411(CS); Mongor, T. 11 March 2008 p. 5795; Kanneh, T. 9 May 2008 p. 9424.
[342] TF1-371, T. 28 January 2008 p. 2411(CS) (note that elsewhere in the Judgement it is acknowledged that Koidu and Kono are interchangeable, see, e.g., Judgement, fn. 6259).
[343] Taylor Appeal, para. 155.
[344] *Rukundo* AJ, para. 81; *Munyakazi* AJ, para. 103.
[345] TF1-585, T. 8 September 2008 pp. 15692, 15696(PS), 15700-702.
[346] Kanneh, T. 9 May 2008 pp. 9424, 9426-27. Kanneh was to attack Segbwema and Daru.
[347] Mongor, T. 11 March 2008 pp. 5795-96. Mongor was to attack Joru and Zimmi.
[348] See the response to Ground 7, para. 94.
[349] TF1-371, T. 28 January 2008 p. 2411 (CS).
[350] It is assumed a Trial Chamber took into account evidence even if not specifically mentioned. See *Nchamihigo* AJ, para. 166; *Zigiranyarazo* AJ, para. 45; *Krajišnik* AJ, para. 141.

said, "When I take Freetown I shall clear every living thing and building."[351] TF1-367 testified that Issa Sesay explained in a meeting before the December attack on Kono that they were to force the release of Sankoh by capturing Koidu Town, "and from there we should not stop anywhere. [...] We should go to Freetown and release Foday Sankoh. That was why it was code named Operation Free Foday Sankoh."[352] Defence witness Charles Ngebeh also testified about the meeting where Sesay referred to the mission as Operation Free the Leader, and agreed that the object of the operation was to go all the way to Freetown.[353] Defence witness Sam Kolleh testified that Bockarie and AFRC officers planned a general attack and "Issa, and Rambo, Morris Kallon" were instructed to move to Freetown.[354]

127. On the basis of the foregoing, the Trial Chamber's conclusion that Freetown was the ultimate destination of the plan[355] is reasonable. TF1-371, Mongor, Kanneh and TF1-585 provided corroborative evidence, and the credible accounts of all four witnesses are not incompatible. Moreover, this evidence was corroborated in material aspects by the totality of the evidence, including Defence evidence. Taylor fails to show that the Chamber was unreasonable in reaching this conclusion.

(iii) The evidence the Chamber accepted did not contradict the finding that Freetown was the ultimate destination of the plan

128. Prosecution witnesses Augustine Mallah, Abu Keita and Albert Saidu did not mention Freetown as part of the plan. Taylor incorrectly argues that by accepting their evidence without reconciling it to the accepted evidence of the four witnesses who included Freetown as part of the plan, the Trial Chamber was precluded from being satisfied beyond a reasonable doubt that Freetown was the plan's ultimate destination.[356]

129. As stated above, details may differ between testimonies and still be corroborative, provided the credible accounts are not incompatible.[357] Mallah, Keita and Saidu were generally credible witnesses[358] whose accounts were not incompatible with the plan evidence of TF1-371, Mongor, Kanneh and TF1-585 that the Trial Chamber found credible. Though the details of the testimonies differed, Mallah, Keita and Saidu's evidence corroborated

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[351] Exh. P-430B: Excerpt from Sierra Leone News dated 19 November 1998.
[352] See Judgement, paras. 3035-36, 3116, 5459; TF1-367, T. 20 August 2008 pp. 14162-65. The Trial Chamber found TF1-367 to be generally credible – see Judgement, para. 2446.
[353] Ngebeh, T. 12 April 2010 pp. 38662, 38667.
[354] Kolleh, T. 1 November 2010 pp. 48450-52.
[355] Judgement, paras. 3099, 3127, 3129, 3615.
[356] Taylor Appeal, paras. 157-59.
[357] *Nahimana* AJ, para. 428; *Munyakazi AJ*, para. 103; *Setako* AJ, para. 31.
[358] Judgement, paras. 2522 (Mallah), 213-19 (Keita), 2384 (Saidu).

material aspects of the plan which the other witnesses had discussed: namely, the other locations targeted by the plan and the two-prong approach.[359] It was therefore reasonable for the Chamber to accept their accounts and, based on the totality of the evidence, to find that the plan was for one flank of fighters to attack Kono and proceed to Makeni while the other flank was to attack Kenema, then the groups would advance and capture Freetown.[360]

130. Taylor asserts that the Trial Chamber should have discounted the testimony of Mallah, Keita and Saidu or reconciled it with the testimony of the four witnesses upon whom it relied to find that Freetown was part of the plan,[361] but this was not necessary as their accounts were not incompatible. The failure to mention the detail of Freetown as a target does not render their accounts incompatible[362] and can be reasonably explained by the witnesses' different vantage points. All three provided more detail about the Kenema target aspect of the plan, where they were assigned to fight, and less detail about the other areas.[363] Further, Saidu was in Koindu at the time of the meeting so he was not present when the plan was discussed.[364] None of the three said that the plan *did not* include Freetown. The Chamber was not precluded from accepting their evidence in spite of minor differences because they were materially corroborative and did not contradict the evidence that Freetown was the plan's ultimate destination.

131. Taylor's complaint that the Trial Chamber did not provide any reasoning as to its preference for the witnesses who incorporated Freetown into the plan over those who did not[365] is without merit. First, as just discussed, the Chamber *did* accept the evidence of credible witnesses who did not mention Freetown as part of the plan. Second, the Chamber explained in detail why it rejected the evidence of Defence witnesses Issa Sesay, Martin

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[359] Mallah testified that the plan was for the first brigade to attack all the way to Kenema while another group was to attack Kono and advance toward Makeni (Judgement, para. 3092 citing Mallah, T. 13 November 2008 pp. 20222-24); Keita testified that Bockarie said the ammunition he'd brought would be used to attack Kono and then proceed to Makeni, while Keita was assigned to fight in the group attacking toward Kenema (Judgement, para. 3092 citing Keita, T. 23 January 2008 pp. 2005-08); Saidu testified that he was told that the plan was for the 1st brigade to attack Kenema and for the 2nd brigade to attack Kono (Judgement, para. 3092 citing Saidu, T. 5 June 2008 pp. 11082-86).

[360] Judgement, para. 3127. As noted in para. 124 and fn. 359 of the response to this Ground, Kono was named as a target by TF1-371, Mongor, Kanneh, TF1-585, Mallah, Keita and Saidu. Makeni was named as a target by TF1-371, Mongor, Kanneh, Mallah and Keita. Kenema was named as a target by TF1-371, Mongor, Kanneh, Mallah, Keita and Saidu. Freetown was identified as a target by TF1-371, Mongor, Kanneh and TF1-585.

[361] Taylor Appeal, para. 159.

[362] See, e.g., *Nahimana* AJ, para. 428.

[363] Judgement, para. 3092. See also Mallah, T. 13 November 2008 pp. 20222-24; Keita, T. 23 January 2008 p. 2008 (note that Keita also testified that he was not allowed in the vanguard meeting in Bockarie's bedroom, T. 23 January 2008 pp. 2006-07); Saidu T. 5 June 2008 pp. 11081-87, 11092-93.

[364] Saidu, T. 5 June 2008 pp. 11081-82.

[365] Taylor Appeal, para. 159.

George, and John Vincent, none of whom incorporated Freetown into the plan discussed in Buedu.[366] The Chamber did not consider Sesay or Vincent to be generally credible witnesses, so their evidence required corroboration before the Chamber would rely on it.[367] When testifying about the plan, Sesay said that there was no discussion about proceeding to Makeni or Freetown and the only plan mentioned was to attack Kono.[368] In contrast to Mallah, Keita and Saidu, Sesay's testimony expressly contradicted TF1-371, Mongor, Kanneh and TF1-585's evidence that attacks on Makeni and Freetown were discussed as part of the plan.

132. The Chamber then looked to Martin George's evidence for corroboration of Sesay's account. George also testified that Freetown was not mentioned, but his testimony contradicted Sesay's in that he said the plan they discussed also targeted Makeni and Lunsar,[369] not only Kono. The Chamber mentioned two other concerns regarding George's evidence, including why Lunsar was mentioned but not Freetown when Lunsar was so close to Freetown, and George's contradiction of his own evidence as to whether or not Sesay attended the meeting where the plan was discussed.[370] All of these factors together led the Chamber to reasonably conclude that George's evidence on the plan was neither credible nor corroborative of Sesay's account.[371] Vincent's evidence did not corroborate Sesay's account either, as he too mentioned a plan to attack "as far as Makeni",[372] directly impugning Sesay's testimony that there was no discussion on continuing to Makeni. The three Defence witnesses explicitly contradicted each other, their testimonies were neither credible nor compatible, and the Chamber acted reasonably and within its discretion to reject their evidence.

133. Taylor erroneously takes issue with the reasoning the Chamber provided when it dismissed as "implausible" Defence witness John Vincent's evidence that Freetown was not mentioned as a target of the plan. Taylor says the Chamber viewed the goal of the operation as the release, i.e. the physical removal, of Sankoh from prison[373] and asserts that this is (1) illogical given that ECOMOG could have easily transferred Sankoh elsewhere in advance of

[366] Judgement, paras. 3094-95.
[367] Judgement, paras. 372 (Sesay), 4465 (Vincent).
[368] Judgement, para. 3094 citing Sesay, T. 29 July 2010 pp. 45050 (PS), 45057 (PS).
[369] Judgement, para. 3094 citing George, T. 23 April 2010 pp. 39744-75 (this was a typographical error and should have been pp. 39774-76).
[370] Judgement, para. 3094.
[371] Judgement, para. 3094.
[372] Judgement, para. 3095 citing Vincent, T. 26 March 2010 pp. 38099-100.
[373] Taylor Appeal, para. 160.

the RUF forces, and (2) irreconcilable with the finding that the operation was designed to be "fearful" in order to pressure the government to negotiate Sankoh's release.[374]

134. As to the first point, whether or not ECOMOG could have transferred Sankoh out of Freetown before an advance is irrelevant given that the totality of the evidence demonstrates that the RUF believed Sankoh was being held in Freetown.[375] Examples of the evidence that the Trial Chamber was obliged to, and presumably did consider include Exhibits P-078,[376] P-063[377] and P-430B,[378] all of which discussed Sankoh's death sentence and/or that he was being held in Freetown. Witness Perry Kamara was in the group of fighters assigned to go to the prison to release Sankoh and other detainees.[379] His evidence shows that the forces in Freetown believed Sankoh was being held there up until the time they opened the prison.[380]

135. As to the second point, the Trial Chamber focused on the aspect of Vincent's testimony that the reason for the operation was to free Sankoh. Its reasoning in the Judgement shows that it found it implausible that the rebel forces would not try to capture the area where they believed Sankoh was being held in keeping with that goal.[381] Contrary to Taylor's argument, this does not contradict the Chamber's later finding that Taylor told Bockarie to make the operation fearful in order to pressure the Government into negotiating Sankoh's release.[382] Both methods were a means to achieve the operation's goal to free Sankoh and were not mutually exclusive as Taylor seems to argue.

(iv) The Chamber did not shift the burden of proof when considering whether Freetown was part of the Bockarie/Taylor plan

136. Taylor mistakenly asserts in this Ground and in Ground 4 of his Appeal that the Trial Chamber discounted TF1-567 and Mohamed Kabbah's evidence that demonstrated the plan only involved an offensive on Kono and misapplied the burden of proof by setting a less

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[374] Judgement, para. 3117.
[375] In fact, this is exactly what happened. Sankoh was secretly transferred and the fighters were not informed, so they went to Pademba Road prison to free him, believing he was still there. See, e.g., Kamara. T. 6 February 2008 pp. 3224-26; Fornie, T. 3 December 2008 pp. 21581-82.
[376] Judgement, paras. 3082-83 (Amnesty International Report that Sankoh was in custody of the Sierra Leone Government and the RUF threatened to continue their campaign of violence against civilians if he remained in detention. In retaliation of Sankoh's conviction and death sentence in October 1998 prompted further rebel attacks against unarmed civilians).
[377] Judgement, paras. 3073-80, particularly para. 3076 (minutes from the Waterworks Forum dated 2 December 1998 documenting that Bockarie spoke talked about the death sentence passed in Freetown on Sankoh and that they should launch an offensive against the Government of Tejan Kabba for the release of their Leader).
[378] Exh. P-430B, Excerpt from Sierra Leone News dated 19 November 1998 stating Sankoh was currently being held at Pademba Road Prison in Freetown.
[379] Judgement, para. 3181.
[380] Kamara, T. 6 February 2008 pp. 3224-26. See also Fornie, T. 3 December 2008 pp. 21581-82.
[381] Judgement, para. 3102.
[382] Judgement, para. 3117.

stringent threshold than "beyond a reasonable doubt" to find that the plan included Freetown.[383]

137. In paragraphs 3097 and 3098 of the Judgement, the Trial Chamber said, in essence, that the evidence of TF1-567 and Kabbah "[did] not negate the possibility" that a larger plan mentioning Freetown was discussed at Waterworks. Taylor misunderstands this language to be shifting the burden of proof.[384] However, when it is considered in its proper context,[385] it is clear that the Trial Chamber is considering that the evidence of TF1-567 and Kabbah, while different to the evidence of TF1-371, Mongor, Kanneh and TF1-585, is not incompatible with it.[386] While not ideal, this choice of language is not fatal when it is read in its proper context. The Trial Chamber was fully cognisant of the Prosecution's burden to prove guilt beyond a reasonable doubt, as it recalled that burden when it made the finding that Freetown was the ultimate destination of the two-prong attack designed by Taylor and Bockarie in November/December 1998.[387] The Chamber did not shift this burden or set a less stringent standard of proof when considering the evidence on whether Freetown was part of the plan.

138. Exacerbating Taylor's erroneous assertion is the fact that he misstates TF1-567's evidence. TF1-567 never expressly testified that Bockarie told him that the plan involved "only an offensive on Kono" as Taylor contends.[388] TF1-567 only mentioned the Kono aspect of the plan, but he never said that was the *whole* plan or that there was no plan to advance toward Freetown.[389] The fact that he did not mention Freetown can be reasonably explained by his vantage point, which the Trial Chamber noted when it said, "TF1-567 did not testify that he was present at the Waterworks meeting, nor did he say there was no plan to advance toward Freetown."[390] The Chamber's finding that TF1-567's evidence did not negate that a plan to advance toward Freetown was laid out at the Waterworks meeting[391] reasonably followed from his testimony. Taylor fails to demonstrate that the Chamber did not consider

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[383] Taylor Appeal, paras. 57, 157 (TF1-567 was the "fourth" witness, Kabbah was the "fifth").
[384] Taylor Appeal, para. 57.
[385] *Rutaganda* AJ, para. 176 (the impugned language must be placed in its proper context). See also the response to Ground 4, paras. 34-36.
[386] Indeed, these paragraphs are the last in a series of corroboration analyses discussed in sections (ii) and (iii) of the response to this Ground where the Trial Chamber assessed the differences between accounts and looked for compatibility of the accounts of TF1-371, Mongor, Kanneh, and TF1-585 (Judgement, paras. 3092-93), Mallah, Keita and Saidu (Judgement, para. 3092), Sesay, George and Vincent (Judgement, paras. 3094-95), and Fornie (Judgement, para. 3096, not discussed in this Ground as the Chamber did not rely on his evidence).
[387] Judgement, para. 3129.
[388] Taylor Appeal, para. 57.
[389] TF1-567, T. 2 July 2008 pp. 12912-13.
[390] Judgement, para. 3097.
[391] Judgement, para. 3097.

TF1-567's evidence in conjunction with other evidence or discounted it.[392] Indeed, the Judgement indicates this evidence was part of all of the evidence considered.

139. Similarly, Mohamed Kabbah's evidence did not contradict the concept of a larger plan, as he was not at Waterworks but was told that an attack on Kono and Makeni was discussed at that meeting.[393] The Chamber reasonably considered the witness's vantage point, noting that Kabbah was stationed in Kono so he was told about the aspect of the plan that related to his own duties[394] and did not include the detail regarding Freetown. This did not render his account incompatible or contradict evidence that a larger plan was discussed.

140. The Trial Chamber performed a proper corroboration analysis and did not shift the burden of proof in spite of its choice of language. It is clear that the Chamber weighed the totality of the evidence and found that TF1-567 and Kabbah's accounts were not incompatible with the evidence of TF1-371, Mongor, Kanneh and TF1-585 and did not raise a reasonable doubt as to Freetown's inclusion in the plan.

(v) Conclusion

141. Taylor has failed to demonstrate that the Trial Chamber committed any error in finding that Freetown was part of the Bockarie/Taylor plan. As such, this Ground of Appeal and the Ground 4 argument that the burden of proof was shifted should be dismissed.

[GROUND 8 follows GROUND 9 to mirror the order of the Taylor Appeal.][395]

GROUND 8: The Trial Chamber reasonably found that Bockarie and Taylor contemplated the possibility of SAJ Musa's involvement in executing the Bockarie/Taylor plan, and that after SAJ Musa's death, Gullit's movements were incorporated into the Bockarie/Taylor plan as contemplated by Taylor and Bockarie

(i) Overview

142. In Ground 8 of his Appeal, Taylor conflates the design of the Bockarie/Taylor plan with its implementation. Taylor's conviction for planning the invasion of Freetown does not depend on which commanders he and Bockarie discussed might be involved or who actually implemented his plan. Indeed, Isaac Mongor, who was a senior RUF commander at the time, explained very clearly in his testimony that "the plan that was brought by Mosquito

[392] Taylor Appeal, para. 57.
[393] Kabbah, T. 12 September 2008 pp. 16153-54.
[394] Judgement, para. 3098.
[395] This is in keeping with para. 13 of the SCSL Practice Direction on the Structure of Grounds of Appeal.

[Bockarie] from Taylor was for us to attack all the other places and to advance to Freetown, *but they did not select a specific group [...] that was supposed to go to Freetown*".[396] Rather, Taylor's conviction for planning rests on the Trial Chamber's reasonable and correct findings, as discussed in the response to Ground 11, that he designed a plan which culminated in the capture of Freetown[397] and the plan substantially contributed to the commission of the Indictment crimes. As discussed in the response to Ground 15, by instructing that the operation be fearful and Freetown be captured "by all means",[398] and as discussed in the response to Ground 14, as a result of his continuous awareness of a campaign of crimes being committed by the RUF and/or AFRC, Taylor intended or had an awareness of the substantial likelihood that Indictment crimes would be committed in the execution of the plan.

143. Notwithstanding this, contrary to Taylor's contention,[399] the Trial Chamber properly evaluated the trial record and reasonably found on the totality of the evidence that Bockarie and Taylor *contemplated the possibility* that SAJ Musa might help implement the plan. Moreover, it reasonably found that after SAJ Musa's death, Musa's plan was abandoned, Bockarie and Gullit coordinated their efforts to capture Freetown and Gullit's movements were incorporated into the Bockarie/Taylor plan as contemplated by Taylor and Bockarie.[400]

144. For all of these reasons, Taylor fails to demonstrate any Trial Chamber error that would warrant appellate intervention, and, therefore, this Ground should be dismissed.

(ii) That Bockarie and Taylor contemplated the possibility of SAJ Musa's participation in implementing the Bockarie/Taylor plan was the only reasonable conclusion on the evidence

145. Based on its assessment of the evidence before it, the Chamber reached the only reasonable conclusion available to it when it found that Bockarie and Taylor contemplated the possibility that SAJ Musa would participate in implementing the plan. The Chamber's reasoned conclusion relied on Mongor and Kanneh's evidence.[401] Mongor testified that Bockarie said when he was in Monrovia, Taylor had shown him (Bockarie) on a map the locations that the RUF and the SLA occupied at the time and had discussed a plan to launch an operation.[402] Kanneh testified that Bockarie said he had complained to Taylor about SAJ

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[396] Mongor, T. 7 April 2008 pp. 6720-21 (emphases added); Judgement, para. 3480.
[397] See the response to Ground 11. Taylor need not necessarily have designed a crime or underlying offence, but only an act, if, as here, he had the intent or awareness of the substantial likelihood that an Indictment crime would be committed in the execution of the plan. See Judgement, fn. 1105, p. 173.
[398] Judgement, paras. 3130, 3615, 6970.
[399] Taylor Appeal, paras. 162-63, 180-81.
[400] Judgement, paras. 3480-82, 6965.
[401] Judgement, para. 3120. Both witnesses were found to be generally credible, see Judgement, paras. 274, 2704.
[402] Judgement, para. 3119 citing Mongor, T. 11 March 2008 p. 5795.

Musa's disloyalty toward his (Bockarie's) command and the RUF. Kanneh further testified that following the Waterworks meeting, Bockarie contacted Musa and requested or ordered him to cooperate.[403] Taylor's assertion that because Mongor and Kanneh's evidence was circumstantial, uncorroborated hearsay, this finding was not the only reasonable conclusion available to the Chamber[404] must be rejected for the following reasons.

146. The Chamber's methodology in assessing uncorroborated hearsay evidence was set out at paragraphs 166, 168 and 169 of its Judgement. From these paragraphs, it is evident that the Trial Chamber exercised the appropriate caution when relying on Kanneh and Mongor's hearsay evidence.[405] The Judgement and trial record are replete with the circumstantial guarantees of the trustworthiness of this evidence. For example, as described in detail in paragraphs 249 and 250 in the response to Ground 15, the totality of the evidence demonstrates longstanding cooperation between Taylor and the RUF/AFRC and Taylor and Bockarie, which intensified after Bockarie became interim leader. This made Bockarie the pivotal and central actor in the AFRC/RUF's receipt of Taylor's support and instructions. In this context, it is credible that Taylor and Bockarie candidly discussed SAJ Musa as well as locations to attack and how best to implement the plan, and their shared interests in seeing their plan and the AFRC/RUF succeed ensured that they spoke honestly with each other.

147. Another circumstantial guarantee of the trustworthiness of this hearsay is that at the time that Bockarie told Kanneh and Mongor about his discussions with Taylor, the trial record establishes that Bockarie had reason to confide in them both. As discussed in paragraph 253 of the response to Ground 15, when Bockarie was training at Naama, Mongor was an NPFL trainer in charge of RUF recruits and subsequently became one of the most senior commanders in the RUF organisation. With such a history, Bockarie had nothing to hide from Mongor about either Taylor's involvement with designing the plan or what that plan entailed. Similarly, Kanneh and Bockarie had a long history in the RUF together, having met in 1994 and then working closely together as senior officers.[406]

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[403] Judgement, para. 3118 citing Kanneh, T. 9 May 2008 pp. 9423-30; T. 13 May 2008 pp. 9720-21.
[404] Taylor Appeal, paras. 163, 175-76.
[405] See also the response to Ground 1 for a more full discussion of the Chamber's treatment of such evidence.
[406] See, e.g., Kanneh, T. 8 May 2008 pp. 9351-54 (the first time he met Bockarie was in Zogoda in 1994, they were in Kailahun district together), 9358-61 (after Sankoh told them to take orders from Bockarie, Kanneh moved with Bockarie to Pendembu, then Daru, then Benguema) 9366-68 and 9376, 9385-88 (Kanneh moved to Kenema with Bockarie during the junta period), 9390-91 (after the Intervention, Kanneh and Bockarie went to Daru, and Bockarie promoted Kanneh and assigned him to Baima, 40 miles from Buedu where Kanneh visited many times).

148. The situations in which Bockarie made the statements to Mongor and Kanneh also show that the hearsay was trustworthy. The statements Bockarie made to Mongor and Kanneh were made in the context of him laying out the plan for his senior commanders who would be implementing it. There was no reason to be anything but honest with these men, as he was trusting them to successfully carry out the plan. Consequently, in light of all these circumstantial guarantees of the veracity of this hearsay, the Trial Chamber reasonably relied on Mongor and Kanneh's evidence.

149. Moreover, the Trial Chamber considered these hearsay statements in the context of the totality of the evidence set out below and drew the only reasonable conclusion that Bockarie and Taylor contemplated the possibility of SAJ Musa's participation in implementing the plan. Specifically, as SAJ Musa was in command of more than 1,000 fighters,[407] many of whom had military training, it was logical Bockarie and Taylor would want those troops to help execute the plan. Because of past differences between Musa and the RUF which the Trial Chamber fully acknowledged and considered,[408] Musa's cooperation was not a foregone conclusion, but the Chamber rightly concluded from the evidence that Bockarie and Taylor contemplated it was a *possibility*. That conclusion is supported by several findings: there were RUF fighters among his troops in the North,[409] Musa had accepted the arms and ammunition Taylor had sent through Superman,[410] he had accepted the Liberian reinforcements Taylor had sent who were serving under O-Five,[411] he allowed RUF radio operators Alfred Brown and Perry Kamara to travel with his forces,[412] Gullit, his deputy, was in radio contact and cooperating with Bockarie until November 1998,[413] and Musa also wanted to recapture Freetown.[414] Also, given their history, Bockarie would not have contacted Musa to attempt to get him to cooperate unless they had contemplated this possibility. Given these circumstances, it is clear that Bockarie reached out to Musa on the possibility he would cooperate.

150. Musa's refusal[415] does not negate that the Chamber found the only reasonable conclusion from the evidence was that Taylor and Bockarie contemplated the possibility of his participation. Musa's stated refusal came *after* Taylor and Bockarie had reached that

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[407] Judgement, paras. 55, 4389.
[408] Judgement, paras. 6755-58. Taylor contends that the Chamber erroneously "downplayed" these problems – see Taylor Appeal, para. 170.
[409] Judgement, paras. 3375, 5652.
[410] Judgement, paras. 5660-64, 5666.
[411] Judgement, paras. 4394, 4396, 4619.
[412] Judgement, para. 3375, fn. 7532.
[413] Judgement, paras. 6755, 6758. See also Judgement, paras. 3385-86.
[414] Judgement, paras. 3121-22.
[415] Judgement, paras. 3128, 3617.

conclusion and as a result of the action Bockarie took to secure Musa's involvement based on that possibility. The Chamber correctly weighed Mongor's evidence with Kanneh's and all of the other evidence on record to reach the only reasonable conclusion based on the totality of the evidence.

151. Taylor's attacks on the evidence from other angles also fail to demonstrate that the Trial Chamber erred. At the outset, it is important to reiterate that the Trial Chamber properly stated the law on evaluating witness credibility, hearsay evidence, and resolving discrepancies amongst witnesses' testimonies.[416] It then properly applied the law in its assessment of the evidence at issue.

152. The Chamber recognised that Kanneh and Mongor's accounts about the call to Musa and how he responded were contradictory.[417] Specifically, it found that Kanneh said Bockarie contacted Musa and Musa refused to cooperate, while Mongor said JPK contacted Musa and Musa agreed to run the operation.[418] Taylor complains that the Chamber failed to explain the inconsistencies. Even though the Chamber was not required to explain inconsistencies or even to set out in detail why it accepted or rejected a particular testimony,[419] it did so here, demonstrating its reasoned and cautious treatment of the evidence. It is the Trial Chamber's prerogative to determine which account is more credible when faced with competing versions of events, as it did here when it found Kanneh's account more credible.[420] It considered that Kanneh's evidence was "direct, detailed and consistent" and found it both credible and reliable.[421] In contrast, it considered the second-hand source of Mongor's evidence and the fact that no other witnesses testified that SAJ Musa agreed to run the operation, so it rejected Mongor's evidence in favour of Kanneh's account.[422] There is no error in the Trial Chamber's approach in this regard.

153. Contrary to Taylor's assertion,[423] in paragraph 3120 of its Judgement, the Trial Chamber relied on Kanneh and not on Mongor's evidence "that following the Waterworks meeting, *Bockarie* contacted SAJ Musa and requested or ordered him to cooperate".[424] Taylor's argument that the discussion at the meeting about whether or not to contact SAJ

[416] Judgement, paras. 165-69, 172, 175-77.
[417] Judgement, para. 3119.
[418] Judgement, paras. 3118-19.
[419] *RUF* AJ, para. 345; *Nchamihigo* AJ, para. 165.
[420] Judgement, para. 177; *AFRC* AJ, para. 121; *Rutaganda* AJ, para. 29.
[421] Judgement, para. 3118.
[422] Judgement, para. 3119.
[423] Taylor Appeal, para. 174.
[424] Judgement, para. 3120 (emphasis added).

Musa would not have been necessary if Taylor and Bockarie had contemplated Musa's involvement[425] must fail as it is based on Mongor's evidence that the Trial Chamber reasonably rejected.[426] Consequently, the only party erroneously relying on evidence that the Chamber found to be "inaccurate",[427] is Taylor, not the Trial Chamber. In any event, as Musa's participation was not certain, it would be reasonable that contacting him would be a subject of discussion.

154. Contrary to Taylor's argument, the Chamber did not ignore the evidence of TF1-371.[428] The Chamber considered his evidence on the small meeting at Bockarie's house.[429] His account about what was discussed is not incompatible with the evidence accepted by the Chamber that the meeting participants discussed approaching SAJ Musa or how Musa responded.[430] A Trial Chamber is presumed to have considered all of the evidence, even if not specifically mentioned, and does not have to refer to every piece of evidence it takes into account.[431]

(iii) The Trial Chamber's finding that after SAJ Musa's death Bockarie and Gullit coordinated their efforts to capture Freetown, Musa's plan was abandoned, and Gullit's movements were incorporated into the Bockarie/Taylor plan, as had been contemplated by Taylor and Bockarie was reasonable based on the totality of the evidence

155. As discussed above, even absent contemplation at the time that Taylor and Bockarie designed the plan that Gullit would ultimately follow it,[432] Taylor's planning conviction would remain in place. Where, as here, the Bockarie/Taylor plan, created with the requisite *mens rea*, substantially contributed to the crimes committed in Freetown, regardless of which RUF/AFRC forces committed them, Taylor is criminally responsible for those crimes. The identity of those who Taylor contemplated as possibly carrying out this plan is irrelevant.

156. As discussed below, Taylor mistakenly argues that the Chamber "creatively inferred" that SAJ Musa or Gullit's movements were "somehow foreseen" by Taylor and Bockarie and

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[425] Taylor Appeal, para. 178.
[426] Judgement, para. 3119.
[427] Taylor Appeal, paras. 174, 178.
[428] Taylor Appeal, para. 173.
[429] Judgement, paras. 2963, 3100, 3102, 3114. A Trial Chamber is presumed to have considered all of the evidence, even if not specifically mentioned, and does not have to refer to every piece of evidence it takes into account.
[430] See *Nahimana* AJ, para. 428 (details may differ between the testimonies and still be corroborative, provided that the two or more credible accounts are not incompatible).
[431] *Kvočka* AJ, para. 23; *Nchamihigo* AJ, para. 166; *Zigiranyarazo* AJ, para. 45; *Krajišnik* AJ, para. 141.
[432] Taylor Appeal, para. 180.

were incorporated into their plan.[433] Rather, the evidence supports the Trial Chamber's conclusion that following the first conversation Bockarie had with Gullit after SAJ Musa's death, Bockarie and Gullit coordinated their efforts to capture Freetown, Musa's plan was abandoned and Gullit's movements were incorporated into the Bockarie/Taylor plan, as had been contemplated by Taylor and Bockarie.[434] The Trial Chamber's language, "Gullit's movements were incorporated into the Bockarie/Taylor plan, as had been contemplated by Taylor and Bockarie"[435] must be considered in context. When Taylor and Bockarie contemplated the possibility that SAJ Musa would participate in the implementation of the Bockarie/Taylor plan, they contemplated that Musa and the forces he commanded, including his deputy, Gullit, would participate. The use of the word "movements" should not be exaggerated, as what was contemplated was that those forces would participate.

157. Nonetheless, the evidence would support a conclusion that Bockarie and Taylor contemplated Gullit's possible participation in implementing the plan. Indeed, they had even more reason for such contemplation given the uncertainty that SAJ Musa would participate and the past cooperative relationship between Bockarie and Gullit and the resumption of that relationship once Musa was dead, as discussed in detail by the Trial Chamber.[436] Further support for this conclusion includes that, at the Waterworks meeting, Bockarie discussed that he had been speaking to Gullit about killing SAJ Musa in a military operation.[437] Such discussion would only have occurred if Bockarie trusted Gullit's loyalty and cooperation with him. Of course, as SAJ Musa's deputy,[438] Gullit would assume leadership of the troops if Musa was killed.[439] While the Trial Chamber stated that it did not need to make a finding as to how SAJ Musa was killed, it considered the evidence that suggested he was killed by Gullit during a military operation as envisioned by Bockarie's conversation.[440] The totality of the evidence thus establishes that Bockarie and Taylor could have reasonably contemplated that if SAJ Musa would not cooperate with the implementation of the plan, Gullit might.

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[433] Taylor Appeal, para. 162.
[434] Judgement, paras. 3480, 3486.
[435] Judgement, para. 3486.
[436] Judgement, paras. 3381, 3385, 3393-94, 3401, 3413, 3417-18.
[437] Judgement, paras. 2979, 3118.
[438] Judgement, para. 55. Note that the "Brima" referred to in this paragraph is Alex Tamba Brima, also known as Gullit, see Judgement, para. 54.
[439] This in fact did happen, see, e.g., Judgement, para. 57.
[440] Judgement, para. 3124.

158. Taylor's argument that once SAJ Musa refused to cooperate, there was no longer "any slight prospect or expectation" that Gullit would follow the Bockarie/Taylor plan[441] fails precisely because of Kanneh's evidence that Bockarie proposed that Gullit kill Musa during a military operation,[442] as discussed above. The Chamber reasonably found that Bockarie's discussion with Gullit about killing Musa indicated Bockarie's desire to bring Musa's separate plan together with the Bockarie/Taylor plan.[443]

159. Finally, as discussed more fully in the response to Ground 11, Taylor's contention that the Bockarie/Taylor plan failed[444] is without merit. The finding he cites to support his statement clearly states that "*without the involvement of Gullit's troops*", the plan "succeeded to the extent that the attack on Kono was successful and fighters under the leadership of Rambo Red Goat were able to enter Freetown".[445] The limited success Taylor is willing to acknowledge was not the plan's *only* success because Gullit's troops did in fact implement the plan. Upon SAJ Musa's death, Gullit abandoned Musa's original plan and followed the Bockarie/Taylor plan, as had been contemplated by Bockarie and Taylor.[446]

160. As discussed more fully in the response to Grounds 10 and 11, Gullit and his troops successfully attacked the ultimate destination or target of the plan, Freetown. In keeping with the *modus operandi* of the plan, Gullit passed on Bockarie's orders to his troops to make the operation fearful. They did. The crimes Gullit's troops committed as a result of the plan spurred the international community into pressuring the government to negotiate for peace and ultimately resulted in Sankoh's release, achieving the plan's ultimate objective. The plan did not fail. Unfortunately for Sierra Leone, it succeeded.

(iv) Conclusion

161. Even though not necessary for his planning conviction, the Chamber correctly assessed the evidence and reached the only reasonable conclusion based on the totality of the evidence it considered credible that Bockarie and Taylor contemplated the possibility of the participation of SAJ Musa and the forces he commanded in the execution of the plan. Even if this participation was not contemplated, the conviction for planning stands. The plan Taylor co-authored with Bockarie substantially contributed to the crimes that Gullit's troops committed, either as intended by Taylor or with his awareness of the substantial likelihood of

[441] Taylor Appeal, para. 180.
[442] Judgement, paras. 2979, 3118.
[443] Judgement, paras. 2979, 3118, 3124.
[444] Taylor Appeal, paras. 79, 162.
[445] Judgement, para. 3480 (emphasis added).
[446] Judgement, para. 3617.

their commission in the implementation of his plan. Consequently, Taylor has been correctly convicted for crimes committed in the implementation of his plan. As such, this Ground of Appeal should be dismissed.

GROUND 10: The Trial Chamber did not err in fact or law in finding that SAJ Musa's plan to attack Freetown was abandoned

(i) Overview

162. Although Taylor styles this Ground as an error of fact and law he does not clearly argue - and certainly does not demonstrate - any legal errors. As for alleged factual errors, the Trial Chamber's conclusion that "after the death of SAJ Musa...SAJ Musa's original plan to attack Freetown was abandoned, and Gullit's movements were incorporated into the Bockarie/Taylor plan" is based on a careful and reasonable assessment of the totality of the evidence.[447] Taylor's attempts to challenge this conclusion[448] are without merit because they fail to establish that no reasonable trier of fact could have reached the same conclusion.[449] Indeed, many of his arguments are simply inappropriate attempts to relitigate arguments made and reasonably rejected at trial. Further, the reference in the Taylor Notice of Appeal that "[t]he Trial Chamber's error arises from an improper evaluation of the evidence" is not developed in his appeal brief.[450] Therefore, consistent with the jurisprudence of the ICTY Appeals Chamber, this line of argument should be considered abandoned.[451]

163. As Taylor fails to demonstrate any error warranting appellate intervention, this Ground of Appeal should be dismissed.

(a) The Trial Chamber reasonably concluded that SAJ Musa's plan to attack Freetown was abandoned

164. The Trial Chamber reasonably concluded on all of the evidence that SAJ Musa's plan to invade Freetown was abandoned and Gullit's movements incorporated into the

[447] Judgement, para. 3486. See also Judgement, paras. 3480, 3611(xiii), 3617, 6965.
[448] Taylor Appeal, paras. 182-206.
[449] The title of this ground alleges both errors of law and fact. However, no error of law is argued. Taylor's submissions concerning the "abandonment theory" dissolve into baseless complaints that the Trial Chamber's findings are not supported by evidence. Such complaints, properly understood, amount to allegations of an error of fact.
[450] Taylor Notice of Appeal, para. 33.
[451] *Gotovina & Markač* Abandoned Grounds Decision, p. 2; *Strugar* AJ, para. 265; *Hartmann* Decision on Further Motions to Strike, para. 12.

Bockarie/Taylor plan.[452] Taylor's claim that the Trial Chamber developed this theory on its own without foundation is without merit, because his argument simply dissolves into a dispute about the type of evidence which he believes should have been led rather than an absence of evidence he says would support a move from one plan to the other.[453] The absence of the sort of evidence Taylor suggests was required does not imply an absence of evidence to support the Trial Chamber's conclusion.[454]

165. In so far as Taylor seeks to rely on two pieces of Perry Kamara's evidence as somehow contradicting the Trial Chamber's conclusion, neither does so.[455] Regarding the first piece, reference should be made to the Trial Chamber's actual finding rather than the selectively summarised version provided by Taylor.[456] On review of the actual finding it is clear that Kamara's evidence that "[s]ome people were in favour of contacting Bockarie, while others were not"[457] is not determinative of whether contact was actually made between Gullit and Bockarie, nor is it determinative of whether SAJ Musa's plan was abandoned. It simply indicates, from Kamara's perspective, what he considered the views of the troops to be in the period *prior* to contact being made.[458] The second piece of evidence concerns Gullit's failure to wait for reinforcements.[459] Again, Taylor's reliance on this piece of evidence is misplaced. The Trial Chamber *accepted* Kamara's evidence on this point.[460] It then specifically and extensively dealt with the issue of Gullit's failure to wait, but considered Gullit's act to be driven by military necessity and, thus, not fatal to its view that SAJ Musa's plan had been abandoned and the Bockarie/Taylor plan adopted.[461] Given that neither piece of evidence contradicts, undermines or establishes that the Trial Chamber was wholly erroneous in concluding there was a change from one plan to the other, Taylor's arguments fail.

166. Further, and contrary to Taylor's arguments,[462] the Trial Chamber was able to differentiate between the two plans and the findings it made in this regard were reasonably

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[452] *Contra* Taylor Appeal, para. 183. The Trial Chamber's conclusion that there were two plans to invade Freetown - one designed by Taylor and Bockarie, and the other by SAJ Musa - is not in dispute on appeal (see Taylor Appeal, paras. 185-86).
[453] Taylor Appeal, paras. 184, 187-88.
[454] Taylor Appeal, paras. 187-88, 193.
[455] Taylor Appeal, para. 187.
[456] In his appeal brief, Taylor argues that "Perry Kamara testified that some of Gullit's troops were opposed to contacting Bockarie after SAJ Musa's death" and cites to Judgement, para. 3176 (see Taylor Appeal, para. 187).
[457] Judgement, para. 3176.
[458] Indeed, the irrelevance of this evidence to any crucial issue is reflected in the fact that it was referred to without comment in the Trial Chamber's summary of the parties' submissions but not in the deliberations.
[459] Taylor Appeal, para. 187.
[460] Judgement, para. 3413.
[461] Judgement, paras. 3402-18.
[462] Taylor Appeal, paras. 188-92.

open to it. Based on a detailed analysis of the evidence before it, the Trial Chamber found that the Bockarie/Taylor plan was to "carry out a two-pronged attack on Kono and Kenema with the ultimate objective of reaching Freetown, releasing Foday Sankoh from prison and regaining control."[463] The Trial Chamber also found that the operation was designed to be "fearful" and to "use all means", meaning that it was to involve a campaign of terror against civilians.[464] The "fearful" aspect of the plan was designed to put pressure on the Government to enter into negotiations for the release of Sankoh.[465] In contrast, the Trial Chamber found that SAJ Musa's plan was to reinstate the army and that he had ordered his forces to "proceed to Freetown without killing, looting or burning."[466]

167. Equally flawed is Taylor's attempt to argue that it was not possible to determine that the SAJ Musa plan had been abandoned and the Bockarie/Taylor plan adopted because it was impossible to differentiate the two in terms of goal and/or the commission of crimes.[467] Taylor's argument is based on an erroneously narrow and fragmented view of how the Trial Chamber actually determined that one plan had been abandoned and the other adopted. Contrary to Taylor's view, the Trial Chamber's analysis of the transition involved a detailed and close consideration of a wide range of factors, including, *inter alia*, communications between Gullit and Bockarie after SAJ Musa's death, coordination between Bockarie's forces and Gullit's troops, reinforcements sent by Bockarie which joined Gullit's troops, and the implementation of instructions issued by Bockarie to Gullit.[468] On this final point, the Trial Chamber concluded that "Bockarie did instruct Gullit to use terror tactics against the civilian

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[463] Judgement, para. 6958. See also Judgement, paras. 3123, 3129-30.
[464] Judgement, paras. 3117, 3124, 3127, 3130.
[465] Judgement, paras. 3117, 3615, 6958.
[466] Judgement, paras. 3123-24. Further support for the finding that SAJ Musa's plan did not involve the commission of crimes is provided by Alimamy Bobson Sesay and TF1-143. Bobson Sesay testified that "[SAJ Musa] said we should go and reinstate the army. He said we should go with these words, then *we will get support from the people*" (see TF1-334, T. 29 April 2008 p. 8837 (emphasis added)). This evidence indicates that SAJ Musa wanted to secure the support of the people. Clearly, the commission of crimes would not have generated popular support. TF1-143's testimony also supports the existence of two fundamentally different plans (see Judgement, para. 863).
[467] Taylor Appeal, paras. 189-92.
[468] See, e.g., Judgement, paras. 3481-86, 6965, which summarise the various factors used by the Trial Chamber to determine the extent of Bockarie's involvement in the Freetown operation following the design of the Bockarie/Taylor plan. See also Exh. P-279B, pp. 2, 4 (supports the finding that the SAJ Musa plan died with SAJ Musa. On Musa's death, rather than continue with the attempt to reinstate the army of Sierra Leone and with Musa's policy of shunning contact with the RUF leadership, Gullit began cooperating with and taking orders from Bockarie. On the day Freetown was invaded, spokesperson FAT Sesay, told the BBC's Robin White that the SLPP government had been overthrown by "[w]e, the combined forces of the AFRC and RUF forces." FAT Sesay made no mention of any plan to reinstate the army but, when asked who would be the new leader, reiterated that is was the combined forces of the RUF and AFRC).

population on the retreat from Freetown, and...Gullit complied."[469] The Trial Chamber at no time measured and assessed the transition by reference to goals and crimes alone. The approach taken by the Trial Chamber was clearly reasonable given the complexity of the issues and evidence before it. Therefore, in so far as Taylor seeks to challenge the reasoning of the Chamber based solely on these two limbs, he must fail as the Chamber did not follow such a myopic approach. Further, Taylor fails to squarely challenge the reasonableness of the approach actually pursued by the Trial Chamber.[470]

(b) The Trial Chamber's conclusion that SAJ Musa's plan to attack Freetown was abandoned is supported by the weight of the evidence

168. Taylor's second argument fails to bring forth a "wealth of evidence" but instead identifies only four examples which he asserts support his claim that SAJ Musa's plan was not abandoned.[471] A close review of Taylor's arguments establishes that they essentially boil down to an assertion that his view of the evidence is to be preferred over that of the Trial Chamber. Further, many of the arguments are simply repeats of those made and rejected at trial. Crucially, however, at no time does Taylor address the standard for appellate review and identify why the Trial Chamber's findings are unreasonable or wholly erroneous.

169. Taylor's first example, which relies on Gullit's failure to follow Bockarie's instruction and wait for reinforcements, should be dismissed as it fails to address in *any* way why the Trial Chamber was unreasonable to conclude that Gullit's act was borne of military necessity rather than insubordination.[472] Given that the Trial Chamber dedicated 17 paragraphs of its Judgement to consider this issue, it is clear that it was a conclusion reached after a detailed and considered analysis of all the different testimonies.[473]

170. Taylor's second example, concerning alleged tensions over the absence of communications and Gullit only contacting Bockarie once he had taken State House, must fail for the same reason as the first.[474] Taylor's arguments set out in paragraphs 196 to 198 of his appeal brief effectively mirror those he ran at trial, as is evidenced by the Trial Chamber's summary of same at paragraphs 3415 and 3416 of the Judgement. At trial, the Trial Chamber

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[469] Judgement, para. 3452.
[470] Given that the Trial Chamber did not differentiate between the plans by reference to goals and plans alone, Taylor's brief argument concerning crimes committed in Kono and Makeni is irrelevant (see Taylor Appeal, para. 192). This is, however, a recurring argument. See the response to Ground 11 below for a more detailed response to this argument.
[471] Taylor Appeal, para. 194. See also Taylor Appeal, para. 196.
[472] Taylor Appeal, para. 195.
[473] Judgement, paras. 3402-18.
[474] Taylor Appeal, paras. 196-98.

concluded that the evidence relied on by the Defence regarding the tensions between Gullit and Bockarie did "not support the Defence contention that coordination between Bockarie and Gullit broke down at this point".[475] The Trial Chamber then proceeded to note the evidence which supported the conclusion that coordination and cooperation continued between Bockarie and Gullit.[476] Taylor advances no argument why these findings are unreasonable. Taylor simply recycles the arguments he made at first instance, arguing that the evidence he identifies should be preferred over the evidence accepted by the Trial Chamber, but does not elevate this argument to the standard required on appeal.

171. It appears that the third example – Fornie's statement that, even after SAJ Musa's death, SAJ Musa's troops wanted to take Freetown before the RUF – is alleged by Taylor to be somehow supportive of his claim that the weight of evidence does not support the theory that SAJ Musa's plan was abandoned.[477] However, Taylor does not frame his criticism of the Chamber's approach to Fornie's statement in terms of reasonableness, as is required on appeal. Instead, he simply states that he finds this statement "difficult to reconcile with...1,000 troops abruptly changing course and following the plan of an RUF commander."[478] The standard is not what Taylor considers "difficult to reconcile". It is whether he can show that the Trial Chamber acted unreasonably or reached a wholly erroneous conclusion. Taylor fails to do so.

172. The fourth example relied on by Taylor concerning Exhibit P-067 is again a rehash of an argument rejected by the Trial Chamber.[479] It should be dismissed because no argument is advanced as to why the Trial Chamber's approach was unreasonable.

173. Finally, Taylor's argument that the RUF and AFRC could have been simply cooperating against a common enemy and that therefore the Trial Chamber was not justified in concluding that this was pursuant to the Bockarie/Taylor plan[480] is not justified. Rather, given that Taylor was certainly aware that the AFRC shared a common enemy, he had every reason to include in his plan contingencies for their incorporation in the attack on Freetown.

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[475] Judgement, para. 3417.
[476] Judgement, paras. 3417-18. The following were considered by the Trial Chamber to show continued cooperation and coordination: Bockarie's promise to send reinforcements, the evidence of TF1-371 and Mongor who testified that divisions and problems between the AFRC and RUF were not serious, the evidence of frequent communications between Buedu and the troops in Freetown on strategic matters and the continued attempts to facilitate the entry into Freetown of troops under Bockarie's command.
[477] Taylor Appeal, para. 199.
[478] Taylor Appeal, para. 199.
[479] The Chamber dealt with the arguments in paras. 200-01 of Taylor's Appeal at Judgement, para. 3442.
[480] Taylor Appeal, para. 202.

174. As demonstrated above, Taylor has not articulated any errors requiring disturbance of the Trial Chamber's findings. This Ground of Appeal should be dismissed.

GROUND 11: The Trial Chamber correctly considered and applied the *actus reus* of planning when convicting Taylor of planning the Bockarie/Taylor plan

(i) Overview

175. The Prosecution notes that two thirds of the arguments advanced by Taylor under this Ground were not notified in his Notice of Appeal.[481] In an Appeal comprising over 40 Grounds, the absence of notice clearly prejudiced the Prosecution. The Prosecution requests that the arguments which were not properly notified be summarily dismissed.[482]

176. In any event, all of Taylor's arguments challenging the Trial Chamber's assessment of the *actus reus* of planning should be dismissed because they fail to demonstrate any error warranting appellate intervention. As discussed below, the Trial Chamber correctly convicted Taylor of planning the crimes committed during the late 1998 attacks on Kono and Makeni and during the invasion of and retreat from Freetown[483] as a result of a proper application of the law to its reasonable factual findings.

(ii) Taylor designed an act or omission constituting the crimes charged

177. Taylor's first argument is flawed because it fails to acknowledge that the accepted international jurisprudence takes a broad approach to the *actus reus* of planning.[484] The planning of conduct which constitutes the statutory crime/s charged attracts criminal liability. Further, the accused need only design an act or omission and not necessarily a crime or underlying offence *per se* if he has the intent that a crime or underlying offence be committed in the execution of the plan, or if he is aware of the substantial likelihood that a crime or underlying offence will be committed.[485] The objective of a plan is irrelevant if it is to be achieved by an act that constitutes a crime, or if an accused is aware of the substantial likelihood a crime will be committed in achieving the plan.[486]

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[481] Taylor Notice, paras. 35, 36 provide notice of the arguments set out in Taylor Appeal, paras. 212-16. Taylor did not provide notice that he would seek to challenge the absence of a legal element in the planning conviction or his conviction for planning crimes committed in Kono and Makeni as part of the late 1998 offensive. See Taylor Appeal, paras. 207-11, 217-18.

[482] See, e.g., *RUF* AJ, para. 466, fn. 1198.

[483] Judgement, para. 6994. See also Judgement, para. 6971.

[484] Taylor Appeal, paras. 209-10.

[485] Judgement, fn. 1105; *Kordić & Čerkez* AJ, paras. 31, 976.

[486] *Boškoski & Tarčulovski* AJ, paras. 169-72. See also *Kordić & Čerkez* AJ, paras. 26, 30.

178. Set in this proper legal context, it is clear that, contrary to Taylor's submissions,[487] the Trial Chamber did find that the Bockarie/Taylor plan was a plan involving the commission of the Indictment crimes and not simply a plan to undertake "a military operation … 'a plan for the RUF/AFRC Freetown invasion'".[488]

179. Having properly directed itself that it "must be satisfied beyond reasonable doubt that the Accused, alone or with others, intentionally planned the criminal conduct constituting the crimes charged",[489] the Trial Chamber made the following findings in the section headed "Findings on the Physical Elements of Planning":[490]

> …in November 1998, Sam Bockarie [and] the Accused … **designed a plan for the RUF/AFRC forces to carry out a two-pronged attack on Kono and Kenema with the ultimate objective of reaching Freetown**, releasing Foday Sankoh from prison and regaining control. The Accused emphasized to Bockarie that **this military operation should be "fearful"**…the Accused told Bockarie to use **"all means"** to capture Freetown.[491]
>
> …the actual plan which **established the various military targets and the *modus operandi* of the attack** was designed during the November 1998 meeting between Bockarie and the Accused. The **objective to capture Kono prior to moving to Freetown** was integrated in the plan upon advice from the Accused and **the aim to make the operation "fearful"** was articulated.[492]

180. These findings clearly establish that the Trial Chamber found that Taylor expressly designed the *modus operandi* of the operation to be "fearful" and to use "all means". When set in the context of the Judgement's other findings that the word "fearful" carried considerable meaning in Sierra Leone's civil war,[493] it is evident that the Trial Chamber correctly found that all the elements of the *actus reus* of planning had been established.[494]

181. During the Sierra Leone war, an order to "make the area fearful" was a clear instruction to commit crimes.[495] The Judgement is replete with testimony explaining what was meant by this terrible order.[496] Further, and as more fully argued in the response to Ground 15

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[487] Taylor Appeal, paras. 208, 211, 219.
[488] Taylor Appeal, para. 208 (original emphasis).
[489] Judgement, para. 6957.
[490] Judgement, p. 2461.
[491] Judgement, para. 6958 (emphasis added) (footnotes omitted).
[492] Judgement, para. 6959 (emphasis added) (footnotes omitted). See also Judgement, paras. 3127, 3129, 3130, 3611(vi, vii).
[493] According to the jurisprudence, the existence of a plan may be demonstrated through circumstantial evidence (see *AFRC* AJ, para. 301; *Blaškić* TJ, para. 269).
[494] Judgement, para. 469(i) which specifies the physical elements (*actus reus*) of planning.
[495] See, e.g., Judgement, paras. 650, 652, 676, 682, 684, 687, 692, 710, 713, 716, 740, 747, 2006, 2017.
[496] See, e.g., Perry Kamara who explained that making an area "fearful" entailed "destruction of life and property, where there will be killings, amputations, burning of houses, destruction of bridges, setting up road blocks. All those things would happen and that will have made the area fearful" (see Judgement, paras. 646,

below, by instructing that Freetown be captured "by all means",[497] Taylor intended or had an awareness of the substantial likelihood that the Indictment crimes would be committed. Therefore, by telling Bockarie "to make the operation "fearful",[498] and to use "all means",[499] Taylor was clearly stating that the *modus operandi* of the operation was to commit the Indictment crimes. Put another way, and using the language of the jurisprudence, "conduct which constituted crimes" was planned by Taylor and Bockarie.[500] At the very least, Taylor's use of the terms in the context of the Sierra Leonean conflict indicates his awareness of the substantial likelihood that the operation would result in the commission of crimes.

182. Further, support for the conclusion that, by using the terms "fearful" and "all means", Taylor designed a plan involving the commission of the Indictment crimes, or designed a plan with the requisite awareness of the substantial likelihood that statutory crimes would be committed, is provided by two other categories of findings.[501] The first is the Trial Chamber's findings on the *modus operandi* pursued by the RUF/AFRC, that is, the finding that, by the start of the Indictment period, the RUF's war strategy was one "based on a campaign of terror against the civilian population".[502] "After Operation Stop Election, and during the remainder of the civil war in Sierra Leone, the RUF and later the AFRC/RUF continued to deliberately use terror against the Sierra Leonean population as a primary *modus operandi* of their political and military strategy."[503]

183. The second category of findings is that regarding what Bockarie understood by the terms "all means" and "make fearful". The Chamber found that: (i) shortly after receiving the use "all means" instruction, "Bockarie named the operation "Operation No Living Thing, implying that anything that stood in their way should be eliminated";[504] and (ii) "SAJ Musa ordered his forces to proceed to Freetown without killing, looting or burning, indicating that he did not have a campaign of terror in mind, as Bockarie did."[505] Further, circumstantial evidence of the import of the term "fearful" is provided in the series of findings made by the

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737). Kamara was found to be generally credible (see Judgement, para. 236). See also the testimonies of Bobson Sesay, TF1-375, Isaac Mongor and Issa Sesay at Judgement, paras. 650, 651, 741, 2008, 3063.

[497] Judgement, paras. 3130, 3615, 6970.

[498] Judgement, para. 3615.

[499] Judgement, paras. 3130, 3615, 6970.

[500] *Boškoski & Tarčulovski* AJ, para. 171.

[501] See *supra* the existence of a plan may be demonstrated through circumstantial evidence (*AFRC* AJ, para. 301; *Blaškić* TJ, para. 269).

[502] Judgement, para. 6788.

[503] Judgement, para. 6790. Examples of the implementation of this terrifying *modus operandi* are provided by the Chamber's findings regarding the operations carried out by the AFRC/RUF forces in Kono district after the Intervention. See *e.g.*, Judgement, paras. 646, 650-51, 676, 679, 686-87.

[504] Judgement, paras. 3130, 3611(vii), 3615.

[505] Judgement, para. 3124.

Chamber regarding the implementation of Bockarie's order to make things "fearful" during the withdrawal from Freetown.[506] The Chamber concluded by stating that it was satisfied "that Bockarie did direct Gullit to use terror tactics against the civilian population on the retreat from Freetown, and that Gullit complied."[507] Therefore, by telling Bockarie, the leader of a rebel group whose "military campaign was inextricably linked to the commission of the crimes charged in the Indictment",[508] to use "all means" and to make the operation "fearful", a criminal plan comprising the commission of the Indictment crimes was designed. Most certainly, given Taylor's continuous awareness of a campaign of atrocities being committed by the group with whose leader he devised this plan, Taylor was aware of the substantial likelihood that Indictment crimes would be committed in the execution of the plan.[509]

184. Taylor erroneously argues that the instructions "to make the operation "fearful"[510] and "to use 'all means' to get to Freetown" were only considered by the Trial Chamber as part of its assessment of the *mens rea* of planning.[511] Taylor seeks to make this artificial division in the Chamber's reasoning in order to try to remove the requisite criminal element from the *actus reus*.[512] However, it is clear that this division did not occur. The section of the Judgement headed "Findings on the Physical Elements of Planning",[513] contains the findings that "the military operation should *be* "'fearful'"[514] and that Bockarie was to "*use* 'all means'".[515] Further, in this section, making the operation "fearful" is found to be an "aim".[516] Finally, paragraph 6959 of the Judgement, which is also in the section dealing with the *actus reus* of planning, states that Taylor and Bockarie "established the various military targets and the *modus operandi* of the attack" at the November 1998 meeting. In the immediately following sentence the targets are identified as Kono and Freetown and the *modus operandi* as being to make the operation "fearful". Therefore, the Trial Chamber found that the commission of criminal acts, specifically, the Indictment crimes,[517] was clearly and deliberately expressed to be central to the execution of the plan. Certainly, given his continuous awareness of a campaign of atrocities being committed by the RUF/AFRC, Taylor

[506] Judgement, paras. 3445-52.
[507] Judgement, para. 3452.
[508] Judgement, para. 6936.
[509] Judgement, paras. 6947, 6969; see also Judgement, paras. 6879-86.
[510] Judgement, para. 6959
[511] Taylor Appeal, para. 208.
[512] Taylor Appeal, para. 219.
[513] Judgement, p. 2461.
[514] Judgement, para. 6958.
[515] Judgement, para. 6958.
[516] Judgement, para. 6959.
[517] Judgement, paras. 6967, 6969, 6970.

had awareness of the substantial likelihood that the execution of the acts he designed with Bockarie would result in the commission of the Indictment crimes.[518] Accordingly, as required by the jurisprudence on the *actus reus* of planning, criminal conduct was clearly part of the design of the plan.[519]

185. The fact that the terms "fearful" and "all means" also featured in the Trial Camber's discussion of *mens rea* is not problematic. Clearly, by articulating that the operation was to be "fearful" and that the troops were to use "all means", Taylor was also manifesting his intent. The Trial Chamber was entitled to use this evidence in its consideration of both the *actus reus* and the *mens rea* of planning.

186. Given the specific meaning that the term "fearful" had in the context of the Sierra Leonean conflict, it is clear that comparisons with ICTY cases such as *Brđanin* are irrelevant and that the present case can be distinguished on its facts.[520]

187. As is evidenced above, it is clear from considering the *totality* of the Judgement and *all* the applicable jurisprudence that the Trial Chamber committed no error of law and properly found all the legal elements of planning satisfied in this case.

(iii) No error in finding that the Bockarie/Taylor plan substantially contributed to the commission of crimes

188. Taylor's second argument under this Ground is equally flawed. For the reasons set out in the responses to Grounds 8 and 10 above, Taylor's argument that the Trial Chamber erred in fact when it found that Bockarie and Taylor contemplated Gullit's participation in executing the plan at the time they designed it and that SAJ Musa's plan was abandoned following his death is without merit.[521]

189. Similarly, Taylor's claim that the Trial Chamber committed an error of law must fail.[522] The context of the paragraph in the Judgement in which the word "evolution" is used makes it clear that the word is ascribed no special meaning by the Trial Chamber.[523] In paragraph 6966 of the Judgement, the word is used to describe the unfolding or ongoing

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[518] Judgement, fn. 1105; *Kordić & Čerkez* AJ, paras. 30-32.
[519] See, e.g., *AFRC* AJ, para. 301; *Boškoski & Tarčulovski* AJ, paras. 169-72.
[520] Taylor Appeal, para. 210.
[521] Taylor Appeal, paras. 215-16. The Prosecution notes that fn. 445 of the Taylor Appeal refers to Judgement, paras. 3116(xiii), 3617. The relevance of these citations to the proposition is not clear. Nevertheless, the Prosecution assumes that the argument Taylor is making is effectively a repeat of that made in Ground 8. Ground 8 is specifically referenced at Taylor Appeal, fn. 447. However, the Prosecution observes that Taylor's arguments made under Ground 10 are also related to his argument regarding "abandonment" made in Taylor Appeal, para. 215. Therefore, the Prosecution relies on the arguments made in response to Grounds 8 and 10, in so far as relevant, to meet Taylor's challenge under this ground.
[522] Taylor Appeal, paras. 212-16, 219.
[523] Taylor Appeal, paras. 216, 219.

implementation of the original "Bockarie/Taylor plan" in the period after SAJ Musa's death. This conclusion is supported by the fact that the immediately preceding paragraph describes the changes which occurred in the short period following Musa's death.[524] Taylor's claims about the creation of a legal fiction are, therefore, without merit.

(iv) No error in Taylor's conviction for planning the crimes committed during the attacks on Kono and Makeni

190. Taylor erroneously argues that the Trial Chamber failed to find that any crimes were committed in Kono and Makeni pursuant to the "Bockarie/Taylor plan".[525] First, the Trial Chamber found that crimes were committed in Kono[526] and Makeni.[527] Secondly, even if the Trial Chamber did not find that any crimes were committed in those locations pursuant to the plan, given that Taylor was convicted of *one* plan, to invade Freetown *via* Kono and Makeni, the multiple crimes the Chamber found committed in Freetown[528] support Taylor's conviction for planning.[529]

(v) Conclusion

191. As demonstrated above, Taylor has not articulated any legal or factual errors requiring disturbance of the Trial Chamber's findings. This Ground of Appeal should be dismissed.

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[524] In Judgement, para. 6965, the Trial Chamber considers SAJ Musa's "own advance" to Freetown, notes Gullit's assumption of leadership following SAJ Musa's death, recalls its finding that Bockarie "assumed effective control over Gullit's actions and that SAJ Musa's plan was abandoned". The Trial Chamber then summarises some of the factors it considered when analyzing the change from the SAJ Musa plan to the "Bockarie/Taylor plan".

[525] Taylor Appeal, paras. 217-19.

[526] For Count 9, *see* Judgement, para. 1424. There is also credible evidence on the trial record that numerous other crimes were committed in Kono in the implementation of the plan. For Counts 2, 3 and 4, Witness TF1-567 testified that (i) the corpses of civilians were seen in Koidu Town following the attack by AFRC/RUF fighters in late 1998; and (ii) women were raped by AFRC/RUF fighters following the capture of Koidu Town during the late 1998 offensive (TF1-567, T. 2 July 2008 p. 12913; the Trial Chamber found TF1-567 to be "generally credible" at Judgement, para. 317). For Count 10, there is evidence on the record that forced mining was taking place in Kono in late 1998 (an objective of the Bockarie/Taylor plan was to take Kono to obtain the diamonds) (Judgement, para. 1720). Note fn. 3938 lists Kokuima as one of the mining sites. This location is a neighbourhood of Koidu Town. Also for Count 10, there is evidence that civilians were forced to carry arms and ammunition from Buedu to Superman Ground in Kono in readiness for the attack on Kono as part of the late 1998 offensive (TF1-567, T. 2 July 2008 p. 12913). For Count 11, there is evidence that mining equipment was looted following the recapture of Koidu Town at the end of 1998 (TF1-367, T. 21 August 2008 p. 14270).

[527] As indicated in the Disposition at paragraph 6994(b) of the Judgement, Bombali District is included in the planning conviction for Count 9 only. The Trial Chamber found that witness Komba Sumana, a former child soldier, "was present and fought during attacks carried out by RUF/AFRC rebels...at [*inter alia*]...Binkolo and Makeni in Bombali District during the period of approximately August through December 1998" (Judgement, para. 1540). See also Judgement, paras. 1537-39, 1541.

[528] Judgement, paras. 787-88, 805-08, 813-14, 830-31, 839-41, 843-44, 853-54, 859-60, 867-70, 980, 983-84, 989, 992, 999, 1007, 1015-16, 1169, 1179, 1187, 1189, 1191, 1205-07, 1272-73, 1277-79, 1284-85, 1289-93, 1297, 1301-02, 1304, 1309, 1314-15, 1323-25, 1329-31, 1333-34, 1343-44, 1346-48, 1351-54, 1453-56, 1575, 1581-82, 1591-94, 1596(xli-xliv), 1598-1600, 1603-06, 1857-64, 1870-76, 1930, 1937, 1940, 1943, 1946, 1948, 1952, 1954, 1956, 1960, 1962-63, 2068, 2082, 2088, 2122, 2132, 2138-39, 2151, 2162, 2175-80, 2185, 2188-89, 2191-92, 6792-93, 6962.

[529] Judgement, paras. 6971, 6967-68.

GROUND 12: No error of law or fact in finding Taylor received daily updates on the Bockarie/Taylor plan

(i) Overview

192. Taylor erroneously alleges that the Trial Chamber erred in fact and law in finding him liable for planning based on the updates he received about the implementation of the Bockarie/Taylor plan to invade Freetown. This Ground of Appeal, therefore, rests on Taylor's allegations in his 10th and 11th Grounds where he argues that SAJ Musa's plan to attack Freetown was not abandoned and that the plan implemented was not the one he designed.[530] Since those Grounds fail for the reasons set out in the responses thereto, so must Ground 12.

193. Taylor was not held liable for planning based on an "expanded plan",[531] or on the daily updates he received. Neither the *actus reus* nor the *mens rea* for planning[532] require action by an Accused after the plan is formulated. Therefore, the updates have no impact on Taylor's planning conviction.[533] Further, the Chamber engaged in a reasoned and rigorous assessment of the witnesses whose testimony it relied on in finding that Taylor received these updates. The Appeals Chamber should dismiss this Ground since Taylor fails to establish any error of law[534] or fact[535] warranting appellate intervention.

(ii) Taylor's planning conviction does not hinge on the updates he received

194. The Chamber's findings on Taylor's awareness of the implementation of the plan do not impact his planning conviction but merely serve to establish a clearer picture of Taylor's intimate involvement during the Freetown invasion. The Chamber's rejection of other Prosecution allegations about Taylor's involvement during the implementation of the plan,[536] and its finding that it had not been established that Taylor *directed or had control over* the Kono and Freetown operations in December 1998 and January 1999,[537] illustrate the caution it exercised in reaching its findings, only convicting Taylor when there was proof beyond reasonable doubt.

195. Taylor's argument is also without merit because the Chamber did not find that the plan "evolved", so the updates do not have the legal significance he attributes to them.[538] As

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[530] Taylor Appeal, para. 252.
[531] Taylor Appeal, para. 252.
[532] *See* Judgement, paras. 469-70.
[533] *Contra* Taylor Appeal, para. 252.
[534] *RUF* AJ, para. 31. See also *Munyakazi* AJ, para. 6.
[535] *RUF* AJ, para. 32; *CDF* AJ, para. 33. See also *Kupreškić* AJ, para. 29.
[536] *See* Judgement, paras. 3607-08, 3611(xv, xvi, xviii), 3618.
[537] Judgement, para. 3618.
[538] *Contra* Taylor Appeal, paras. 224, 252.

discussed in the responses to Grounds 10 and 11, the Chamber found that it was the Bockarie/Taylor plan that was implemented and that substantially contributed to the crimes committed.[539] In the subsequent paragraph, the Chamber merely noted that Taylor was aware of how the plan he designed was being implemented.[540]

196. Below, the Prosecution addresses Taylor's unsupported contention that the Chamber erred in finding he was in contact with Bockarie, directly or through Yeaten, during the Freetown invasion. In any event, as discussed above, the impugned findings have no impact on Taylor's planning conviction.

(iii) The Trial Chamber correctly found that Taylor was in contact with Bockarie, directly or through Yeaten, during the Freetown invasion[541]

197. Taylor treats the impugned finding as two distinct findings, *i.e.* that he was in *direct* contact with Bockarie, and, separately, that he was in *indirect* contact with Bockarie through Yeaten. This does not adequately portray the Chamber's singular finding, but the totality of the evidence supports both limbs. Taylor fails to establish any error.

198. The impugned finding[542] is consistent with several other findings regarding updates at other times during the conflict.[543] The Chamber based this finding on the testimony of a number of witnesses,[544] many of whom were radio operators in Buedu monitoring or facilitating radio communications with Liberia, present in the radio room when such communications occurred, or present when Bockarie spoke on the satellite phone with Taylor or Yeaten[545] who was Taylor's subordinate and represented him.[546] The witnesses were careful to substantiate the basis on which they believed the communications took place.[547]

(a) The Chamber correctly considered TF1-516's testimony on direct contact between Taylor and Bockarie

199. Taylor's challenges to the testimony of TF1-516 and Mohamed Kabbah, on whom the Chamber relied in relation to *direct* contact between Taylor and Bockarie, as uncorroborated

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[539] Judgement, paras. 6965, 6959, 6961-62.
[540] Judgement, para. 6966. This reflects the Chamber's earlier findings at paras. 3606, 3611(xiv), 3618; See also paras. 3605, 6960.
[541] Taylor Appeal, paras. 222-23, 230, 237, 242, 251.
[542] Judgement, para. 3606.
[543] See Judgement, paras. 3613, 3128, 3130, 3615, 6958. There was no reason why Bockarie would have stopped updating Taylor during the execution of the plan they jointly designed.
[544] See Judgement, paras. 3554-64.
[545] Judgement, para. 3562.
[546] See Judgement, paras. 5126, 2621, 2623, 2626, 2629.
[547] Judgement, para. 3562.

must fail.[548] The Chamber's finding relates to contact between Taylor and Bockarie generally, not to the specific instances thereof and the Chamber properly concluded, based on the totality of the evidence before it, that their testimony was corroborative.

200. The Chamber conducted a rigorous and reasoned assessment of TF1-516's credibility, rejected Defence allegations similar to those Taylor makes in his appeal, found him *generally* credible and accepted his testimony as consistent.[549] The Chamber's assessment included several relevant considerations: that TF1-516 was present during the satellite communications between Taylor and Bockarie and overheard them;[550] that he served as a radio operator for Yeaten in Liberia for two years,[551] in addition to his role as radio operator for the RUF in Sierra Leone (a fact absent from Taylor's arguments).[552] Therefore, TF1-516 was certainly in a position to know that "020" was the call sign of the radio in the Executive Mansion and that the operator there – code named Sky 1 - reported to Taylor.[553]

201. Taylor offers no support for his suggestion that others could or did use this call sign.[554] Indeed, the evidence of both Prosecution and Defence witnesses indicates this would have been very difficult, because, *inter alia*, the Executive Mansion was securely guarded, including by the ATU, SSS and SBUs, and there were very strict procedures about who could enter.[555]

202. The Chamber also considered that TF1-516 stated that "Sky 1" was the name of the radio operator with the call sign "020" at the Executive Mansion,[556] and that "Sky 1" reported to Taylor.[557] Taylor's contention that the Chamber heard no other evidence that "020" was the call sign of the radio at the Executive Mansion overlooks evidence considered by the

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[548] Taylor Appeal, paras. 222, 231-42. Taylor's assertion that neither witness heard him speaking (Taylor Appeal, paras. 233, 238) is not supported by the transcript excerpts he cites to in fns. 470, 482.
[549] Judgement, paras. 284, 3559-61 *contra* Taylor Appeal, paras. 222, 236-37; see also Judgement, paras. 172, 174, 176, 276-79, 283, 3520. The Prosecution refers to its response to Grounds 1, 2 and 7 with regards to Taylor's repeated arguments in relation to the Chamber's assessment of hearsay evidence and Bockarie's alleged motivations for associating with Taylor (Taylor Appeal, paras. 235-36).
[550] Judgement, para. 3516. The transcript reference cited in Judgement, fn. 7995 (T. 8 April 2008 pp. 6942-43) makes this clear.
[551] Judgement, para. 275 citing to TF1-516, T. 8 April 2008 pp. 6858-59; see Taylor Appeal, para. 231.
[552] Judgement, para. 275.
[553] *Contra* Taylor Appeal, para. 232. Indeed, the witness stated that the RUF radio codes were known to "020", himself having distributed codes to operators Sky 1 and others in Liberia, including Sunlight, TF1-516, T. 8 April 2008 pp. 6890-91.
[554] Taylor Appeal, para. 233.
[555] See Jaward, T. 10 July 2008 p. 13473; TF1-579, T. 5 November 2008 pp. 19809-10, 19817; Sherif, T. 9 January 2008 p. 814; DCT-008, T. 3 September 2010 pp. 47880-81, 47888-91.
[556] TF1-516, T. 8 April 2008 pp. 6890-91.
[557] TF1-516, T. 8 April 2008 pp. 6890-91.

Chamber.[558] The Chamber noted that TF1-585 testified that operator "Sky 1" in Liberia would send "448" messages to the RUF, and that "[s]everal witnesses confirmed that 'Sky 1' operated a radio for Taylor in Liberia, either at Taylor's Executive Mansion or at Roberts International Airport."[559]

(b) The Chamber correctly considered Mohamed Kabbah's testimony on direct contact between Taylor and Bockarie

203. Taylor's challenges to the testimony of Mohamed Kabbah must also fail. The Trial Chamber addressed and dismissed Taylor's concerns,[560] committing no error in the exercise of its discretion. Following a rigorous and reasoned assessment, the Chamber concluded that Kabbah was *generally* credible and credible in respect of the specific allegation.[561] Again, the Chamber relied on several considerations. Kabbah worked at various locations as a radio operator for the RUF during the conflict.[562] During the period Gullit was in Freetown, Kabbah heard Bockarie inform Taylor[563] by satellite phone that the RUF were in Freetown.[564] Therefore, contrary to Taylor's assertion,[565] Kabbah testified to the content of the conversation. The fact that this witness was present during the conversation, as noted by Taylor,[566] lends significant reliability to his testimony on the matter.

204. [See this paragraph in full in Confidential Annex A]

(c) The Chamber correctly considered the testimony of other witnesses

205. Taylor's assertion that the fact two other Prosecution witnesses, Dauda Aruna Fornie and Abu Keita, did not testify as to contact specifically between himself and Bockarie amounts to an error in the Chamber's assessment of evidence is unsupported in law or jurisprudence and is misleading.[567] The Chamber did rely on the testimony of these two witnesses in reaching the impugned finding, *i.e.* that Taylor was in contact with Bockarie either directly or through Yeaten.[568] The fact that they testified as to *indirect* rather than *direct* contact between Taylor and Bockarie is irrelevant and any reason as to why they did not

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[558] Taylor Appeal, para. 233.
[559] Judgement, para. 3890 and fn. 8857.
[560] Taylor Appeal, para. 239.
[561] Judgement, paras. 336, 338, 3557-58. See also Kabbah, T. 15 September 2008 pp. 16244-47 *contra* Taylor Appeal, para. 239.
[562] Judgement, para. 334.
[563] See Judgement, para. 3555, fn. 8094 and Kabbah, T. 15 September 2008 pp. 16175-78 in relation to how Kabbah knew Bockarie was speaking to Taylor.
[564] Judgement, para. 3555; Kabbah, T. 15 September 2008 pp. 16173, 16175, 16176-78. Judgement, fn. 8089 only cites to pp. 16173, 16175. However, pp. 16176-78 deal with the same issue and clarify it.
[565] Taylor Appeal, paras. 238, 242.
[566] Taylor Appeal, para. 238.
[567] Taylor Appeal, para. 241.
[568] See Judgement, paras. 3555-56, 3562-64.

explicitly testify on *direct* contact is purely speculative. Further, Kabbah testified that he was present along with Tiger, Pascal and "Foday" when Bockarie made the call to Taylor.[569] Therefore, neither of the two witnesses Taylor asserts could have testified about this instance were present.

206. Taylor fails to establish that the Chamber erred in finding he was in direct contact with Bockarie, and, as discussed below, he also fails to establish any error in finding he was in contact with Bockarie through Yeaten.

(d) The Chamber correctly assessed the contact between Bockarie and Yeaten

207. Contrary to Taylor's assertions,[570] the Chamber did not "hedge its bets" in finding that he was in contact with Bockarie through Yeaten during the Freetown invasion,[571] which finding reflects the totality of the evidence before the Chamber. Taylor's submissions on this issue simply attempt to relitigate the unsuccessful position he put forward at trial.[572] Taylor fails to establish any error in the Chamber's finding.

208. Taylor's claim that Fornie's evidence is the only evidence of Bockarie's contact with Yeaten during the Freetown invasion is incorrect.[573] The Chamber also relied on evidence from Fornie, TF1-516, Kabbah, TF1-567, TF1-585, and Abu Keita,[574] all of whom it considered generally credible.[575] The Chamber also correctly dismissed Defence challenges, as well as challenges by Taylor himself during his testimony, to some of this evidence,[576] and noted the strength of the evidence in support of its finding.[577] Further, several other findings support the Chamber's findings on the frequent contact between Yeaten and Bockarie,[578] and, as discussed below, that Taylor would have been informed about this contact.

209. Kabbah explained that even if a message from Yeaten did not specifically refer to Taylor, it was understood in the RUF that Yeaten was the conduit for the Accused's instructions as he was the Accused's "right-hand man".[579] The fact Kabbah may not have been aware of the relationship between Taylor and Yeaten as it actually transpired from other

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[569] Kabbah, T. 15 September 2008 pp. 16176-78.
[570] Taylor Appeal, paras. 249-251.
[571] *Contra* Taylor Appeal, sub-title (v), p. 83 and para. 223.
[572] Judgement, para. 3492.
[573] Taylor Appeal, para. 249.
[574] Judgement, paras. 3555-57, 3563.
[575] See Judgement, paras. 358 (Fornie), 284 (TF1-516), 338 (Kabbah), 317 (TF1-567), 333 (TF1-585), 219 (Keita).
[576] Judgement, paras. 3558, 3560-61, 3563.
[577] Judgement, para. 3562.
[578] See Judgement, paras. 3572, 5130; see also paras. 3499-500, 5113-14, 5126, 5128-29.
[579] Judgement, para. 3557; Kabbah, T. 16 September 2008 pp. 16380-81.

witnesses, in no way invalidates the Chamber's finding.[580] Indeed, the Chamber describes Yeaten as Taylor's "subordinate"[581] and, contrary to Taylor's contention,[582] although there was testimony Yeaten did not obtain Taylor's authorisation for every single action, the Chamber did not find that this suggested that the actions taken were covert rather than simply being consistent with his general instructions from Taylor, but without specific authorisation.[583] There was also substantial evidence that Yeaten represented Taylor.[584] Therefore, the Trial Chamber did not abuse its wide discretion in assessing evidence to conclude that Taylor would have known about Yeaten's communication with Bockarie.[585]

210. Taylor's contention that the Chamber made no findings as to the regularity of contact between Yeaten and Bockarie[586] is belied by the Chamber's statement that contact between Taylor and Bockarie, either directly or through Yeaten, was "frequent and even daily"[587] and, specifically in relation to contact through Yeaten, that "during the Freetown invasion, they spoke at least two or three times a day".[588]

(e) The Chamber correctly considered Taylor's testimony

211. Contrary to Taylor's contention,[589] the Chamber properly noted,[590] assessed and rejected his testimony denying contact with Bockarie directly or through Yeaten, and provided several reasons for its rejection.[591] Based on its assessment, even if the Chamber had not found Taylor's testimony to be inconsistent, there were other bases on which it would have reasonably rejected the evidence. The Chamber correctly noted there were inconsistencies in Taylor's testimony.[592] Taylor's attempts to substitute his self-serving

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[580] *Contra* Taylor Appeal, para. 249.
[581] Judgement, para. 5126. The Chamber also found that Yeaten was not engaged in the trade of arms and ammunition for the RUF independently and without the knowledge of the Accused (Judgement, para. 2629) and noted that "[b]oth Prosecution and Defence witnesses testified that Yeaten was extremely powerful but still subject to the Accused's authority whereas Taylor downplayed Yeaten's power" (para. 2621).
[582] Taylor Appeal, para. 250.
[583] Judgement, para. 2623.
[584] Judgement, para. 2626.
[585] *Contra* Taylor Appeal, para. 251.
[586] Taylor Appeal, para. 250.
[587] Judgement, para. 3606.
[588] Judgement, para. 3555.
[589] Taylor Appeal, paras. 221, 226, 230.
[590] See Judgement, paras. 3530-32.
[591] (i) the evidence, including the testimony of TF1-585, TF1-516, Keita and Fornie, clearly established that there was no particular secrecy surrounding Bockarie's satellite phone conversations with Yeaten at the time (Judgement, para. 3563); (ii) his inconsistent testimony (Judgement, para. 3564); and (iii) Prosecution evidence contradicting his other denials (Judgement, para. 3564).
[592] Judgement, para. 3564.

interpretation of his testimony for the Chamber's[593] fails to establish any error in the Chamber's assessment.[594]

212. The Chamber relied on four, not three, extracts from Taylor's testimony in rejecting his denials, and did not misconstrue them.[595] Taylor first testified that "it would not be out of reason for [Yeaten's] operator to call Sam Bockarie".[596] Contrary to Taylor's contention, this was clearly a generic statement, no longer in response to the question concerning events around the time that Koidu and some Nigerian soldiers were captured.[597] Taylor then testified that in January of 1999 there was communication between the Government of Liberia and Bockarie *immediately after the Freetown invasion* and into the negotiation for the ceasefire.[598] However, Taylor later testified that senior members of his regime were not in contact with Bockarie *during the Freetown invasion* because they would have no reason to be,[599] and, finally, that he was not in contact with Bockarie at all *during* the Freetown invasion.[600]

213. Therefore, Taylor's first statement is inconsistent with the testimony that there was no contact with Bockarie *during* the Freetown invasion. Further, his admission in his second statement to being in contact with Bockarie *immediately* thereafter would also "cast doubt"[601] on his testimony that he was not in contact *during* the invasion. Taylor's testimony that he had given Bockarie a satellite phone[602] and loved him like a son,[603] and that he was the "point President" who "led the whole Sierra Leonean situation",[604] contradicts his denial of speaking to Bockarie during the crisis that affected the whole region and of doing "[n]othing" while Freetown was burning.[605]

214. Taylor's allegation that the Chamber shifted the burden of proof is also unfounded.[606] The Chamber set out[607] and applied the correct standard of proof beyond reasonable doubt.

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[593] Taylor Appeal, paras. 227-28.
[594] Taylor also fails to elaborate how the finding was "otherwise erroneous" (Taylor Appeal, para. 228).
[595] *Contra* Taylor Appeal, para. 227.
[596] T. 14 September 2009 p. 28738 cited to in Judgement, fn. 8131.
[597] Taylor Appeal, para. 227.
[598] T. 16 September 2009 p. 29096 cited to in Judgement, fn. 8130.
[599] T. 22 September 2009 p. 29396 cited to in Judgement, fn. 8129.
[600] T. 27 October 2009 pp. 30452-54. Judgement, fn. 8130 cites to pp. 30452-53, yet the one line response is contained on p. 30454.
[601] This is the language the Trial Chamber used to describe Taylor's testimony, Judgement, para. 3564.
[602] Judgement, paras. 3668, 3706, 3722, 3725, 3729-30.
[603] Taylor, T. 26 October 2009 pp. 30219-21; T. 26 November 2009 p. 32541.
[604] Judgement, para. 6812.
[605] Taylor, T. 26 November 2009 p. 32615.
[606] Taylor Appeal, para. 229; see the response to Ground 4.
[607] Judgement, paras. 158-59, 181.

The impugned statement[608] does not constitute a shift in burden,[609] it is part of the Chamber's deliberations and is an application of the principle that "[w]hen faced with competing versions of events, it is the prerogative of the Trial Chamber to determine which one is more credible."[610] The Chamber merely noted that Taylor's testimony did not raise a reasonable doubt. In reaching the relevant finding,[611] the Chamber applied the correct "beyond reasonable doubt" standard.[612]

(iv) The Chamber correctly found that Taylor passed on instructions to Bockarie to transfer the Pademba Road prisoners to Buedu and correctly found Taylor advised Bockarie[613]

215. This instruction was not the only evidence that Taylor advised Bockarie,[614] and it illustrates that Taylor was aware of exactly what was going on in Freetown.[615]

(a) The Chamber correctly found that Taylor passed on instructions to Bockarie to transfer the Pademba Road prisoners to Buedu

216. The Chamber did not abuse its wide discretion to evaluate the evidence before it in finding that Taylor directed Bockarie to send prisoners released from Pademba Road Prison to RUF controlled areas.[616] The Chamber based this finding on the evidence of Dauda Aruna Fornie,[617] as corroborated by TF1-516.[618] The Chamber noted that their accounts differed slightly,[619] yet reasonably deemed inconsequential the differences between whether the conversation preceding the instruction was conducted via radio station "Base 1" or satellite phone, as TF1-516 used the Liberian radio call signs, "020" or "Base 1", even when referring to satellite phone conversations.[620]

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[608] Judgement, para. 3564 ("[i]n light of these inconsistencies, and against the weight of the Prosecution evidence, the Trial Chamber does not find the Accused's denial that he was communicating with Bockarie directly or through Yeaten during the Kono or Freetown operations credible").
[609] *Contra* Taylor Appeal, para. 229.
[610] Judgement, para. 177.
[611] Judgement, para. 3606.
[612] Judgement, para. 3606; see also Judgement, para. 181 and paras. 3111, 5023, 5105-07, 5193, 5514, 5516, 6543 concerning Taylor's lack of credibility in relation to numerous other issues.
[613] Taylor Appeal, paras. 244-47. As Taylor often does, he refers to this order which the Chamber found proven beyond reasonable doubt as an allegation (Taylor Appeal, paras. 243, 248, p. 81, sub-title (iv))
[614] *Contra* Taylor Appeal, para. 243.
[615] *Contra* Taylor Appeal, para. 248.
[616] Judgement, paras. 3609, 3605, 3611(xvii). See also Judgement, para. 3457.
[617] See Judgement, para. 3588. In his testimony, Fornie admitted to a "lack of candour" in his dealings with the Prosecution until receipt of a letter promising immunity and gave a candid explanation for this which supports the Chamber's finding that he was credible, Judgement, para. 352, *contra* Taylor Appeal, para. 245. For Taylor's repeated arguments concerning witness payments and corroboration of hearsay evidence (Taylor Appeal, para. 245), the Prosecution refers to its responses to Grounds 1, 2, 5 and 40.
[618] Judgement, para. 3591 *contra* Taylor Appeal, para. 244; see also Judgement, para. 3588.
[619] Judgement, para. 3587 *contra* Taylor Appeal, para. 245.
[620] Judgement, para. 3587.

217. The Chamber also noted that although Fornie testified that Bockarie instructed Mohamed Kabbah to send a radio message to Gullit to send the released prisoners to the rear for their safety,[621] Kabbah failed to mention this instruction.[622] The Chamber noted that having testified prior to Fornie, Kabbah was not questioned further on his testimony concerning the release of the Pademba Road prisoners. However, this was not the reason for its acceptance of Fornie's evidence,[623] the passage of time between the event and his testimony was.[624] Taylor's concern with "strategic scheduling of witnesses"[625] could have been remedied by recalling Kabbah to testify. Further, Kabbah's testimony that he only monitored one conversation between Bockarie and Taylor is completely unrelated to whether or not he was instructed to send a radio message to Gullit.[626]

(b) The Chamber correctly found that Taylor advised Bockarie during the Freetown invasion

218. The Trial Chamber acted within its discretion to evaluate evidence in finding that Taylor ordered the release of Pademba Road prisoners[627] and in accepting testimony that (i) during the Freetown invasion Bockarie contacted Taylor and then drafted instructions for the commanders regarding military strategy;[628] (ii) Yeaten instructed Bockarie to send reinforcements;[629] and (iii) Bockarie "would contact Benjamin to consult him on some decisions before he ever took them".[630] Recalling the Chamber's findings on the relationship between Yeaten and Taylor,[631] all this evidence supports the Chamber's finding that Taylor gave advice to Bockarie.[632] Regardless, the finding on the release of prisoners alone justifies the later finding that Taylor advised Bockarie.[633]

(c) The Chamber correctly found that Taylor was in frequent contact with Bockarie during the Freetown invasion

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[621] Judgement, para. 3589.
[622] Judgement, para. 3589.
[623] Judgement, para. 3589 *contra* Taylor Appeal, para. 246.
[624] Judgement, para. 3589.
[625] Taylor Appeal, para. 246.
[626] *Contra* Taylor Appeal, para. 246.
[627] Judgement, para. 3591.
[628] Judgement, paras. 3555-56; see TF1-516, T. 8 April 2008 pp. 6923-24.
[629] Judgement, para. 3556.
[630] Judgement, para. 3556.
[631] See para. 209 above.
[632] *Contra* Taylor Appeal, para. 243.
[633] In reaching its finding, the Chamber was not required to *cite* to anything (*contra* Taylor Appeal, para. 243), having given the clear reasons for its finding in the "Deliberations" section where it referred to the evidence it relied on to establish Taylor advised Bockarie.

219. Taylor also fails to establish that the Chamber relied on the instruction regarding the Pademba Road prisoners to establish there was *direct* contact between himself and Bockarie.[634] The Chamber was clear that this order reached Bockarie through Yeaten, and, therefore, indirectly and was entitled to consider this as *one* of the instances of contact with Bockarie which led it to conclude that Taylor was in *frequent* contact with him.

(v) Conclusion

220. The updates Taylor received about the implementation of the plan the Chamber found he and Bockarie designed have no impact on his planning conviction.[635] Further, the Chamber committed no error in reaching the impugned findings. The Appeals Chamber should dismiss this Ground of Appeal since Taylor fails to establish any error warranting appellate intervention.

GROUND 13: The Trial Chamber correctly found that the Bockarie/Taylor Plan substantially contributed to the crimes committed in Freetown

(i) Overview

221. In the Judgement, the Trial Chamber correctly applied the law on planning to find that the "Bockarie/Taylor plan" substantially contributed to the crimes committed by Gullit and his troops during the invasion of and retreat from Freetown.[636] In making this finding, the Trial Chamber correctly and reasonably considered that "Bockarie's effective control over Gullit's actions" was *one* factor which supported this finding.[637] However, when determining Taylor's responsibility for planning the Indictment crimes, the Trial Chamber was not required to determine whether any element of superior responsibility under Article 6(3) of the Statute was satisfied.[638] Taylor's extensive arguments regarding the Trial Chamber's alleged failure to make the necessary findings to establish Bockarie's "effective control" over Gullit to the standard which would be required for assessing whether Article 6(3) liability had been proven are completely irrelevant to Taylor's planning conviction.[639]

222. In so far as any of the arguments under this Ground can be considered independent challenges to the factual basis on which the Trial Chamber determined that Bockarie had

[634] Taylor Appeal, sub-title (iv), p. 81 and para. 248.
[635] *Contra* Taylor Appeal, para. 252.
[636] Judgement, para. 6965.
[637] Judgement, para. 6965.
[638] Judgement, paras. 469-470. Taylor does not criticise the legal elements of planning identified by the Chamber in these paragraphs of the Judgement (see Taylor Appeal, para. 285, fns. 576, 577).
[639] Taylor Appeal, paras. 253-287.

sufficient control over Gullit's actions[640] such that the crimes committed by Gullit's forces were considered products of the Bockarie/Taylor plan, these should also be dismissed because they fail to explain why no reasonable trier of fact, based on the evidence, could have evaluated the evidence as the Trial Chamber did.[641] This Ground is, therefore, without merit and should be dismissed.

(ii) No legal error in the Trial Chamber's finding that Bockarie assumed control over Gullit's actions

223. Taylor's arguments regarding the Trial Chamber's alleged failure to make the requisite findings to establish Bockarie's effective control over Gullit can be briefly dealt with as they are based on an erroneous conflation of the legal elements of planning and superior responsibility.[642] The Trial Chamber determined Bockarie had "effective control over Gullit's actions" in the context of an assessment of Taylor's responsibility under Article 6(1) of the Statute for planning the Indictment crimes.[643] Planning is an autonomous form of individual criminal responsibility, separate from superior responsibility.[644] An independent examination of whether a superior-subordinate relationship existed between Bockarie and Gullit was not required in order to support Taylor's planning conviction.[645] While the Chamber used the term "effective control", it was clearly using the term in a factual sense and was not seeking to import the legal meaning behind Article 6(3) responsibility to the term. Indeed, Bockarie's control over Gullit was only one of several factors used by the Trial Chamber to determine that the plan developed by Bockarie and Taylor "substantially contributed"[646] to the crimes committed by Gullit and the forces under his command in Freetown.[647]

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[640] Taylor Appeal, paras. 254, 263-276, 278-281.
[641] Such arguments may be summarily dismissed (see *RUF* AJ, para. 40).
[642] Taylor Appeal, paras. 254-286.
[643] Judgement, paras. 3479, 3480-86, 3617, 6957, 6961, 6965.
[644] SCSL Statute, Arts. 6(1) and 6(3).
[645] Judgement, paras. 469-470 ("Planning consists of the following mental and physical elements: the accused, alone or with others, intentionally designed an act or omission constituting the crimes charged, [and] [t]he intent that a crime or underlying offence be committed in the execution of that design, or... the awareness of the substantial likelihood that a crime or underlying offence would be committed in the execution of that design").
[646] Judgement, para. 470, citing *Kordić & Čerkez* AJ, para. 26.
[647] In finding that the Bockarie/Taylor plan "substantially contributed" to the crimes committed by Gullit, the Trial Chamber also relied on evidence that: (i) after SAJ Musa's death Gullit contacted Bockarie; (ii) following their re-connection Bockarie and Gullit had "frequent daily contact"; (iii) "Bockarie issued a number of specific instructions to Gullit, including instructions leading to the commission of crimes, which were implemented by Gullit and his troops"; (iv) Gullit reported to Bockarie as the overall commander; and (v) Gullit referred to Bockarie with deference (see Judgement, paras. 3464, 3481, 3485, 3611(viii), 6965).

224. In short, the legal elements of superior responsibility have no place in an analysis of the legal elements of planning. Taylor, therefore, fails to establish an error of law which invalidates the Trial Chamber's decision.

(iii) No factual error in the Trial Chamber's finding that Bockarie assumed control over Gullit's actions

225. Underlying all the submissions made under this Ground is Taylor's erroneous contention concerning "effective control" dealt with above. However, in so far as some of his submissions can be considered separate, independent challenges to the Trial Chamber's assessment of the facts, these should also be dismissed for the reasons set out below.[648]

(a) The Trial Chamber reasonably found that Bockarie ordered Gullit to execute soldiers

226. The Trial Chamber properly relied on Perry Kamara's evidence that Bockarie gave Gullit orders to execute captured ECOMOG soldiers near State House.[649] The Trial Chamber correctly weighed this evidence and found it credible.[650] Moreover, on one view, Kamara's evidence was not hearsay at all, if he heard Bockarie give such an order over the radio. According to Kamara, Bockarie told Gullit he had "no prison" for ECOMOG and as a result the captured soldiers were killed.[651] Even assuming that the evidence was hearsay, the Trial Chamber found that Bobson Sesay corroborated Kamara's testimony that Gullit ordered the execution of captured ECOMOG soldiers, even if Bobson Sesay did not attribute the order to Bockarie.[652] In reconciling the two accounts, the Chamber specifically considered as circumstantial guarantees of trustworthiness, Kamara's position as a radio operator located in Freetown, which would have made him privy to the communications between Gullit and Bockarie, whereas Bobson Sesay, as a fighter on the ground, would not always have had that access.[653] To the extent that it can be argued that the testimony was not corroborated, as explained in the response to Ground 1, it is not an error of law to rely on uncorroborated

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[648] All of Taylor's quibbles with the evidence of individual orders ignore the overwhelming evidence that Gullit was implementing Bockarie's orders to commit crimes. Ten witnesses, from a variety of vantage points, testified that Bockarie gave orders for the destruction of Freetown: (1) Kabbah, T. 15 September 2008 p. 16171; (2) TF1-516, T. 8 April 2008 pp. 6931-32, 6935; (3) Fornie, T. 3 December 2008 pp. 21590-93; (4) TF1-585, T. 8 September 2008 pp. 15726-30; (5) Kamara, T. 6 February 2008 pp. 3234-35; (6) Lansana, T. 22 February 2008 pp. 4561, 4563, 4568); (7) Pyne, T. 19 June 2008 pp. 12281-82; (8) TF1-375, T. 24 June 2008 pp. 12612-13; (9) Mongor, T. 11 March 2008 pp. 5821, 5825; (10) Bobson Sesay, T. 22 April 2008 pp. 8299-300; T. 23 April 2008 pp. 8328-30. The Trial Chamber's findings establish that these orders were carried out.

[649] Taylor Appeal, paras. 263-66.

[650] Judgement, para. 3462.

[651] Judgement, para. 3462 citing Kamara, T. 6 February 2008 pp. 3230-31.

[652] Judgement, para. 3462 citing Bobson Sesay, T. 22 April 2008 p. 8292.

[653] Judgement, para. 3462.

hearsay. The Chamber also recalled that it found Kamara a generally credible witness.[654] The Trial Chamber appropriately assessed and relied on Kamara's testimony regarding this order.

227. Second, Taylor's argument about the "misrepresentation" of Kamara's testimony is effectively an attempt to substitute alternative interpretations of the evidence.[655] As this Chamber observed in *RUF*, "claims that the Trial Chamber...should have interpreted evidence in a particular manner, are liable to be summarily dismissed."[656]

(b) The Trial Chamber reasonably found that Bockarie ordered Gullit to execute Martin Moinama

228. Equally without merit are Taylor's submissions challenging the Trial Chamber's reliance on the testimony of Foday Lansana and Alice Pyne regarding the execution of Martin Moinama.[657] In relation to the evidence of both, it is well accepted that hearsay evidence may be admitted.[658] Further, and as conceded by Taylor,[659] the majority of the evidentiary difficulties were considered by the Trial Chamber during its careful analysis of the testimony of both witnesses.[660] In this careful analysis, the Trial Chamber weighed the probative value of their evidence, given under solemn declaration, and concluded that it was reliable for the purpose of proving the truth of its contents. Taylor fails to explain why no reasonable trier of fact, based on the evidence, could have reached the conclusion the Trial Chamber did.

229. The other "evidentiary weaknesses" identified by Taylor in relation to the testimony of Pyne and Lansana are also without foundation.[661] The fact that Lansana and Pyne were husband and wife is irrelevant *per se*. Indeed, Taylor fails to explain why this fact would be relevant in this case. Further, Pyne's testimony clearly does not cast doubt on the reliability of Lansana's testimony. Lansana said he monitored Bockarie ordering Gullit to execute Moinama, whereas Pyne simply testified that she *herself* did not monitor such a message.[662] Both testimonies are not mutually exclusive. Finally, the inconsistencies in Lansana's evidence regarding his knowledge of Moinama's execution seized upon by Taylor amount to nothing. Lansana's testimony is clearly confused in parts but Defence counsel clarified matters during cross-examination by putting to the witness that he only mentioned that

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[654] Judgement, para. 3462 citing Judgement, paras. 227-36 (found "generally credible" at para. 236).
[655] Taylor Appeal, paras. 264-66.
[656] *RUF* AJ, para. 40.
[657] Taylor Appeal, paras. 263, 267-69.
[658] *RUF* AJ, para. 518.
[659] Taylor Appeal, para. 267.
[660] Judgement, paras. 3459-3461.
[661] Taylor Appeal, para. 268.
[662] Pyne, T. 20 June 2008, pp. 12342-44.

Moinama had been killed in 2007.[663] Lansana agreed. Therefore, there is no inconsistency, as the position reverts to Lansana saying in 2003 that he did not know of Moinama's whereabouts and then in 2007 advising that he had been killed. The Trial Chamber dealt with this inconsistency.[664] Taylor's arguments challenging the testimonies of Pyne and Lansana and the Trial Chamber's assessment of them, therefore, fail.

(c) The Trial Chamber reasonably found that Gullit and his troops took orders from Bockarie

230. Taylor's submissions challenging the Trial Chamber's finding that Bockarie was in effective control of Gullit's actions based on "Gullit's persistent insubordination"[665] should also be dismissed. His submissions are, in large part, inappropriate attempts to relitigate arguments made and rejected at trial and to substitute alternative interpretations of the evidence. Indeed, they are also raised by Taylor in his submissions under Ground 10.[666] Crucially, however, at no time either in this Ground or in Ground 10, does Taylor address the standard for appellate review and identify why the Trial Chamber's findings are unreasonable or wholly erroneous.[667] Accordingly, these submissions should be summarily dismissed.[668]

231. Taylor's submissions regarding the point from which the Trial Chamber found Bockarie to be in effective control are irrelevant and should also be dismissed.[669] As argued above, Bockarie's control over Gullit was only *one* of the factors which the Trial Chamber relied upon to determine that the Bockarie/Taylor plan "substantially contributed" to the crimes committed by Gullit.[670] Thus, any minor discrepancies in wording do not establish prejudice on this point such that it warrants appellate intervention.[671]

232. Taylor's submissions in paragraphs 278 to 281 of his appeal brief simply argue that various witnesses' testimony should have been interpreted in a different manner. The appellate standards of review are not satisfied as Taylor does not address why no reasonable trier of fact, based on the evidence, could have reached the conclusion the Trial Chamber did.

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[663] Lansana, T. 26 February 2008, pp. 4749-51.
[664] Judgement, para. 3461.
[665] Taylor Appeal, para. 270. See also Taylor Appeal, paras. 271-277.
[666] The following were raised by Taylor at trial and also in Ground 10: (i) Gullit's failure to follow Bockarie's instruction and wait for reinforcements which the Trial Chamber considered an act of military necessity rather than insubordination; (ii) alleged tensions over the absence of communications with Gullit only contacting Bockarie once had taken State House; (iii) arguments relying on Exh. P-067 (see Taylor Appeal, paras. 271, 273, 274).
[667] The Prosecution also relies on its fuller submissions set out in the response to Ground 10.
[668] *RUF* AJ, para. 40.
[669] Taylor Appeal, para. 272.
[670] See, e.g., Judgement, paras. 3464, 3481, 3485, 3611(viii), 6965.
[671] The issue boils down to a marginal difference in time, i.e. "during" or "after". Given the facts, the difference in time can likely be measured in hours.

Such arguments, in so far as they amount to independent allegations of errors of fact, should be summarily dismissed.[672]

(iv) No error committed by the Trial Chamber in its planning conviction

233. Taylor's final arguments made in paragraphs 284 to 286 regarding the alleged error in the Trial Chamber's determination that the "Bockarie/Taylor plan" substantially contributed to the crimes committed during the invasion of and retreat from Freetown are an amalgamation of arguments made in Grounds 6 to 13. These arguments should be dismissed for the reasons discussed above in the responses to Grounds 6 to 13.

234. For the reasons more fully set out in the response to Ground 11 above, Taylor's criticism regarding the absence of findings that any crimes were committed during the implementation of the "Bockarie/Taylor plan" in Kono and Makeni is also without merit.[673]

(v) Conclusion

235. This Ground fails to allege any error of law that invalidates the Trial Chamber's decision, or any error of fact that constitutes a miscarriage of justice. Therefore, this Ground of Appeal should be dismissed.

GROUND 14: The Trial Chamber did not err in finding that Taylor had the requisite *mens rea* for planning based on his awareness of crimes being committed by the RUF and/or AFRC

(i) Overview

236. Having considered the totality of the evidence, the Trial Chamber did not err in fact or in law by finding that Taylor had the requisite *mens rea* for planning the invasion of Freetown. Taylor misreads or misconstrues the Judgement when he argues that the Trial Chamber erred in finding that his awareness of past crimes committed by the RUF and/or AFRC was sufficient to satisfy the *mens rea* for planning. The Trial Chamber correctly relied on his continuous awareness of a campaign of crimes being committed by the RUF and/or AFRC, and, as will be clear in the response to Ground 15, also correctly relied on Taylor's specific instructions to make the operation "fearful" and to use "all means"[674] as the basis for his *mens rea* for planning. Consequently, this Ground of Appeal should be dismissed as Taylor has failed to demonstrate any error warranting appellate intervention.

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[672] *RUF* AJ, para. 40.
[673] Taylor Appeal, para. 287.
[674] In Taylor Appeal, para. 298, Taylor repeats arguments he made in Ground 17 of his Appeal Brief. The Prosecution has responded to these arguments in its response to Ground 17 rather than here.

(ii) No error in the Chamber's reliance on Taylor's awareness of crimes by AFRC/RUF to satisfy the mens rea of planning

237. Contrary to Taylor's submission,[675] the Trial Chamber did find that Taylor made a plan to commit statutory crimes. This has been addressed in the response to Ground 11.

238. Turning to his *mens rea*, the Trial Chamber correctly set out the *mens rea* for planning in paragraph 469 (ii) of its Judgement. The Accused must have directly intended that crimes be committed pursuant to the plan, or must have been aware of the substantial likelihood that a crime would be committed in the execution of that design.[676] Taylor incorrectly argues that to find an accused guilty of planning the Prosecution has to establish his *mens rea* for each crime committed pursuant to the plan, for example, each murder, each rape and each act of pillage regardless of the nature of the plan in question.[677] This is not the law. This is particularly true, when, as here, an accused's plan is broad and intended to indiscriminately perpetrate a limitless number of violent crimes in a large area, and involving many perpetrators. In such circumstances, it cannot and is not required that the Prosecutor establishes every aspect of the *mens rea* of all crimes planned or envisaged in the plan.

239. Taylor can demonstrate no error in the Trial Chamber's finding in this regard. Specifically, in paragraph 6970 of its Judgement, the Trial Chamber expressly found proof that Taylor both directly intended that the specific crimes charged in Counts 1-11 of the Indictment be committed pursuant to the plan, and was aware of the substantial likelihood that these crimes would be committed. This finding was based on the totality of the evidence. This included his direction that the invasion of Freetown be made "fearful" and that it should be captured by "all means". As discussed in the response to Ground 15, the Judgement is replete with the testimony of credible Prosecution witnesses and even a Defence witness that, by making an operation "fearful", it was known that crimes against civilians were to be carried out, including killings, amputations, destruction of property and burning of houses.[678] Similarly, as detailed in the response to Ground 15, by finding that Taylor instructed that the attack on Freetown be carried out "by all means" the Chamber reasonably found that Taylor intended or had an awareness of the substantial likelihood that the Indictment crimes would be committed pursuant to the plan.[679]

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[675] Taylor Appeal, paras. 289-91.
[676] *Kordić & Čerkez* AJ, paras. 29, 31; *Nahimana* AJ, para. 479.
[677] Taylor Appeal, paras. 291-95, 299.
[678] Response to Ground 15, paras. 251-52.
[679] Judgement, paras. 6969, 3130, 3615.

240. The Trial Chamber also relied on Taylor's continuous awareness of a campaign of crimes committed by the RUF and/or AFRC to find that he was aware of the substantial likelihood that crimes would occur in the execution of the plan.[680] The Trial Chamber based this on the fact that as "as President of Liberia and a member of the ECOWAS Committee of Five the Accused was *continuously* receiving detailed reports of the atrocities committed by RUF/AFRC troops in Sierra Leone."[681] It also relied on the fact that Taylor was well aware of the crimes committed by RUF/AFRC in their military operations and that their war strategy was explicitly based on a widespread or systematic campaign of crimes against civilians. It was also based on Taylor's own statements, for example, his testimony that by April 1998 he was aware that the RUF was engaged in a campaign of atrocities against the civilian population of Sierra Leone. The Accused also testified that there were "news reports in May 1998 which made him aware that the RUF was engaged in a 'horrific campaign [...] against the civilian population of Sierra Leone."[682] Against this context of Taylor's express knowledge that the RUF had previously committed and was continuing to commit crimes against civilians in Sierra Leone at this time, it was reasonable for the Trial Chamber to conclude that he was aware of the substantial likelihood that the RUF would also perpetrate crimes against civilians in the course of the Freetown invasion as this was its war strategy or *modus operandi*. Moreover, it is clear in light of the above that the Trial Chamber reasonably found that Taylor was, contrary to his submissions,[683] not only aware of the past crimes committed by AFRC/RUF, but continuously aware of crimes being committed by them.

241. To the extent that the Chamber relied on Taylor's awareness of past crimes, while it may not be dispositive of intent alone, it is, contrary to Taylor's submissions,[684] a relevant consideration. As the ICTR Appeals Chamber has held, "By its nature, intent is not usually susceptible to direct proof. Only the accused himself has first-hand knowledge of his own mental state, and is unlikely to testify to his own genocidal intent. Intent thus must usually be inferred."[685] As a result, it is well established that intent may be proven through inference from the relevant facts and circumstances of a case which include the general context.[686] Taylor has not demonstrated any error in this regard.

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[680] Judgement, paras. 6947, 6969. See also Judgement, paras. 6879-86.
[681] Judgement, para. 6969 (emphasis added).
[682] Judgement, para. 6969.
[683] Taylor Appeal, para. 296.
[684] Taylor Appeal, paras. 296-299.
[685] *Gacumbitsi* AJ, para. 40.
[686] *Seromba* AJ, para. 176; *Rutaganda* AJ, para. 525; *Gacumbitsi* AJ, paras. 40-41.

242. Paragraph 297 of Taylor's Appeal Brief and the *Baglishema* Trial Judgement cited[687] are of no assistance to the issue raised in this Ground. Rather, they concern the "reason to know" standard for superior responsibility under Article 6(3) of the Statute. Notwithstanding, in paragraph 297 Taylor himself acknowledges that in some circumstances, "future crimes" can "be inferred from past conduct" and that it can be a "legitimate consideration" in determining whether a superior had reason to know that his subordinates had committed or would commit crimes.[688] Therefore, while awareness of past crimes may not on its own be sufficient to prove intent, it is relevant, as recognised by Taylor, in the evaluation of the all the circumstances under which a finding of *mens rea* can be drawn.

243. Moreover, the Prosecution does not dispute Taylor's position that a risk that crimes might or could be committed is insufficient for a finding of indirect intent.[689] As submitted above and as correctly found by the Trial Chamber,[690] for indirect intent the Accused must be aware of the *substantial likelihood* that a crime would be committed in the execution of the plan. However, Taylor has not demonstrated that the Trial Chamber committed any error in this regard.

(iii) Conclusion

244. In light of the above, Taylor has failed to show that the Trial Chamber's approach was incorrect, or that no reasonable trier of fact could have reached the conclusion that Taylor possessed the *mens rea* for planning the invasion of Freetown. Consequently, this Ground of Appeal should be dismissed.

GROUND 15: The Trial Chamber did not err in finding that Taylor instructed that the Freetown operation be made "fearful" and that "all means" should be used or in finding that he had the requisite *mens rea* for liability as a planner

245. Having considered the totality of the evidence, the Trial Chamber did not err in fact or in law by relying in part on the evidence of Isaac Mongor and TF1-371 in finding that Taylor

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[687] Taylor Appeal, para. 297, fn. 600.

[688] In the paragraph of the *Hadžihasanović & Kubura* AJ cited by Taylor in paragraph 299 of his Appeal Brief, the Appeals Chamber found no error in the Trial Chamber's reliance on the accused's awareness of, and failure to punish past acts of plunder *in addition* to other factors when establishing his *mens rea* under Article 6(3) for plunder (*Hadžihasanović & Kubura* AJ, para. 295)(emphasis added). To this end, the Prosecution underscores that Taylor's direct intent for the crimes committed pursuant to the plan or his awareness of the substantial likelihood that crimes would be committed during the implementation of the plan was correctly derived from his continuous awareness of a campaign of crimes being committed by the RUF and/or AFRC and also from his direct instructions regarding the invasion of Freetown.

[689] Taylor Appeal, para. 297.

[690] Judgement, paras. 469 (ii), 6969.

had the requisite *mens rea* for liability as a planner.[691] Contrary to Taylor's position, these two witnesses corroborate each other, as Taylor's instructions that the operation be made "fearful" and that "all means" be used are evidence of the same thing, notably Taylor's intent, or awareness of the substantial likelihood, that the Indictment crimes would be committed during the Freetown invasion. Consequently this Ground of Appeal should be dismissed, as Taylor has failed to demonstrate any error warranting appellate intervention.[692]

(i) No error in the Chamber's reliance on the testimony of Isaac Mongor

246. Taylor erroneously claims that the Trial Chamber erred in relying on Isaac Mongor's evidence that he (Taylor) instructed that the invasion of Freetown should be fearful, as it was uncorroborated hearsay[693] and lacked credibility.[694]

247. As explained in the response to Ground 1, it is not an error of law to rely on uncorroborated hearsay.[695] The Trial Chamber was clearly aware that Mongor's evidence on this instruction was hearsay.[696] Nevertheless, the Trial Chamber correctly weighed the evidence and found it credible. The Trial Chamber considered that it was given under solemn declaration and took into account the circumstantial guarantees of its trustworthiness and the totality of the circumstances under which it was given, including the longstanding cooperation between Taylor and Bockarie, and Taylor and RUF/AFRC forces in Sierra Leone, and concluded that it was reliable for the purpose of proving the truth of its contents, in the sense of being voluntary, truthful and trustworthy. The Chamber's methodology in assessing all the uncorroborated hearsay evidence it heard was clearly set out at paragraphs 166, 168 and 169

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[691] The Trial Chamber also relied on other evidence to find Taylor's *mens rea* as a planner as shown in Judgement, para. 6969 and as discussed in the response to Ground 14.

[692] In Taylor Appeal Ground 15, he repeats arguments he made in Ground 7 of his Appeal regarding inconsistencies with TF1-371's evidence of the alleged satellite phone conversation between Bockarie and Taylor, see Taylor Appeal, para. 308. The Prosecution relies on and incorporates the same arguments it set out in its response to Ground 7 in this regard.

[693] Taylor Appeal, paras. 302-03.

[694] Taylor Appeal, paras. 304-05.

[695] The cases cited in Taylor Appeal, fn. 612 do not contradict this position. They are simply a few examples of cases at the ICTR where the Trial Chambers concerned, in the exercise of their discretion, have not relied on uncorroborated hearsay to find an allegation proven. They do not support the position that it is an error of law to do so. Indeed, in three of the five examples cited, the fact that the allegation was not proven was not *only* because the evidence was uncorroborated hearsay. In *Bizimungu* TJ, paras. 683-93, the Chamber also found that the Defence evidence raised a doubt in the Prosecution case regarding this allegation about which Witness LEL testified, and in *Bizimungu* TJ, paras. 756-64, it is clear that the Chamber had significant concerns regarding witness GHY's general credibility in addition to noting the fact that his evidence was uncorroborated hearsay; *Nzabonimana* TJ, para. 1454, the Chamber noted that "*in this instance*" it did not find the witnesses' evidence, which was uncorroborated hearsay, sufficient to support the allegation, rather than finding that as a rule all uncorroborated hearsay would not be relied upon; see also *Nzabonimana* TJ, paras. 68-69, 72-74.

[696] See Judgement, para. 3116, where the Trial Chamber noted that "Bockarie told him that Taylor said ... that the operation should be fearful."

of its Judgement. It is evident from these paragraphs that the Trial Chamber exercised the appropriate caution when relying on it as set out in the response to Ground 1.

248. Taylor's claim that the Trial Chamber erred by failing to assess the veracity of the source of the hearsay is misguided.[697] In relying on uncorroborated hearsay evidence, a Trial Chamber must take into consideration the indicia which it set out at paragraphs 166 and 168 to 169 of its Judgement. In assessing the credibility of a hearsay statement, factors taken into account by a Trial Chamber include cross-examination of the witness by a party and such circumstantial guarantees of reliability as are relevant to the source.[698] While obviously the source of the hearsay him or herself cannot be tested in cross-examination, Taylor's claim that the evidence is un-testable[699] is incorrect, given, as argued below, that a Trial Chamber can test the underlying circumstances that provide circumstantial guarantees of the trustworthiness of the hearsay. In this case, the Prosecution notes that the Defence extensively cross-examined Mongor about the fact that it was Taylor who instructed that Freetown should be captured and that this instruction was relayed by Bockarie. Significantly, the Defence chose not to cross-examine Mongor about his testimony that Taylor instructed that the operation be fearful.[700] Having considered the entirety of the witness's testimony and all the factors set out in paragraphs 166, 168-169 of its Judgement, the Chamber acted within its discretion in reasonably finding this evidence reliable.

249. The Judgement and trial record are replete with circumstantial guarantees of the trustworthiness[701] of this hearsay evidence, as Taylor's instructions at the end of 1998 to make the Freetown operation "fearful" and that "all means" be used did not occur in a vacuum, but against a backdrop of longstanding cooperation between Taylor and Bockarie, and Taylor and AFRC/RUF forces in military operations in Sierra Leone. For example, from August 1990, Taylor provided the RUF with a training camp in Liberia[702] and in March 1991 he was involved in the invasion of Sierra Leone by NPFL and RUF troops.[703] After the arrest of Foday Sankoh in March 1997 and the appointment of Sam Bockarie as the leader of the RUF, Taylor began to deal with Bockarie, for example, to facilitate the delivery of

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[697] Taylor Appeal, para. 303.
[698] See the response to Grounds 1 and 2.
[699] Taylor Appeal, para. 302.
[700] Mongor, T. 7 April 2008, pp. 6720-21, 6736-38, 6754-68.
[701] See the response to Grounds 1 and 2 and in particular footnote 50, see also the response to Ground 23, para. 453, in respect of the fact that there is nothing to support Taylor's general allegation that Bockarie had a motivation to exaggerate or lie about Taylor's backing.
[702] Judgement, para. 2337.
[703] Judgement, paras. 2380-81, 2390. Taylor then provided the RUF with arms and ammunition after June 1991, see Judgement, para. 2380.

ammunition, including the critical Magburaka arms shipment which had a direct impact on the commission of crimes by the RUF/AFRC.[704]

250. Around the time of the Intervention in February 1998, the interactions between Taylor and the AFRC/RUF leaders, in particular Bockarie, became more frequent. Until Bockarie's travel to Monrovia at the end of 1998, Taylor participated in all of the key tactical decisions on the military operations of AFRC/RUF. For example, the Trial Chamber found that Taylor instructed the AFRC/RUF to capture Kono.[705] Taylor directly instructed Bockarie to maintain,[706] and recapture Kono, resulting in the unsuccessful Fitti-Fatta attack in mid-June 1998.[707] Taylor also sent and or facilitated the provision of materiel to the AFRC/RUF[708] and met several times with Bockarie, giving him sizeable amounts of arms and ammunition[709] which were used by AFRC/RUF troops in Sierra Leone.[710] By the end of 1998, after months of such intense interaction between Taylor and the AFRC/RUF leadership, especially Bockarie, the latter was the pivotal and central actor in the ability of the AFRC/RUF to receive Taylor's support and instructions. In these circumstances, it is credible that Taylor would plan with Bockarie how to carry out the Freetown invasion and specifically that it "be fearful" and "all means" be used.

251. Moreover, the Judgement is replete with references to the testimony of credible Prosecution witnesses and a Defence witness that by making an operation "fearful" it was known that crimes against civilians were to be carried out. Such testimony includes:

> [m]aking an area fearful ... entailed 'destruction of life and property, where there will be killings, amputations, burning of houses, destruction of bridges, setting up road blocks. All those things would happen and that will have made the area fearful';711

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[704] Judgement, paras. 4845, 5408-09, 5559-60, Taylor sent Ibrahim Bah to Freetown to negotiate the delivery of a very large shipment of arms and ammunitions to Magburaka with Bockarie and Johnny Paul Koroma, which arrived by plane sometime between September and December 1997. This large shipment was distributed among the AFRC/RUF Junta forces and used in fighting ECOMOG and SLPP forces during and after the Intervention and in offensives against civilians, including in Operation Pay Yourself, as well as in subsequent offensives in Kono where crimes were committed. The ammunition was kept by Bockarie in Kenema and used in his activities in the area, which included the commission of crimes.

[705] Judgement, paras. 2855, 2863.

[706] Judgement, para. 2864.

[707] Judgement, paras. 2927, 2951.

[708] Judgement, para. 4965.

[709] Judgement, paras. 5029-31.

[710] Judgement, paras. 5666-67.

[711] Judgement, paras. 646, 737 citing Perry Kamara, who also testified: "Well, what I knew if before we entered Freetown if we had a message that we should make an area fearful it was to destroy, kill, amputate, destroy bridges, set road blocks. And in that message he talked about some areas as well and it was not just one message" (see Judgement, para. 2067 citing Kamara, T. 6 February 2008 p. 3235). The Chamber found Kamara credible at Judgement, para. 236.

> [the RUF in Kono District adopted a policy of] "making the area fearful" which meant that 'they would kill, burn down houses so that they make sure that the people who were living in the areas when there was those things going on they would be afraid and that even the enemies against whom they were fighting would also be afraid';[712]
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> [to the RUF, making an area] "fearful" meant "to kill civilians, burn houses and to instil fear into ECOMOG, or any other opposing troop that would want to get into that area easily";[713]
>
> [that] in order to comply with the orders given by their commanders to make the area "fearful", the AFRC/RUF forces displayed the corpses at the various junctions around Yardo Road in order to frighten off any other civilians that might have wanted to come to or remain to Koidu town.[714]

252. The Chamber also referred to Issa Sesay's testimony that "making an operation 'fearful' means destruction, committing crimes against civilians and the opposing troops."[715] There can therefore be no doubt about what an instruction to make a campaign fearful meant. Moreover, as will be seen below (see paragraphs 266-267 and 269), TF1-371 also gave evidence which the Chamber found credible that Taylor gave the same instruction the following day but using different language, specifically that Freetown should be captured "by all means".

253. Another circumstantial guarantee of the trustworthiness of this hearsay is that at the time that Bockarie told Mongor about Taylor's instruction, the trial record establishes that Bockarie had reason to confide in Mongor. Specifically, Mongor, one of Taylor's NPFL commanders, was an NPFL trainer in charge of RUF recruits at the camp in Liberia when Bockarie was trained there[716] and he became one of the most senior RUF commanders under Bockarie.[717] Moreover, Mongor had the necessary rank and experience to understand and assess what was meant by "fearful" in light of his experience of both NPFL and RUF methods of combat.[718] Indeed, he was one of the RUF's highest ranking commanders in 1998.[719]

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[712] Judgement, para. 651 citing Mongor, who the Chamber found credible at Judgement, para. 274.
[713] Judgement, paras. 741, 2008 citing TF1-375 who the Chamber found credible when corroborated, as in this case, Judgement, para. 312.
[714] Judgement, para. 650 citing Bobson Sesay.
[715] Judgement, para. 3063.
[716] TF1-371, T. 24 January 2008 pp. 2202-03, 2206 (CS). The Chamber found this witness generally credible, Judgement, para. 226.
[717] Indeed at the time of their conversation they had known each other for over eight years. Specifically, Mongor was the Commander of the 2nd Battalion during the invasion of Sierra Leone in March 1991, Acting Battle Group Commander in 1992, RUF Colonel in 1996, Member of the AFRC Supreme Council in 1997, RUF Brigadier in 1998, see, Mongor, T. 31 March 2008 pp. 6233-38. The Chamber found this witness credible, see Judgement, para. 274.
[718] The Prosecution recalls that he is a Liberian who was captured and trained by the Charles Taylor's NPFL in 1989 and remained with them until 1991, see Mongor, T. 31 March 2008 pp. 6231-33.

Consequently, in light of all these circumstantial guarantees of the veracity of this hearsay, the Trial Chamber reasonably relied on Mongor's evidence.

254. Taylor's additional complaints about the way the Trial Chamber assessed Mongor's testimony are without merit.[720] The Chamber correctly noted Mongor's status as an accomplice and treated his evidence with appropriate caution in accordance with established case law.[721] This is demonstrated by its careful consideration of his testimony, prior statements, the fact that originally he was not forthcoming regarding the role of Taylor in the Freetown invasion, and the letter of immunity he received from the Prosecution.[722] The Chamber expressly and carefully considered the money he received from the Prosecution, concluding that "he did not testify for monetary gain".[723] Having considered all of these factors, and noting that Mongor had been subjected to a cross-examination totaling over 24 hours in which he had been "pressed heavily and repeatedly accused of lying",[724] it found Mongor to be a credible and reliable witness generally and in respect of this specific allegation.[725] The fact that the Chamber declined to rely on all parts of his testimony is, contrary to Taylor's submission, not problematic. It is well established that a Trial Chamber can rely on parts of a witness's testimony, but decline to rely on all of it.[726] Moreover, as the ICTY Appeals Chamber has held, a Trial Chamber's cautious approach in its assessment of the reliability of a witness's evidence can be evidenced by the exercise of its discretion to rely on specific parts of their testimony while rejecting other parts as not credible.[727]

255. Contrary to Taylor's claim,[728] Mongor's testimony as to when he was told about the "fearful" instruction is not inconsistent. There is nothing inconsistent about his testimony that Bockarie told him of Taylor's instructions regarding the mission in a private conversation and that Bockarie repeated that information the morning after, during a meeting with other commanders.[729] The fact that the Trial Chamber did not find that any of the witnesses who attended the commanders' meeting testified that Bockarie told them that the operation must be

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[719] This followed seven years as a RUF commander in Sierra Leone, when the operations in Kono were carried out with the *modus operandi* to make these operations fearful, which entailed the commission of atrocities against civilians, Mongor, T. 31 March 2008 pp. 6224, 6238.
[720] Taylor Appeal, para. 304.
[721] Judgement, paras. 182-83, 270. *AFRC* AJ, paras. 128-29; *Nchamihigo* AJ, paras. 47-48.
[722] Judgement, paras. 269-74, 3101.
[723] Judgement, para. 271.
[724] Judgement, para. 273.
[725] Judgement, paras. 274, 3101.
[726] *AFRC* AJ, para. 155; *Setako* AJ, para. 48; *Haradinaj* AJ, para. 201.
[727] *Krajišnik* AJ, para. 150.
[728] Taylor Appeal, para. 305.
[729] Mongor, T. 11 March 2008 p. 5797.

fearful at that meeting has no bearing on whether Bockarie said it to Mongor the previous evening. In addition, while Taylor correctly states that Witness TF1-371, who attended the meeting, made no reference to any instruction that the operation be fearful, he did testify that Taylor instructed that "all means" be used to capture Freetown,[730] which the Chamber found to be consistent in meaning with making the operation "fearful" (see paragraphs 266-267 and 269 below).[731]

256. Moreover, contrary to Taylor's submission,[732] there is circumstantial evidence that Bockarie conveyed the instruction to other commanders. Indeed, Witness TF1-367 testified that after Sesay met Bockarie in Buedu following his return from seeing Taylor in Monrovia, he convened a meeting with senior officers in Kono. At that meeting, the instruction was given to the fighters that the operation should be made fearful.[733] However, contrary to Taylor's argument, the Chamber did not rely on this to make its finding that Taylor gave this instruction, rather, as argued above, it reasonably relied on Mongor's testimony.

257. For the reasons more fully set out in the response to Ground 11 above, Taylor's argument that the Trial Chamber did not find that any crimes were committed in the only successful part of the plan, the offensives on Kono and Makeni is without merit.[734]

258. In light of the above, Taylor has failed to demonstrate that the Chamber erred in its reliance on Mongor's testimony in finding that Taylor instructed that the Freetown invasion be fearful and that this evidenced the requisite *mens rea* for planning.

(ii) No error in the Chamber's reliance on the testimony of TF1-371

259. Taylor erroneously claims that the Trial Chamber erred in relying on TF1-371's evidence that he (Taylor) instructed Bockarie to use "all means" to capture Freetown as it was uncorroborated hearsay.[735]

260. The Trial Chamber was clearly conscious that TF1-371's evidence on this instruction was hearsay.[736] Nevertheless, the Chamber weighed the probative value of his evidence and concluded that it was reliable for the purpose of proving the truth of its contents. It is evident from paragraphs 166, 168 to 169 of its Judgement that the Trial Chamber exercised the

[730] Judgement, para. 3114.
[731] Judgement, para. 6969.
[732] Taylor Appeal, para. 305.
[733] Judgement, paras. 3035-36; see also TF1-367, T. 20 August 2008 p. 14181 where TF1-367 testified that Bockarie met and gave the ammunition to Sesay in Buedu when Bockarie came back from Liberia evidencing their meeting.
[734] Taylor Appeal, para. 306.
[735] Taylor Appeal, para. 308.
[736] See Judgement, para. 3114 where the Chamber noted that "Bockarie said that Taylor gave him an instruction ... that they should capture Freetown "by all means".

appropriate caution when relying on this uncorroborated hearsay evidence as set out in the response to Ground 1.

261. Taylor's claim that the Trial Chamber erred by failing to assess the veracity of the source of this hearsay[737] is misguided. The Prosecution notes that the Defence cross-examined TF1-371 about the fact that the instruction to capture Freetown came from Taylor via Bockarie and notwithstanding, having considered all the factors set out in paragraphs 166, 168-169 of the Judgement, found this evidence reliable.[738]

262. Moreover, the Prosecution relies on its submissions at paragraphs 249-250 above as to the circumstantial guarantees about the trustworthiness of the source of the hearsay, Bockarie, in light of the context of his long history with Taylor and the ongoing relationship between Bockarie, the RUF/AFRC and Taylor, especially in 1998.

263. [See this paragraph in full in Confidential Annex A]

264. Taylor's additional complaints about the way the Trial Chamber assessed TF1-371's testimony are without merit.[739] The Chamber correctly noted TF1-371's status as an accomplice and treated his evidence with appropriate caution in accordance with established case law.[740] This is demonstrated by its careful consideration of his testimony, prior statements and prior testimony before this Tribunal.[741] Having considered all of these factors, it found TF1-371 to be a credible and reliable witness generally and specifically in regard to this allegation.[742] The fact that the Chamber declined to rely on all parts of his testimony is, contrary to Taylor's submission, not problematic.[743] Moreover, the fact that the Trial Chamber declined to rely on his testimony in other parts of its Judgement underscores that it exercised full and careful scrutiny before relying on it in this instance.[744]

265. Moreover, the Chamber did not mischaracterise TF1-371's evidence.[745] In its summary of TF1-371's evidence, the Trial Chamber quotes directly from his testimony that Taylor instructed Bockarie "We should *by all means* capture Freetown."[746] The critical part of this sentence are the words "all means", which, contrary to the Defence submission, are the words that the Chamber cited in inverted commas throughout its Judgement, sometimes

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[737] Taylor Appeal, para. 308.
[738] TF1-371, T. 30 January 2008 pp. 2641-42 (CS).
[739] Taylor Appeal, paras. 308-09.
[740] Judgement, paras. 182-83, 220; *AFRC* AJ, paras. 128-29; *Nchamihigo* AJ, para. 48.
[741] Judgement, paras. 220-24, 3104, 3114-15.
[742] Judgement, paras. 226, 3104, 3114-15.
[743] *AFRC* AJ, para. 155; *Setako* AJ, para. 48.
[744] *Krajišnik* AJ, para. 150.
[745] Taylor Appeal, para. 310.
[746] Judgement, para. 2963.

prefaced by the word "by"[747] and sometimes by "use", the choice of which does not change their meaning.[748] In any event, Taylor does not state in which way the meaning of "all means" is potentially changed. Consequently, this argument must fail.

266. In the totality of the circumstances considering the following factors, the Trial Chamber did not err, as alleged by Taylor,[749] when it reasonably found that by instructing that the RUF capture Freetown "by all means" he intended or had an awareness of the substantial likelihood that the Indictment crimes would be committed.[750] First, Taylor instructed that Freetown be captured "by all means" within a war in which the Chamber found that the RUF and RUF/AFRC repeatedly committed crimes against civilians. Specifically, it found that the RUF and RUF/AFRC military campaign was inextricably linked to the commission of crimes charged in the Indictment.[751] By the start of the Indictment period, the RUF's war strategy had "evolved" to be one "based on a campaign of terror against the civilian population."[752] Secondly, Taylor gave this instruction the day after his other command that the invasion "be fearful" which also meant that crimes should be committed against civilians, for example, amputations, killing (see paragraphs 251-252). Thirdly, the Chamber found that immediately after he received the "by all means" instruction, Bockarie coined the name "Operation No Living Thing" for the invasion of Freetown implying that "anything that stood in their way should be eliminated."[753] Indeed in his testimony, TF1-371 used the phrase Operation No Living Thing within two words of "by all means":

> He came in excited and he said, well, he had just been on line with Mr. Taylor ... and he said he gave the instruction directly to his commander this is Operation No Living Thing. We should by all means capture Freetown. That is instruction he had received to capture Freetown so as to force the government to negotiation.[754]

A few moments later, TF1-371 testified:

> Q. Now you said that Sam Bockarie said, "This is Operation No Living Thing. We should by all means capture Freetown". Did he explain what he meant by Operation No Living Thing?
> A. I mean he meant at this point in time, I mean that nobody – no commander in that operation was supposed to allow any enemy forces or capture any enemy forces to bring to his headquarters and nobody was supposed to stand in the way of

[747] Judgement, paras. 3114-15.
[748] Judgement, paras. 3117, 3130, 3611(vii), 6969.
[749] Taylor Appeal, para. 311.
[750] Judgement, paras. 3130, 3615, 6969-70.
[751] Judgement, para. 6936.
[752] Judgement, para. 6788. See also Judgement, para. 6790.
[753] Judgement, paras. 3130, 3115, 3611(vii), 3615.
[754] TF1-371, T. 28 January 2008 pp. 2412-13 (CS).

> the operation. Anything that stand in the way should be eliminated and the target was to capture Freetown to force the government into negotiation.[755]

267. While the Prosecution recalls that the Chamber found that on cross-examination TF1-371 clarified that it was Bockarie who coined the name "Operation No Living Thing" rather than Taylor, it does not affect the fact that, in this context, the phrase "by all means" could not have meant "by all available military means" as Taylor suggests.[756] Moreover, when questioned about what happened to civilians during the invasion of Freetown, TF1-371 testified that civilians were killed, houses burned and amputations carried out and that this was consistent with TF1-371's description of Operation No Living Thing.[757]

268. In light of the above, Taylor has failed to demonstrate that the Chamber erred in its reliance on TF1-371's testimony in finding that Taylor instructed that the Freetown invasion be achieved "by all means" and that this in part evidenced the requisite *mens rea* for planning.

(iii) No error in the Chamber's overall approach

269. Taylor mischaracterises the Chamber's conclusions by artificially separating its findings about his instructions to make the Freetown invasion fearful and to use all means to achieve it. These two instructions are consistent, as both instructed the RUF to utilise its well-known terror tactics. As argued above, by finding that Taylor instructed Freetown be invaded "by all means", the Chamber reasonably found that Taylor intended or had an awareness of the substantial likelihood that the Indictment crimes would be committed in the implementation of the plan. Similarly, as stated above at paragraphs 251-252, the Judgement is replete with the testimony of credible Prosecution witnesses and a Defence witness that by making an operation "fearful", it was known that crimes against civilians were to be carried out.

270. Clearly, therefore, both instructions entailed the commission of Indictment crimes and consequently corroborate each other to demonstrate that Taylor possessed the intent for planning the fearful invasion of Freetown. These instructions and the other evidence relied on by the Trial Chamber[758] establish the requisite *mens rea* for planning.

(iv) Conclusion

271. Taylor has failed to show that the Trial Chamber's approach was incorrect or that no reasonable trier of fact could have reached the conclusion that Taylor possessed the *mens rea*

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[755] TF1-371, T. 28 January 2008 pp. 2413-14 (CS).
[756] Taylor Appeal, para. 311.
[757] TF1-371, T. 28 January 2008 pp. 2428-29 (CS).
[758] See Judgement, para. 6969 and the response to Ground 14.

for planning the invasion of Freetown. Consequently this Ground of Appeal should be dismissed.

PART III: NO ERRORS TO INVALIDATE THE AIDING AND ABETTING CONVICTIONS

272. The Trial Chamber correctly convicted Taylor of aiding and abetting the crimes charged in Counts 1 to 11 of the Indictment as a result of the proper application of the law to its reasonable factual findings. Taylor's challenges to his aiding and abetting conviction focus on the Trial Chamber's alleged application of an erroneous *mens rea* standard and the Chamber's alleged failure to properly assess Taylor's *mens rea* in relation to individual acts of assistance and resulting crimes. Taylor also seeks to challenge the Trial Chamber's findings on the *actus reus* of aiding and abetting by alleging errors in the Chamber's application of the elements of the *actus reus* to the facts before it. In the process, Taylor frequently conflates the requirements of the *actus reus* with those of the *mens rea.*

273. In his submissions, Taylor takes an unsupported fragmentary approach to the Trial Chamber's findings, attempting to isolate and assess whether each particular act of assistance, support and encouragement could give rise to aiding and abetting liability. Taylor's arguments ignore the Chamber's holistic approach based on the totality of the evidence in reaching its findings. There is nothing in the elements of aiding and abetting nor the associated jurisprudence which requires a Chamber to analyze each individual act of assistance in relation to the required *actus reus* and *mens rea.*[759]

274. The Trial Chamber properly assessed Taylor's conduct in light of all the evidence on the trial record, including his awareness of crimes by the RUF, AFRC/RUF forces[760] and his persistent and cumulatively critical contributions to the military operations and very existence of an organisation engaged in a relentless campaign of violence and exploitation against the civilian population of Sierra Leone.[761] Based on the totality of the evidence, the Trial Chamber properly concluded that the totality of Taylor's assistance was "critical"[762] and at

[759] See, e.g., *Perišić*, TJ, para. 1624: "The element of substantial assistance for aiding and abetting does not require that an accused provided the specific weapon used by the perpetrator, as the element may be established by the *numerous other forms of practical assistance* described above, which substantially facilitated the perpetrators' crimes" (emphasis added). See also *Perišić*, TJ, para. 1625: "The Majority is satisfied that the overwhelming majority of *Perišić's actions* in support of the VRS facilitated the commission of future crimes" (emphasis added).
[760] Judgement, para. 6886.
[761] Judgement, para. 6790.
[762] Judgement, para. 6914.

times "indispensable"[763] to the RUF and AFRC, and substantially contributed to the crimes for which he was convicted.[764]

GROUND 16: The Trial Chamber correctly defined the *mens rea* for aiding and abetting

(i) Overview

275. None of the alleged errors relied on by Taylor under this Ground establish that the Trial Chamber relied on an incorrect standard for *mens rea*. Taylor's assertions that the Trial Chamber erred by failing to apply the 'purpose requirement' of facilitating the principal crimes, misapplied the standard of knowledge for the *mens rea*, and failed to define the *mens rea* in relation to the *actus reus*, are incorrect in law. Taylor's submissions fail to demonstrate any error by the Trial Chamber which would serve to invalidate the decision and warrant appellate intervention.

276. The Trial Chamber correctly applied the elements of the mode of liability of aiding and abetting developed in the jurisprudence of this Appeals Chamber. This standard is consistent with customary international law and the fundamental principles of criminal law. Taylor fails to demonstrate any reason to alter these elements as he proposes or to adopt his position that providing assistance to an insurgency with knowledge that the group utilises an operational strategy of terror against civilians is the "prerogative of states."

(ii) The Trial Chamber properly defined the mens rea for aiding and abetting

277. The Trial Chamber properly set out the *mens rea* for aiding and abetting as:

> i. The Accused performed an act with the knowledge that it would assist the commission of a crime or underlying offence or that he was aware of the substantial likelihood that his acts would assist the commission of [sic] underlying offence; and
>
> ii. The Accused is aware of the essential elements of the crime committed by the principal offender, including the state of mind of the principal offender.[765]

278. The Trial Chamber added that while the *conduct* of the accused that amounts to the assistance must itself be *intentional*, it is not required that the accused intend the crime or underlying offence. Rather, it is only required that the accused had *knowledge* that his acts assist the commission of the crime or the underlying offence.[766]

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[763] Judgement, para. 6914.
[764] Judgement, para. 6915.
[765] Judgement, para. 486 (footnotes omitted).
[766] Judgement, para. 487.

279. The Trial Chamber applied the correct elements of the *mens rea* for aiding and abetting. The jurisprudence of this Appeals Chamber as well as of the *ad hoc* tribunals establishes that the *mens rea* for aiding and abetting does not require that the accused's assistance be provided for the "purpose" of facilitating the principal's crimes. Rather, the act must be done with knowledge or awareness of the substantial likelihood that it will facilitate the underlying offence.[767]

(iii) The Trial Chamber's standard comports with SCSL jurisprudence

280. In the *Brima et al.* (*AFRC*) Appeal, Kamara challenged the Trial Chamber standard for the *mens rea* for aiding and abetting. This Appeals Chamber found that the Trial Chamber was correct in applying the following definition, which was subsequently applied in the Appeal Judgments in *RUF* and *CDF*:

> The *mens rea* required for aiding and abetting is that the accused knew that his acts would assist the commission of the crime by the perpetrator or that he was aware of the substantial likelihood that his acts would assist the commission of a crime by the perpetrator.[768]

(iv) Customary international law is consistent with the knowledge standard

281. Taylor attacks the settled law of this Court and that of the *ad hoc* tribunals by asserting that under customary international law, knowledge is insufficient to establish the *mens rea* for aiding and abetting. Rather, Taylor argues that it must be shown that the *actus reus* was performed with "purpose",[769] which he equates with conduct "specifically directed" or "specifically aimed" to assist, encourage or lend moral support to a particular crime.[770] Taylor's claim that the entire *corpus* of jurisprudence of the ICTR, ICTY and SCSL is flawed because customary international law never accepted the knowledge standard is without merit.

282. The United Nations and its Member States have recognised that post-Second World War cases are evidence of state practice at the time.[771] These cases repeatedly applied the knowledge standard as the required *mens rea* for aiding and abetting. In the *Zyklon B* case, a

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[767] *Contra* Taylor Appeal, para. 319.
[768] *AFRC* AJ, paras. 242-43. The same definition was repeated by the Appeals Chamber in both the *CDF* AJ (para. 366) and *RUF* AJ (para. 546).
[769] Taylor Appeal, p. 112, sub-title (b).
[770] Taylor Appeal, paras. 354-55.
[771] The United Nations General Assembly unanimously affirmed the principles of international law recognised by the Nuremberg tribunals. See Affirmation of the Principles of International Law Recognized by the Charter of the Nürnberg Tribunal. Also, the United Nations War Crimes Commission ("UNWCC") said that cases before British military courts are declaratory of the state of the law and illustrative of actual state practice. See UNWCC Report I, p. 110. The UNWCC reported on at least 89 cases, e.g. UNWCC Report XV, p. xvi. The UNWCC's reports also support a knowledge standard, see UNWCC Report VII, p. 71 ("This condition is fulfilled if circumstance constituting complicity are present e.g. the [Accused] knew that his action would lead to the commission of a war crime and either intended this consequence or was recklessly indifferent with regard to it").

British military court sentenced two industrialists who supplied poison gas to the Nazis to death because they "*knew* that the gas was to be used for the purpose of killing human beings."[772]

283. The Nuremberg Military Tribunal ("NMT") in the United States occupied zone applied a knowledge standard in the twelve subsequent Nuremberg trials held pursuant to Control Council Law No. 10. In *United States v. Flick*, the Tribunal convicted two defendants for knowingly assisting Nazi crimes. Flick was convicted because he knew of the widespread crimes of the SS and nevertheless contributed money critical to its operations. The Tribunal found that "[o]ne who *knowingly* by his influence and money contributes to the support [of war crimes and crimes against humanity] must, under settled legal principles, be deemed to be, if not a principal, certainly an accessory to such crimes".[773]

284. The French Appellate Tribunal confirmed the conviction of Hermann Roechling, an industrialist, for the inhumane use of forced labour in his factories noting that the *mens rea* for war crimes under the jurisprudence developed by the NMT allowed convictions solely on the basis of knowledge of the criminal activity.[774] The Appellate Tribunal noted that Roechling "knew in what way such foreign workers were supplied."[775] The Appellate Tribunal also found the president of the Board of Directors of the Roechling company, von Gemmingen-Hornberg, guilty of war crimes as he knew of the inhumane treatment of workers in the plant and had authority to change it but failed to act.[776]

285. In *The Einsatzgruppen Case*, Klingelhoefer was convicted for forwarding lists of Communist party functionaries "aware [they] would be executed",[777] and Fendler was convicted because he failed to stop summary executions although he knew of them.[778] In *Schonfeld*, a British military court acquitted defendants Karl Brendle and Eugen Rafflenbeul, as despite having made a physical contribution to the commission of the offence, they had no knowledge that they were doing so.[779]

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[772] *The Zyklon B Case*, p. 101 (emphasis added); see also *Furundžija* TJ, para. 238 discussing *The Zyklon B Case*.
[773] *The Flick Case*, p. 1217.
[774] *Roechling* AJ, p. 1106.
[775] *Roechling* AJ, p. 1130.
[776] *Roechling* AJ, p. 1136.
[777] *The Einsatzgruppen Case*, p. 569.
[778] *The Einsatzgruppen Case*, p. 572.
[779] See *Furundžija* TJ, para. 239.

286. The ICTY was mandated to apply rules of international humanitarian law "which are beyond any doubt part of customary law".[780] The Trial Chamber in *Furundžija* correctly determined after an analysis of these cases that under customary international law, knowledge is sufficient to establish the *mens rea*.[781] Taylor wrongly asserts that the analysis in *Furundžija* was incomplete.[782] "*The Ministries Case*" cited by Taylor actually confirms the knowledge standard.[783] In seeking only to rely on *Rasche*, Taylor disregards the fact that the court based Rasche's acquittal not on the lack of proof of his *mens rea*, but on the finding that no *actus reus* was shown, as the court held that the provision of a loan for the purposes of an unlawful enterprise was not a violation of international law.[784] For other accused, the NMT in the *Ministries Case* confirmed the knowledge standard. In *Puhl*'s conviction, the NMT acknowledged that selling valuables of Holocaust victims "was probably repugnant to [Puhl]",[785] but convicted him because he *knew* that the property was stolen.[786] Likewise, while the NMT accepted that *Von Weizsaecker* and *Woermann* might not have approved of the deportation of Jews, the proper question was "whether they knew of the program".[787]

287. The 1996 Draft Code of Crimes Against the Peace and Security of Mankind adopted by the International Law Commission ("ILC Draft Code") provides further evidence that customary international law at the time of the Indictment period provided for aiding and abetting liability based on the knowledge standard. As noted by the *Furundžija* Trial Chamber, the Draft Code was the work of a body of outstanding experts in international law, including governmental legal advisers, elected by the United Nations General Assembly.[788] Article 2(3)(d) of the Draft Code imposes criminal responsibility upon an individual who "*knowingly* aids, abets or otherwise assists, directly and substantially, in the commission of such a crime, including providing the means for its commission" (emphasis added).

288. Taylor's analysis of the jurisprudence overlooks that the *Tadić* Trial Chamber at the ICTY also concluded, on the basis of its review of post-World War II cases, that an individual who "knowingly participated in the commission of an offence that violates international

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[780] 1993 Secretary General Res. 808 Report, para. 34.
[781] *Furundžija* TJ, paras. 245, 249.
[782] *Contra* Taylor Appeal, para. 352.
[783] *Contra* Taylor Appeal, para. 353.
[784] See *The Ministries Case*, pp. 621-22; see also Talisman Amicus, p. 11 "[t]hus, Rasche's acquittal resulted from inadequate evidence to establish the *actus reus*, not a *mens rea* of purpose."
[785] *The Ministries Case*, pp. 620-621.
[786] *The Ministries Case*, p. 620.
[787] *The Ministries Case*, p. 478.
[788] *Furundžija* TJ, para. 227.

humanitarian law and his participation directly and substantially affected the commission of that offence" will be found criminally culpable.[789]

289. Further, Ambassador Scheffer, who was relied on in Taylor's submissions, opined that post-World War II jurisprudence from both national military courts and the Nuremberg Military Tribunals consistently applied a knowledge standard of *mens rea* for aiders and abettors, concluding that "[c]ustomary international law applies the knowledge standard for aiding and abetting as a mode of participation."[790]

290. Taylor attacks the jurisprudence of the Special Court and the *ad hoc* tribunals, arguing that customary international law requires that in order to attach liability for aiding and abetting, at a minimum it must be shown that the *actus reus* was performed with "purpose,"[791] which he also equates with the conduct being "specifically directed" or "specifically aimed" to assist, encourage or lend moral support to a particular crime.[792] Taylor's arguments conflate jurisprudence that uses the terms "specifically directed" or "specifically aimed" in discussing the requirement for the *actus reus*. A large body of jurisprudence from the Special Court, the *ad hoc* tribunals, and the Extraordinary Chambers in the Courts of Cambodia ("ECCC") and the Special Tribunal for Lebanon ("STL") holds that the knowledge of the accused that his conduct will assist a crime, and awareness of the essential elements of the crime, are sufficient to establish the mental elements of aiding and abetting.[793]

(v) The mens rea standard does not require that assistance be "specifically directed" or "specifically aimed" to the commission of crimes

291. The *actus reus* of aiding and abetting is satisfied when it is proven that the accused provided practical assistance, encouragement or moral support that has a substantial effect on the perpetration of the crime.[794] Some of the jurisprudence from the *ad hoc* tribunals defined the elements of aiding and abetting as requiring proof that the accused's conduct was "specifically directed" or "specifically aimed" at assisting, encouraging or morally supporting the perpetration of a crime, but this was always in reference to the *actus reus*, not the *mens rea*. As illustrated below, the concept was meant to express the requirement that conduct must

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[789] *Tadić* TJ, para. 692.
[790] *Royal Dutch Petroleum Co.*, Scheffer Supplemental Brief, p. 33.
[791] Taylor Appeal, p. 112, sub-title (b).
[792] Taylor Appeal, paras. 354-55.
[793] See, e.g., *Tadić* AJ, para. 229(iv); *Mrkšić* AJ, para. 159; *Ntawukililyayo* AJ, para. 222; *Duch* TJ, para. 535; STL Applicable Law Decision, para. 227.
[794] Judgement, para. 482.

be sufficiently connected with the crime of the principal to constitute assistance, encouragement or moral support.[795]

292. The House of Lords case of *Gillick v. West Norfolk and Wisbech Health Authority* ("*Gillick*") contains an example of an act not sufficiently connected with the crime of the principal to constitute assistance, encouragement or moral support to a crime. According to Taylor's submission, in this case the court "applied a purpose standard to acquit a person where he had a lawful purpose for his action, despite an awareness of a probability that a crime might be therefore be assisted."[796] In fact, no one was acquitted in *Gillick*, as it was a civil action where a parent sought to prevent a medical clinic from giving advice or treatment for contraception to girls under 16 years of age. The House of Lords held that a doctor who provided advice or treatment for contraception to a girl under 16 was not committing an offence as the doctor was in fact treating girls who were the victims, not the perpetrators, of the crime of unlawful sexual intercourse with a minor.

293. The term "specifically directed" first appeared in the *Tadić* Appeal Judgement when distinguishing the *actus reus* of aiding and abetting from joint criminal enterprise.[797] However, in relation to *mens rea*, the *Tadić* Appeals Chamber stated that "the requisite mental element is knowledge that the acts performed by the aider and abettor assist the commission of a specific crime".[798]

294. In *Blagojević and Jokić*, the Appeals Chamber reviewed the history of the "specifically directed" language and explained its meaning in relation to *actus reus*, stating that the conduct or omission of the aider and abettor must contribute to the crime charged:

> The Appeals Chamber observes that while the *Tadić* definition has not been explicitly departed from, specific direction has not always been included as an element of the *actus reus* of aiding and abetting. This may be explained by the fact that such a finding will often be implicit in the finding that the accused has provided practical assistance to the principal perpetrator which had a substantial effect on the commission of the crime.[799]

295. In *Mrkšić*, the ICTY Appeals Chamber squarely addressed the "specific direction" issue and stated that "the Appeals Chamber has confirmed that 'specific direction' is not an

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[795] In the *RUF* TJ, the *actus reus* for aiding and abetting was defined as when an accused "perpetrates an act or an omission specifically directed to assist, encourage or lend moral support to the perpetration of a certain specific crime and that this act or omission of the aider and abettor must have a substantial effect upon the perpetration of the crime" (para. 276). In contrast, the *mens rea* was defined as "knowledge that the acts performed by the Accused assist the commission of the crime" (para. 280).
[796] Taylor Appeal, para. 363.
[797] *Tadić* AJ, para. 229(iii).
[798] *Tadić* AJ, para. 229(iv).
[799] *Blagojević & Jokić* AJ, para. 189.

essential ingredient of the *actus reus* of aiding and abetting".[800] *Mrkšić* reiterated that the *mens rea* requirements for aiding and abetting are knowledge that the acts performed assist in the commission of the offence, and awareness of the essential elements of the crime.[801] The Appeals Chamber recalled that it had previously rejected an elevated *mens rea* standard, "namely, the proposition that the aider and abettor needs to have intended to provide assistance, or as a minimum, accepted that such assistance would be a possible and foreseeable consequence of his conduct".[802]

296. ICTR jurisprudence is consistent, holding "[t]he requisite *mens rea* is the fact that the aider and abettor knows that his acts assist in the commission of the specific crime of the principal".[803] While jurisprudence defining the *actus reus* of the offence often includes language suggesting that the conduct of the accused must be "specifically aimed" at a crime, meaning it must make a substantial contribution to the crime, ICTR cases have consistently held that the *mens rea* required is simply knowledge that the conduct assists the crime. In *Ntawukulilyayo*, the ICTR Appeals Chamber held "the *actus reus* of aiding and abetting is constituted by acts or omissions specifically aimed at assisting, encouraging, or lending moral support to the perpetration of a specific crime, and which have a substantial effect upon the perpetration of the crime".[804] A few paragraphs later the Judgement states, "The Appeals Chamber recalls that the *mens rea* for aiding and abetting is knowledge that the acts performed by the aider and abettor assist the commission of the specific crime of the principal perpetrator".[805]

297. In discussing the substantial effect requirement, the *Kalimanzira* Appeals Chamber held that the aider and abettor must commit acts "specifically aimed" at assisting a crime, but reiterated "[T]he requisite mental element ... is knowledge that the acts performed assist the

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[800] *Mrkšić* AJ, para. 159, citing *Blagojević & Jokić* AJ, paras. 188 and 189. Taylor Appeal, para. 356, mischaracterises the decision as being made with one dissent on this point. The dissent of Judge Vaz is unequivocal—her disagreement with the majority was on whether it was proven that Sljivančanin possessed the required *mens rea* for aiding and abetting murder by omission. Judge Vaz stated that the *mens rea* test would be whether "Šljivančanin knew that (i) killings of the prisoners of war were likely to take place at Ovčara and that (ii) his failure to take action in this regard would assist the commission of the murders." (para. 2 of Dissent of Judge Vaz). Notably, the test as articulated by Judge Vaz does not include specific direction.

[801] *Mrkšić* AJ, para. 159.

[802] *Mrkšić* AJ, para. 159, citing *Blaškić* AJ, para. 49 and *Vasiljević* AJ, para. 102. See also *Ntakirutimana* AJ, paras. 501, 508.

[803] *Ntagerura* AJ, para. 370. See also *Karera* AJ, para. 321 ("the *mens rea* for aiding and abetting is knowledge that acts performed by the aider and abetter assist in the commission of the crime by the principal").

[804] *Ntawukulilyayo* AJ, para. 214, citing *Karera* AJ, para. 321, *Nahimana* AJ, para. 482.

[805] *Ntawukulilyayo* AJ, para. 222 citing *Kalimanzira* AJ, para. 86, *Rukundo* AJ, para. 53, *Nahimana* AJ, para. 482.

commission of the specific crime of the principal perpetrator".[806] The *Rukundo* Appeal Judgement defined the *actus reus* for aiding and abetting identically (acts "specifically aimed at assisting")[807] but reiterated that "the requisite mental element is knowledge that the acts performed assist the commission of the specific crime of the perpetrator".[808]

298. The ECCC's Trial Chamber has held that "[l]iability for aiding and abetting a crime requires proof that the accused knew that a crime would probably be committed ... and that the accused was aware that his conduct assisted the commission of that crime".[809] The STL's Appeals Chamber affirmed a "knowledge" standard in customary international law and emphasised that "aiding and abetting does not presuppose that the accomplice shares a common plan or purpose with the principal perpetrator or his criminal intent".[810]

299. Therefore, the jurisprudence from all of the international courts is consistent – knowledge or awareness of the substantial likelihood that the accused's conduct will assist the crime is the standard for the *mens rea* of aiding and abetting, and no further showing of a higher mental state, intent or purpose, is required. This jurisprudence reflects customary international law as it existed prior to the Indictment period in *Taylor*. The ICTY deals with serious violations of international law in the former Yugoslavia since 1991. The ICTR mandate covers such crimes in Rwanda 1994. The ECCC mandate covers the years 1975-1979. Thus all of these courts deal with crimes committed before the start of the Indictment period in *Taylor*, 30 November 1996.

(vi) Article 25(3)(c) of the ICC Statute does not codify the elements on aiding and abetting under ICL

300. Taylor wholly relies on the ICC Statute to argue that, with regards to the *mens rea* for aiding and abetting, customary international law requires a standard higher than mere knowledge of the perpetrator's intended crime and awareness that his assistance facilitates the crimes. His argument that the minimum standard for aiding and abetting under customary international law is reflected in Article 25(3)(c) of the ICC Statute, which makes criminally responsible those who "for the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission",[811] is fundamentally flawed.

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[806] *Kalimanzira* AJ, para. 86.
[807] *Rukundo* AJ, para. 52.
[808] *Rukundo* AJ, para. 53.
[809] *Duch* TJ, para. 535.
[810] STL Applicable Law Decision, paras. 227, 206, 225, 211-12 (explaining its analysis of CIL).
[811] Taylor Appeal, paras. 319, 338 *et seq.*

301. First, the ICC Statute in general, and the modes of liability scheme in particular, were never meant to codify customary international law.[812] The ICC has itself stated that whether the Statute conforms to customary international law is irrelevant for the purposes of its interpretation. In the *Katanga* Confirmation Decision, the Pre-Trial Chamber noted that the ICTY Appeals Chamber had expressly found in *Stakić* that co-perpetratorship is not a mode of liability under international customary law, but:

> since the Rome Statute expressly provides for this specific mode of liability, the question as to whether customary law admits or discards the 'joint commission through another person' is not relevant for this Court.[813]

302. Secondly, no case at the ICC has yet defined the elements of Article 25(3)(c) liability. The confirmation hearing in *Mbarishimana*, cited by Taylor, merely referred to the article in passing as *Mbarishimana* was not charged under 25(3)(c).[814] Taylor quotes Ambassador Scheffer stating that the "purpose" language was a compromise reached during negotiations for the Rome Statute between those favouring wording with "knowledge" and those favouring "intention."[815] But Scheffer himself makes the point that "the Statute never defines 'purpose' and the legislative history provides no guidance."[816]

303. Third, Taylor's attempt to depict Article 25(3)(c) of the ICC Statute as identical to aiding and abetting in Article 6(1) of the SCSL Statute is misguided. The ICC has its own unique scheme of individual criminal responsibility and is still in the early stages of developing these modes in its jurisprudence. "Planning", for example, is not mentioned in the ICC Statute although it is a recognised mode of liability under international criminal law. Under the ICC scheme, acts that assist or encourage a crime are not limited to paragraph (c) of Article 25(3) but would also be covered by paragraph (d) of the same provision.[817]

304. While Article 25(3)(d) uses the term "common purpose", it is very different from joint criminal enterprise liability as the accused need not be part of the criminal plan nor intend any

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[812] See *Orić* AJ, Judge Shomburg Opinion, para. 20: the Rome Statute is specific to the jurisdiction of the ICC and "was not intended to codify existing customary rules"; see also *Exxon Mobil*, p. 42: "The Rome Statute which created the International Criminal Court ("ICC") is properly viewed in the nature of a treaty and not as customary international law."

[813] *Katanga* Confirmation Decision, para. 508.

[814] *Mbarishimana* Confirmation Decision, para. 8.

[815] Taylor Appeal, para. 341.

[816] See Talisman Amicus, p. 20.

[817] Article 25(3)(d) provides that a person is criminally responsible for crimes under the Rome Statute if he "[i]n any other way *contributes* to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either: (i) Be made with the aim of furthering the criminal aim or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the court; or (ii) Be made in the *knowledge* of the intention of the group to commit the crime." (Emphasis added.)

crime.[818] Because ICC jurisdiction is "limited to the most serious crimes of concern to the international community",[819] it is highly probable that every case at the ICC will concern crimes committed by a group of persons acting with a common purpose as such crimes could not be committed by individuals acting alone. Article 25(3)(d) makes an individual responsible for providing any assistance to a crime within the ICC's jurisdiction when the contribution is "made in the knowledge of the intention of the group to commit the crime." Thus, exactly contrary to Taylor's submission,[820] the ICC Statute does indeed hold responsible those who contribute to a crime with mere knowledge of the intention of the perpetrators to commit the offence. Taylor's argument that state practice is reflected in the ICC Statute and rejects criminal responsibility for contributing to a crime with mere knowledge, is untenable in light of Article 25(3)(d), which holds persons criminally responsible who are not themselves part of a common plan, but who contribute with knowledge of the intention of the group to commit crimes.

305. What is clear is that the scheme of modes of liability in the ICC Statute is distinct from that of the SCSL and the *ad hoc* tribunals and does not, and never was intended to, reflect customary international law. Therefore, the ICC Statute is not helpful in understanding Article 6(1) of the SCSL Statute and provides no reason to reverse the jurisprudence of this Court in defining the elements of aiding and abetting liability.

(vii) Awareness of a "substantial likelihood" satisfies the knowledge test

306. The Trial Chamber correctly stated that the aider and abettor must possess the knowledge *or* be "aware of the substantial likelihood" that his acts would assist the commission of the underlying offence.[821] This Appeals Chamber has endorsed the "substantial likelihood" standard in *AFRC*,[822] *CDF*,[823] and *RUF*.[824] Appeals Chambers are bound to follow their previous decision absent cogent reasons that mandate a different holding in the interest of justice.[825] Taylor has failed to demonstrate the existence of any such reason to alter the jurisprudence of the Special Court, which is consistent with that of the Appeals

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[818] *Mbarushimana* Confirmation Decision, para. 282.
[819] Rome Statute, Art. 5.
[820] Taylor Appeal, para. 319.
[821] Judgement, para. 486.
[822] *AFRC* AJ, paras. 242, 243.
[823] *CDF* AJ, para. 366.
[824] *RUF* AJ, para. 546.
[825] *Aleksovski* AJ, paras. 108-11, 125. Instances of situations where cogent reasons in the interests of justice requires a departure from a previous decision include cases where the previous decision has been decided on the basis of a wrong legal principle or where a previous decision has been given *per incuriam*, that is the judicial decision that has been wrongly decided, usually because the judges were ill-informed about the applicable law.

Chambers of the *ad hoc* tribunals by which it "shall be guided".[826] The standard articulated by this Appeals Chamber for the *mens rea* for aiding and abetting is proper, represents the standard test under customary international law, is consistent with the jurisprudence of other international tribunals and should not be disturbed.

307. The STL Appeals Chamber cited the *AFRC* definition of *mens rea* which included the "substantial likelihood" language, with approval, stating:

> This accords with fundamental principles of criminal law: if someone provides a gun to a well-known thug with the knowledge that it will be used (or is reasonably likely to be used) to commit a crime, he is liable for aiding and abetting whatever that crime is, regardless of whether he was fully aware of the specific crime the thug intended to perpetrate.[827]

308. The findings in the *Taylor* case, and Taylor's own testimony, show that the RUF was worse than a "well known thug." It was an organisation with a notorious operational strategy of terrorising innocent civilians, of which Taylor himself was well aware when he gave the group guns and ammunition that fueled its terror campaign. The STL Appeals Chamber noted the *Van Anraat* case before the Hague Court of Appeal relevant to the same principle of awareness of a probability of the commission of a crime:

> The accused had provided to Iraq, between 1980 and 1988, the chemical raw material TDG ... necessary for the manufacture of the mustard gas that the Iraqi Government had then used against the Kurds in 1987-88. The Court applied Dutch law ... [t]he Court first found that the accused knew that the quantity of TDG he provided could only be used to produce mustard gas and then found that the accused was aware of the high risk of the mustard gas in war, particularly given the 'unscrupulous character of the then Iraqi regime.'[828]

309. Taylor incorrectly submits that the ICTY never accepted that knowledge can include "awareness of a probability."[829] The *Blaškić* Appeals Chamber endorsed the statement made by the *Blaškić* and *Furundžija* Trial Chambers to the effect that:

> it is not necessary that the aider and abettor ... know the precise crime that was intended and which in the event was committed. If he is aware that one of a number of crimes will *probably* be committed, and one of those crimes is in fact committed, he has intended to facilitate the commission of that crime, and is guilty as an aider and abettor.[830]

310. Taylor's submission misreads paragraph 49 of *Blaškić,* which did not overturn the probability standard.[831] Rather, the *Blaškić* Appeals Chamber fully endorsed the principle that

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[826] SCSL Statute, Art. 20(3).
[827] STL Applicable Law Decision, para. 227.
[828] STL Applicable Law Decision, fn. 345 (internal references omitted).
[829] Taylor Appeal, para. 371.
[830] *Blaškić* AJ, para. 50 (emphasis added).
[831] *Blaškić* AJ, para. 49.

the knowledge test is satisfied when it is shown that the aider and abettor was "aware that one of a number of crimes will *probably* be committed."[832] This probability standard has been consistently applied at the ICTY.[833]

311. Taylor's submission incorrectly asserts that the *Haradinaj* and *Blagojević* Appeal Judgements rejected the "awareness of a probability" standard.[834] In both *Haradinaj* and *Blagojević*, the Appeals Chamber found that the respective Trial Chambers did not impose a standard of 'certainty' but, rather, acquitted on the basis that the evidence did not show "to any standard" that the accused were aware their acts would assist the commission of a crime.[835]

312. ICTR jurisprudence also supports the principle that the knowledge element of *mens rea* is satisfied by evidence that the accused is aware a crime will probably be committed.[836] In *Karera,* the ICTR Appeals Chamber found that "[i]f an accused is aware that one of a number of crimes will probably be committed, and one of those crimes is in fact committed, he has intended to facilitate the commission of that crime."[837]

(viii) Taylor fails to show that the mens rea standard is "actual knowledge"

313. Taylor is mistaken in law in asserting that unless the assister can be said to have "actual knowledge" of the criminal intention of the principal, then the assistance is too remote.[838] No jurisprudence using the term "actual knowledge" is cited, nor does Taylor offer a definition of the term. If the term is meant to distinguish constructive knowledge, *i.e.*, a "should have known" standard, there is no relevance to this appeal as the Trial Chamber did not utilise a "should have known" standard.[839] In the event that Taylor suggests that by "actual knowledge" the aider or abettor must know for a "certainty" that the crimes will be committed, this is an incorrect statement of the law. When dealing with future events, no one can have absolute certainty. Regardless of how much information one possesses about past behaviour and declarations of intent, it is always possible that an individual or group will act to the contrary. Moreover, it would make no sense to impose a certainty standard for aiding and abetting when the test for instigating, ordering and planning is awareness of a substantial

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[832] *Blaškić* AJ, para. 50 (emphasis added).
[833] *Simić* AJ, para. 86; *Furundžija* TJ, para. 246; *Brđanin* TJ, para. 272; *Strugar* TJ, para. 350.
[834] Taylor Appeal, paras. 370-71.
[835] *Haradinaj* AJ, para. 59; *Blagojević & Jokić* AJ, para. 223.
[836] *Ndindabahizi* AJ, para. 122 ("aiding and abetting a crime with awareness that a crime will *probably* be committed").
[837] *Karera* AJ, para. 321.
[838] Taylor Appeal, para. 385.
[839] Judgement, paras. 6878-79, 6886, 6947-52.

likelihood.[840] The correct *mens rea* standard is that which was articulated by this Appeals Chamber in three prior judgments and applied by the Trial Chamber in this case: the accused must know or be aware of the substantial likelihood that his conduct would assist the commission of the underlying offence.

(ix) There is no right of heads of states to aid and abet atrocities

314. Taylor's argument that the Trial Chamber's *mens rea* standard risks interfering with well-established prerogatives of states conflates state responsibility with international criminal responsibility.[841] Taylor in effect argues that Heads of State should be immune from criminal charges for aiding and abetting atrocity crimes because states have a right to provide assistance to insurgencies even with the knowledge that there is a substantial likelihood such acts will facilitate the commission of atrocities. No such principle exits in international law.

315. States have no right to assist crimes against humanity or war crimes. The International Court of Justice has held that Article 16 of the International Law Commission's Articles on State Responsibility reflects customary international law.[842] The Article provides:

> A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:
> (a) That State does so with knowledge of the circumstances of the internationally wrongful act; and
> (b) The act would be internationally wrongful if committed by that State.

316. Taylor's reliance on the International Court of Justice decision in the *Nicaragua* case as establishing a right of States to support insurgencies in other countries is misplaced.[843] The holding in *Nicaragua* provides no support for Taylor's argument that he had a right to support the RUF as part of his foreign policy, as the Decision found no such right under international law, deciding:

> that the United States by training, arming, equipping, financing and supplying the contra forces or otherwise encouraging, supporting and aiding military and paramilitary activities in and against Nicaragua, has acted, against the Republic of Nicaragua, in breach of its obligation under customary international law not to intervene in the affairs of another State.[844]

317. Taylor argues that the effect of the precedent in the *Taylor* case would be to criminalise assistance to any foreign group because there are reports that some of their forces have committed crimes. This argument ignores the fundamental findings of the Trial Chamber

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[840] *Blaškić* AJ, paras. 42 and 166 for ordering; *Kordić & Čerkez* AJ, paras. 30-32 and 112 for ordering, instigating and planning.
[841] Taylor Appeal, paras. 388-93.
[842] *Bosnia v. Serbia*, para. 420.
[843] See Taylor Appeal, paras. 388-90.
[844] *Nicaragua* Judgment, para. 292.

in this case about the notorious reputation of the RUF which distinguishes this case from any of the scenarios in Taylor's submission. There are over 500 pages in the Trial Judgement containing findings about the crimes committed by the RUF and its allies.[845] The Chamber found that "[t]hese crimes were inextricably linked to the strategy and objectives of the military operations themselves"[846] and that "[t]hroughout the Indictment period, the operational strategy of the RUF and AFRC was characterised by a campaign of crimes against the Sierra Leonean civilian population, including murders, rapes, sexual slavery, looting, abductions, forced labour, conscription of child soldiers, amputations and other forms of physical violence and acts of terror."[847] Taylor "knew of the atrocities being committed against civilians in Sierra Leone by the RUF and RUF/AFRC forces and of their propensity to commit crimes"[848] and "knew that his support to the RUF/AFRC would provide practical assistance, encouragement or moral support to them in the commission of crimes".[849]

318. Heads of State should not and do not enjoy immunity for acts that constitute crimes under international law.[850] This Appeals Chamber has already denied Taylor's claim to such immunity.[851] Under Taylor's argument, providing explosives to Al Qaeda knowing of their attacks targeting civilians, or providing guns to the Lord's Resistance Army, knowing of their well-documented practice of abducting children during military operations to serve in their forces, would be legal if the individuals providing this assistance were acting on behalf of a State. Fortunately, this is not the law. There is no principle in international law that grants officials of States the right to provide support to foreign groups that substantially assist crimes, aware of the substantial likelihood that the assistance will facilitate atrocity crimes. No principle of "state prerogative" grants immunity to Charles Taylor, who knew his assistance would lead to more enslavement, more amputations, rapes and the murders of thousands of innocent civilians in Sierra Leone.

(x) The mens rea need not be defined "in relation" to the actus reus

319. Taylor argues that the *mens rea* for aiding and abetting should be that the accused not only was aware he was contributing to the crime but was aware that his actions constituted a substantial contribution.[852] This contradicts all of the jurisprudence cited above from this

[845] Judgement Section VII, pp. 210-755.
[846] Judgement, para. 6905.
[847] Judgement, para. 6905.
[848] Judgement, para. 6947.
[849] Judgement, para. 6949.
[850] See, e.g., ICTR Statute, Art. 6(2); Rome Statute, Art. 27.
[851] Decision on Immunity from Jurisdiction, pp. 2, 26.
[852] Taylor Appeal, paras. 394-96.

Appeals Chamber, the ICTR, ICTY, ECCC and STL defining the *mens rea* for aiding and abetting. Taylor bases his argument on the premise that *mens rea* "always requires as a minimum that the accused know the character of the *actus reus,*"[853] but cites no authority for this assertion. There is no rule in international criminal law or state practice that an accused must always know before taking an action that all the elements of the *actus reus* will result. To take an example from common law, the *actus reus* for murder is the killing of a person but the *mens rea* is malice aforethought which is satisfied when it is shown the accused possessed the intent to kill *or* to cause grievous bodily harm.

320. Taylor argues that Article 30 of the ICC Statute articulates this principle,[854] but Article 30 merely provides that a person may be held criminally responsible "only if the material elements are committed with intent and knowledge." The Trial Chamber applied this standard, holding that "the lending of practical assistance, encouragement, or moral support must itself be *intentional*"[855] and that it must be shown that the accused performed the act with awareness of the substantial likelihood that the act would assist the commission of the underlying offence.[856]

(xi) Conclusion

321. The elements of *mens rea* for aiding and abetting are established by the jurisprudence of this Appeals Chamber and were correctly applied by the Trial Chamber in this case. There is no support in international criminal law jurisprudence for the elements proposed by Taylor – that the accused must act with something more than knowledge and must be certain of the future actions of the perpetrator. The standard proposed by Taylor would grant heads of states the prerogative to provide military assistance with the awareness of the substantial likelihood it will facilitate atrocity crimes against neighbours. Such a principle would be a very regrettable step backward in efforts to protect victims of atrocity crimes under international criminal law.

322. Contrary to Taylor's assertions, the Trial Chamber applied the correct standard of *mens rea* for aiding and abetting. Taylor's appeal under this Ground should be dismissed as it fails to demonstrate any error that would serve to invalidate the Judgement.

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[853] Taylor Appeal, para. 395.
[854] Taylor Appeal, para. 396.
[855] Judgement, para. 487 (emphasis added).
[856] Judgement, para. 486.

GROUND 17: No legal or factual error in finding that throughout the Indictment period the RUF/AFRC had an operational strategy to commit crimes and that Taylor possessed the requisite *mens rea* for aiding and abetting

(i) Overview

323. The Trial Chamber reasonably and correctly found that the RUF and AFRC had an operational strategy throughout the Indictment period which the Chamber properly considered in determining Taylor's mental state for aiding and abetting. Taylor fails to establish any error of law or fact that invalidates the decision or occasions a miscarriage of justice. In the present Ground Taylor cross refers to his Grounds 12,[857] 16,[858] 21[859] and 23.[860] The Prosecution does not repeat its response to those Grounds herein but includes them by reference.

324. Taylor artificially separates the Chamber's findings on operational strategy and his *mens rea* into three timeframes,[861] and attempts, but fails, to establish that the Chamber committed errors in relation to each. The Prosecution will first address Taylor's erroneous conflation of *actus reus* with *mens rea.* Next, the Prosecution will illustrate, by reference to the entire Indictment period and also to the artificial timeframes set out by Taylor, that Taylor fails to establish that the Chamber erred in finding that the RUF/AFRC had a continuous operational strategy. Finally, the Prosecution will demonstrate, again by reference to the entire Indictment period as well as the artificial timeframes, that Taylor fails to establish the Chamber erred in finding he possessed the required *mens rea* for aiding and abetting.

(ii) Taylor conflates the requirements of actus reus with those of mens rea

325. At the outset, the Prosecution notes that throughout this Ground of Appeal, Taylor erroneously argues that the Chamber was required to find that he knew that his assistance would *substantially* contribute to the crimes.[862] This conflates the requirements for *actus reus* with those for *mens rea,* a conflation for which Taylor fails to provide any support, in the

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[857] Taylor Appeal, para. 429.

[858] Taylor Appeal, paras. 399, 426. With regard to Taylor's argument regarding the requirement of "purpose" for *mens rea*, the subject of Ground 16, the Prosecution notes that none of the examples he cites to support his view that the Chamber's findings exclude that he provided support "for the purpose" of facilitating crimes (Taylor Appeal, para. 399, fn. 772). The fact that the Chamber found there was a *quid pro quo* between Taylor and the RUF in no way negates this. Regardless, the Trial Chamber applied the correct standard for *mens rea* (Judgement, paras. 486-487).

[859] Taylor Appeal, para. 400.

[860] Taylor Appeal, paras. 398, 400, 410, 413, 428.

[861] See sub-titles (ii) (iii) and (iv) at pp. 138, 141 and 149 of the Taylor Appeal.

[862] Taylor Appeal, para. 398; see also paras. 413 ("...no reasonable trial chamber could have inferred that at the time Taylor supplied this materiel, he did so *for the purpose of, and with knowledge that, it would contribute substantially* to the crimes committed." (emphasis added)), 425.

form of either law or jurisprudence. As correctly noted by the Trial Chamber,[863] "substantial contribution" or "substantial effect" is an element of the *actus reus*, not the *mens rea* of aiding and abetting. In order to satisfy the *mens rea* requirements, all that is required is that the Accused know, or is aware of the substantial likelihood, that his acts would assist the commission of a crime or underlying offence.[864] In any case, if there were any requirement that Taylor be aware that his assistance was substantial, the great volume of materiel which Taylor supplied alone, *inter alia*, would certainly establish this.

(iii) The RUF/AFRC had a continuous "operational strategy" to commit crimes throughout the Indictment period

326. As mentioned above, Taylor seeks to detract from the Trial Chamber's findings by attacking them based on three artificial timeframes. However, the Trial Chamber properly and reasonably found that the RUF and AFRC had an operational strategy to commit crimes against civilians which lasted *throughout* the entire Indictment period.[865] Taylor attempts to re-interpret and downplay the Chamber's findings on the consistency of the commission of the crimes[866] yet the Chamber's findings clearly establish that the operational strategy ran throughout the entire Indictment period.

327. Contrary to Taylor's contention,[867] the Chamber properly found that beginning with Operation Stop Election in 1996, and during the remainder of the civil war in Sierra Leone, the RUF and later AFRC/RUF used terror as a primary *modus operandi*.[868] Taylor fails to support his claim that this finding constituted an "over-generalization", nor can he support this given the Chamber's clear reasoning and findings.[869]

328. Specifically, the Chamber found that the RUF or AFRC/RUF: (i) murdered civilians between May 1997 and January 2000;[870] (ii) carried out widespread acts of cruel treatment and other inhumane acts against civilians between February 1998 and February 1999;[871] (ii)

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[863] Judgement, para. 482; see also paras. 485-87.
[864] See Judgement, paras. 486-87.
[865] *Contra* Taylor Appeal, paras. 402-06, 419-24, 428-30. See Judgement, para. 6905; see also paras. 5842, 6914.
[866] Taylor Appeal, paras. 403, 406, 407, 419.
[867] Taylor Appeal, para. 404.
[868] Judgement, para. 6790.
[869] See Judgement, para. 6790.
[870] In Kenema District between 25 May 1997 and about 31 March 1998 (Judgement, paras. 643-44); In Kono District between about 1 February 1998 and 31 January 2000 (paras. 749-50); In Freetown and the Western Area between about 21 December 1998 and 28 February 1999 (paras. 869-70); In Kailahun District between about 1 February 1998 and 30 June 1998 (paras. 770-71).
[871] In Kono District between about 1 February 1998 and 31 December 1998 (Judgement, paras. 1231-32); In Freetown and the Western Area between about 21 December 1998 and 28 February 1999 (Judgement, paras. 1353-54). In relation to Kailahun, the Chamber found that the witnesses who testified on the incidents in this district were credible and that their evidence supported proof of the existence of crimes relating to physical

committed sexual violence crimes, including widespread acts of rape against women and girls,[872] sexual slavery,[873] and outrages upon personal dignity,[874] throughout the *entire* Indictment period;[875] (iii) conscripted and enlisted children under the age of 15 into armed groups and used them actively in hostilities between November 1996 and 2000;[876] (iv) enslaved civilians during the *entire* Indictment period;[877] (v) pillaged between February 1998 and February 1999;[878] and (vi) committed acts of terrorism, through the commission of crimes described in counts 2 to 8 and acts of burning civilian homes and other property, throughout the *entire* Indictment period.[879]

329. The crimes spanned seven of Sierra Leone's twelve provincial districts plus Freetown and the Western Area,[880] and were "some of the most heinous and brutal crimes recorded in human history".[881]

330. Therefore, the Chamber properly found that the RUF/AFRC operational strategy ran *throughout* the Indictment period.[882] Below, the Prosecution addresses the arguments Taylor

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violence on a widespread or systematic basis. However, the Chamber held it would only consider this evidence in relation to the *chapeau* requirements (Judgement, para. 1263), see Prosecution Appeal, Ground 3.

[872] In Kono District in 1998 (Judgement, paras. 931-32); In Kailahun District between about 30 November 1996 and 18 January 2002 (Judgement, paras. 971-72); In Freetown and the Western Area between January and February 1999 (Judgement, para. 1016. The Chamber found that rape occurred in this area after February 1999 but these fell outside the scope of the allegations in the Indictment, see paras. 999, 1015).

[873] In Kono District between about February and October 1998 (Judgement, paras. 1144-46); In Kailahun District between February 1998 and December 1999 (Judgement, paras. 1073-75); In Freetown and the Western Area between January and April 1999 (Judgement, paras. 1189-91).

[874] In Kono District from February 1998 and throughout that year (Judgement, paras. 1199-1201); In Freetown and the Western Area in January and February 1999 (Judgement, paras. 1205-07); In Kailahun District between February and December 1998 (Judgement, paras. 1202-04).

[875] See fns. 872-74 above.

[876] Between 30 November 1996 until 2000 in Tonkolili, Kailahun, Kono, Koinadugu, Bombali and Port Loko Districts, and in Freetown and the Western Area District. (Judgement, paras. 1596-1607, esp. 1605).

[877] In Kenema District in 1997 and 1998 (Judgement, paras. 1657-59); In Kono District from January 1998 through January 2002 (Judgement, paras. 1660, 1738, 1747, 1752-54); In Kailahun District between 30 November 1996 and 2000 (Judgement, paras. 1764-66, 1769, 1771, 1778-79, 1788-89, 1800, 1803, 1807-08, 1812-13, 1822-23, 1829, 1833, 1843-44); In Freetown and Western Area between December 1998 and February 1999 (Judgement, paras. 1857-64, 1870, 1873-76).

[878] In Kono District between about 1 February 1998 and 31 December 1998; In Bombali District between 1 February 1998 and 30 April 1998; In Port Loko District between 1 February 1998 and 30 April 1998; In Freetown and Western Area between 21 December 1998 and about 28 February 1999 (Judgement, p. 689).

[879] Murders in Kenema District (Judgement, para. 1979); burning, unlawful killings, sexual violence and physical violence in Kono District (Judgement, paras. 2005-06, 2017, 2021, 2025-26, 2031-32, 2038-46, 2048-49); unlawful Killings and sexual violence in Kailahun District (Judgement, paras. 2050-53, 2055-56); burning, unlawful killings, sexual violence, and physical violence in Freetown and the Western Area (Judgement, paras. 2068, 2082, 2088, 2122, 2132, 2138-39, 2151, 2162, 2172-81, 2185, 2188-92).

[880] The seven districts are Kenema, Kono, Kailahun, Tonkolili, Bombali, Port Loko, and Koinadugu.

[881] Sentencing Judgement, para. 70; see also paras. 71, 75.

[882] See sub-titles (ii) (iii) and (iv) at pp. 138, 141 and 149 of the Taylor Appeal.

puts forward in relation to the three artificial timeframes.[883] He fails to establish any error warranting appellate intervention in relation to any of the timeframes addressed.

(a) The Junta Period (May 1997 - about 14 February 1998)[884]

331. The RUF's apology cited by Taylor merely acknowledges what everyone knew, *i.e.* that the RUF had killed and committed acts of sexual violence,[885] and supports, not detracts from, the Chamber's findings on policy and strategy.[886] Indeed, the Chamber's findings on the crimes committed during the Junta period, which included murder, sexual violence, conscription and use of children under the age of 15 into armed groups, and enslavement,[887] dispel Taylor's attempts to downplay what actually transpired during the Junta.[888] Apart from the fact that the Trial Chamber considered *all* the evidence before it when reaching its findings, the exhibits Taylor refers to do not support his argument.[889]

332. At paragraph 404 of his Appeal, Taylor contends that the Chamber made no finding that he provided any support "during this time period". The time period being referred to is ambiguous. If Taylor is referring to the Junta period (May 1997 - February 1998),[890] the Chamber entered several findings on Taylor's support during this timeframe.[891] If Taylor is referring to Operation Stop Election, which he refers to at the beginning of the paragraph, this falls outside the scope of the Indictment and the Chamber therefore need not have entered findings as to his assistance at the time. Regardless, Taylor ignores the Chamber's findings on his assistance from the very start of the Indictment period.[892]

(b) 15 February 1998 - February 1999[893]

333. Taylor seeks to detract from the totality of the Chamber's findings on his actions between 15 February 1998 and February 1999 by failing to mention several other actions he carried out in this timeframe that also constituted practical assistance.[894] Taylor also fails to

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[883] Taylor Appeal, paras. 402-06, 415, 419-22, 424, 430.
[884] See Taylor Appeal, p. 138, sub-title (ii) and paras. 402-06.
[885] Taylor Appeal, para. 404. The RUF admitted they "killed [their brothers] in cold blood...slaughtered [their] mothers and butchered [their] fathers" and undid their sisters' femininity.
[886] *Contra* Taylor Appeal, para. 404.
[887] See fns. 870-74, 876-79 above.
[888] Taylor Appeal, para. 406.
[889] Exhs. D-135 and D-136, cited by Taylor at para. 406, fns. 789-790 of his Appeal, in fact refer to "a section of the military in Sierra Leone" and "The rebellious RUF members" (Exh. D-135). Further, these exhibits focus on the reaction of the international community to the events at the time, rather than the events themselves.
[890] As indicated by the sub-heading immediately above Taylor Appeal, para. 404.
[891] Judgement, paras. 3834, 3937, 4845, 5406-09, 5834.
[892] See, e.g. Judgement, paras. 3663, 3665-66, 3783, 3918, 4248(i, ii, vi, viii, xvi, xix), 4262, 4845.
[893] See Taylor Appeal, p. 141, sub-title (iii) and paras. 415, 419-22, 424.
[894] See Judgement, paras. 3918 (road and air transportation), 4094 ('herbalists'), 4247 (guesthouse in Monrovia), 4394-96 (20 former NPFL fighters), 4579, 4581-82 (SLA soldiers), 5329 (sent Varmuyan Sherif to open a corridor to facilitate trade of materiel), 5330 (financial support).

mention that the Chamber found that his assistance in this timeframe was used in a number of other attacks[895] in addition to the ones he refers to in paragraph 412 of his Appeal.

1. Operation Fitti-Fatta & Kono & Makeni

334. The lack of success of an operation, alleged or otherwise, has no bearing on Taylor's culpability for aiding and abetting[896] since "[t]he Accused may aid and abet at one or more of the 'planning, preparation or execution' stages of the crime or underlying offence."[897]

335. Therefore, the failure of Operation Fitti-Fatta does not mean the RUF did not have an operational strategy.[898] Indeed, the fact that the Chamber found Operation Fitti-Fatta was attempted[899] is clear evidence of said operational strategy.

336. Given the Chamber's findings that the crimes ensuing from the Bockarie/Taylor plan to capture Freetown were predominantly committed in Freetown, Taylor seeks to reinterpret the Chamber's finding so as to separate Kono and Makeni from Freetown.[900] However, this was a single operation put into effect over a large geographic area, reflecting their plan. The Chamber's findings on the crimes committed,[901] which resulted directly from this plan,[902] provide clear insight into the AFRC/RUF's operational strategy.[903]

2. Disciplining

337. Taylor's argument that the RUF and AFRC leadership tried to impose discipline and punish soldiers who committed crimes,[904] is unsupported.[905] While the Chamber does refer to isolated instances of discipline by the RUF as testified to by Defence witnesses,[906] these were not witnesses on whom the Chamber could rely.[907] The Chamber also refers to Prosecution

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[895] See Judgement, paras. 4394-96, 4582, 5721.
[896] *Contra* Taylor Appeal, para. 419.
[897] Judgement, para. 484.
[898] *Contra* Taylor Appeal, para. 419.
[899] Judgement, paras. 55, 2951.
[900] Taylor Appeal, para. 419.
[901] See fns. 870-74, 876-79 above.
[902] Judgement, para. 6962.
[903] See Judgement, paras. 3129-30, 3485-86, 6969.
[904] Taylor Appeal, paras. 403, 420.
[905] Taylor claims that "substantial evidence from Prosecution witnesses" establishes that the RUF attempted to discipline criminal acts by its soldiers (Taylor Appeal, para. 420). This evidence is anything but substantial. TF1-314, the same witness Taylor cites to in order to establish that Issa Sesay executed soldiers for carrying out rape, also testified nobody was ever punished for raping the witness herself (TF1-314, T. 20 October 2008 p. 18792). TF1-101 did testify about an isolated incident regarding a threat to punish yet he later testified that he was not aware whether this punishment was actually carried out (TF1-101, T. 14 February 2008 pp. 3928-29, T. 15 February 2008 p. 3935). Taylor fails to provide a reference to the transcript of TF1-367 whom he alleges also supports his contention (Taylor Appeal, para. 420).
[906] See Judgement, paras. 943, 1035.
[907] The Chamber found that Sesay's evidence must generally be considered with caution and cannot be relied upon without corroboration (Judgement, para. 372), and on multiple instances rejected DCT-068's testimony as disingenuous and unreliable (Judgement, paras. 944, 1038; see also para. 1653).

witnesses who testified that there was no real attempt to impose discipline,[908] and found these witnesses to be generally credible.[909] Sporadic discipline does not undermine the Chamber's finding on the AFRC/RUF's policy and strategy of committing crimes against the civilian population, especially in view of the magnitude and continuity of the crimes they committed.

3. SAJ Musa

338. Taylor's argument that the Trial Chamber "*found* that SAJ Musa ordered the main AFRC faction 'to proceed to Freetown without killing, looting or burning, indicating that he did not have a campaign of terror in mind, as Bockarie did'",[910] does not help Taylor. On Musa's death, Gullit took over and executed the Bockarie/Taylor plan.[911] Therefore, Musa was dead during the bloodiest chapter of the operation and the forces he formerly commanded where now operating in cooperation with, and under the instructions of, the commander of combined AFRC and RUF forces and committing Indictment crimes.[912]

339. Further, that Musa seemed disenchanted with the RUF's strategy in November 1998, as set out in an Adjudicated fact,[913] and that, unlike Bockarie, he did not have a campaign of terror in mind,[914] supports, rather than negates, the existence of the strategy.

4. Internal Disputes

340. The instances of infighting in the AFRC/RUF cited to by Taylor[915] do not detract from the reasonableness of the Chamber's finding that the AFRC/RUF had a continuous operational strategy. Taylor simply repeats factual arguments which the Trial Chamber rejected without showing that there was any error of law or fact.[916] Even though there were disputes, contact was still maintained,[917] and, crucially, following Musa's death, Gullit followed and executed the Taylor/Bockarie plan throughout the attack on Freetown.[918] The infighting with Musa was of no consequence to the operational strategy as illustrated by the

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[908] *Contra* Taylor Appeal, paras. 403, 420. See Judgement, paras. 1101, 1106, 1243. The orders to, *inter alia*, loot also contradict the existence of any sense of discipline within the RUF and AFRC/RUF, see, e.g., Judgement, paras. 549, 1089, 1901-10.
[909] Judgement, paras. 253 (TF1-362), 274 (Isaac Mongor), 289 (Alimamy Bobson Sesay).
[910] Taylor Appeal, para. 421 (emphasis added). The Chamber merely "notes the Defence's acceptance of Bobson Sesay's testimony" on the matter and therefore did not enter a *finding* in this regard (Judgement, para. 3124).
[911] Judgement, paras. 3481-86; see also the response to Grounds 10 and 11.
[912] See Judgement, paras. 3481, 3485-86; see also the response to Grounds 10 and 11 and fns. 870-74, 876-79 above.
[913] Judgement, para. 3122; see Judicial Notice Decision, Annex A, Fact 11.
[914] Judgement, para. 3124.
[915] Taylor Appeal, para. 422.
[916] Taylor Appeal, para. 422. See Judgement, paras. 6751 *et seq.*
[917] Judgement, para. 6755.
[918] Judgement, para. 6765.

crimes committed, *inter alia*, during the Freetown invasion. Taylor overstates the facts[919] and fails to establish any error.[920]

(c) March 1999- 2002[921]

341. The Chamber's findings on the crimes carried out by the RUF or AFRC/RUF[922] clearly illustrate that nothing had changed by early 1999, despite the ceasefire.[923] The crimes committed after the Freetown invasion do not differ from those committed during and before the invasion. The operational strategy persisted.

(d) Conclusion

342. The Trial Chamber's findings clearly establish an operational strategy to commit crimes against civilians which lasted throughout the Indictment. Taylor fails to establish any error warranting appellate intervention.

(iv) Taylor knew, or was aware of the substantial likelihood, that his acts would assist the commission of the Indictment crimes

343. As discussed above, Taylor fails to establish any error in the Chamber's finding that the RUF/AFRC adopted an operational strategy to commit crimes against civilians throughout the Indictment period. Taylor also fails to establish his contention that the Chamber erred in finding he possessed the required *mens rea* throughout various stages of the Indictment.[924] The Prosecution will first illustrate that the Chamber properly found that Taylor had the required *mens rea* throughout the entire Indictment period, and then address the arguments Taylor presents based on the artificial timeframes he adopts.

344. Based on the totality of the overwhelming circumstantial and direct evidence before it, the Chamber found that even before Taylor became President, he knew of the crimes committed by the RUF in Sierra Leone,[925] and as early as August 1997, he was aware of past and ongoing[926] crimes committed by the RUF/AFRC forces against civilians.[927] He would also "have been aware of the likelihood that the AFRC/RUF would commit similar crimes in

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[919] At para. 422 of his Appeal, Taylor cites to para. 6755 of the Judgement in support of the claim that "At least three and possibly four factions emerged within what had been the 'RUF/AFRC' alliance in the course of 1998 alone." This paragraph offers no support to that statement.
[920] Taylor also fails to provide any references to the Judgement in support of some of his claims (Taylor Appeal, para. 422).
[921] See Taylor Appeal, p. 149, sub-title (iv) and para. 430.
[922] See Judgement, paras. 65, 5742, 5744, 5750; see also fns. 870, 872-73, 876-79 above.
[923] *Contra* Taylor Appeal, para. 430.
[924] Taylor Appeal, paras. 398-99, 401-02, 407-16, 418-19, 423-33.
[925] Judgement, para. 6878.
[926] See Judgement, para. 6879.
[927] Judgement, paras. 6882, 6886.

the future."[928] Taylor was also aware of the "essential elements" of the crimes committed by RUF and RUF/AFRC troops, including the state of mind of the perpetrators.[929]

345. The fact that Taylor testified that by April 1998 if "someone was providing support to the AFRC/RUF [...] they would be supporting a group *engaged in a campaign* of atrocities against the civilian population of Sierra Leone",[930] and that there were news reports in May 1998 which made him aware that the RUF was engaged in a "horrific *campaign* [...] against the civilian population in Sierra Leone"[931] also support the Chamber's conclusion. Further support is given by the fact that in a statement dated July 1998, Taylor himself "strongly condemned the *continuing* rebel activities in Sierra Leone, as well as the horrendous atrocities that had been committed there."[932]

346. Taylor instructed JPK and Bockarie to capture, maintain, and re-capture Kono,[933] and jointly designed a plan to attack Freetown with Bockarie and told him to use "all means" to do so and to make the operation "fearful".[934] Having issued these instructions and received updates thereon,[935] Taylor was certainly aware that the AFRC/RUF were executing their operational strategy. His instruction to make the area "fearful" reflects the use of this same instruction by RUF/AFRC commanders during previous operations which also resulted in the commission of heinous crimes.[936] The fact Taylor used an instruction which was commonly used by the RUF/AFRC in their previous attacks illustrates that he knew of their operational strategy. The fact that his instruction was later repeated by Bockarie during the course of the Freetown invasion,[937] indicates that Taylor also contributed to the continuation of that strategy.

347. Further, the Chamber found that: (i) Taylor received daily briefings from his national security advisor when he became President; (ii) Taylor was privy to numerous reports as a member of ECOWAS which described the "massive looting of property, murder and rapes" that were being committed on the territory of Sierra Leone;[938] (iii) the situation in Sierra

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[928] Judgement, para. 6882; see also para. 6947.
[929] Judgement, paras. 6950-6951.
[930] Judgement, paras. 6805, 6884 (emphasis added).
[931] Judgement, para. 6969 (emphasis added).
[932] Judgement, para. 6884 (emphasis added).
[933] Judgement, para. 6942.
[934] Judgement, paras. 3129-30.
[935] Judgement, paras. 3605-06, 3611(xiv), 3618, 6942, 6960, 6966.
[936] See Judgement, paras. 646, 682, 684, 687, 692, 710, 713, 740, 747, 2006, 2017. For an explanation of what making an operation "fearful" means, see Judgement, paras. 3063 (citing to Sesay, T. 4 August 2010 p. 45419), 646, 737 (citing to Perry Kamara, T. 5 February 2008 p. 3150), 651, 741, 2067.
[937] Judgement, para. 6969.
[938] Judgement, paras. 6802, 6804, 6812-13, 6879, 6882, 6947.

Leone had a direct impact on the Liberian situation; (iv) embargos on arms and military equipment to Sierra Leone were in force at the time;[939] and (v) media coverage and reports by various organisations on the AFRC/RUF's crimes and terror campaign against the Sierra Leonean civilian population after 1997 meant that it was public knowledge that AFRC/RUF forces committed the crimes of unlawful killings, sexual violence, physical violence, conscription and use of child soldiers, abduction and forced labour, looting, and terrorism.[940]

348. Therefore, the totality of all the above findings led the Trial Chamber to reasonably conclude that Taylor knew that his support to the RUF/AFRC would provide practical assistance, encouragement or moral support to the commission of crimes during the course of their military operations in Sierra Leone and that "[n]evertheless, he provided these groups with practical assistance, encouragement and moral support."[941]

(a) Taylor misrepresents the Chamber's findings

349. Taylor misrepresents the Trial Chamber's findings concerning his knowledge.[942] First, his contention that there was an evolution in his knowledge[943] ignores the Trial Chamber's finding that he possessed the required *mens rea* even before his election as President of Liberia.[944]

350. As to his knowledge when he assumed the Presidency in Liberia, in the last paragraph of the "Deliberations" section on the "Knowledge of the Accused",[945] the Chamber stated that "*[i]n light of the foregoing*, the Trial Chamber is convinced that the Accused knew of the AFRC/RUF's operational strategy and intent to commit crimes from the clear and consistent information he received after his election."[946] Taylor became President in August 1997. In the paragraph immediately thereafter, in its "Findings" section, the Chamber stated "the Accused was aware of the crimes committed by the RUF/AFRC forces against civilians, including murder, abduction of civilians including children, rape, amputation and looting, *as early as August 1997* when he became President of Liberia."[947]

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[939] Judgement, para. 6882.
[940] Judgement, paras. 6880, 6883.
[941] Judgement, para. 6949.
[942] Taylor Appeal, paras. 401-02.
[943] Taylor Appeal, paras. 401-02.
[944] Judgement, para. 6878. Therefore, the Chamber found he possessed the required *mens rea* from the beginning of the Indictment period, and not April 1998 as Taylor states (Taylor Appeal, paras. 401-402). The only reference the Chamber makes to April 1998 is based on Taylor's own admission that by that month and year, if someone was providing support to the AFRC/RUF, he "would be supporting a group engaged in a campaign of atrocities against the civilian population of Sierra Leone" (Judgement, para. 6884).
[945] A section spanning from paras. 6887 to 6885 of the Judgement.
[946] Judgement, para. 6885.
[947] Judgement, para. 6886.

351. Therefore, the Trial Chamber properly found that Taylor knew about the RUF/AFRC's operational strategy *throughout* the Indictment period. Below, the Prosecution addresses Taylor's assertions that he was not aware of this strategy in three distinct timeframes.[948] Taylor fails to establish any error.

(b) The Junta Period (May 1997 - about 14 February 1998)[949]

352. As Taylor notes,[950] the Chamber found he knew of the AFRC/RUF's *propensity* to commit crimes.[951]However, the Chamber also found, based, *inter alia*, on the reports, media coverage, the embargo, and the impact on Liberia,[952] that he knew of the atrocities *being committed* during the Junta period[953] and "would...have been aware of the likelihood that the AFRC/RUF would commit similar crimes in the future."[954] Taylor fails to establish, or even to support his argument, that the Chamber committed any error in so determining.

353. Taylor erroneously challenges the use of the word "could" in the Chamber's statement that "military support could facilitate the commission of crimes",[955] stating the use of this word rather than "would" means "the Chamber could only infer Taylor's knowledge of a *possibility* that assistance might be used in *possible* crimes."[956] However, the finding Taylor refers to does not speak specifically of Taylor's knowledge, but that of the international community in general.[957] Indeed, in the following paragraphs, the Chamber fully discusses the sources of information that led it to conclude that Taylor "*would* therefore have been aware of the likelihood that the AFRC/RUF *would* commit similar crimes in the future."[958] The Chamber therefore speaks of, at a minimum, the awareness of a substantial likelihood his acts would assist the commission of crimes, which, as established in the response to Ground 16, satisfies the requisite *mens rea* for a conviction for aiding and abetting.[959]

354. Contrary to Taylor's assertion,[960] the Chamber did not *only* rely on the official reports listed in footnotes 15475-15482 of the Judgement. These constitute only *part* of the evidence

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[948] See sub-titles (ii), (iii) and (iv) at pp. 138, 141 and 149 of the Taylor Appeal.
[949] Taylor Appeal, p. 138, sub-title (ii) and paras. 405, 407-409, 431.
[950] Taylor Appeal, para. 407.
[951] Judgement, para. 6947.
[952] Judgement, paras. 6880-83.
[953] Judgement, para. 6947.
[954] Judgement, para. 6882.
[955] Taylor Appeal, paras. 407-08.
[956] Judgement, para. 407.
[957] Judgement, para. 6881 ("These embargos clearly indicate that already by August 1997, the Junta was perceived by the international community as a threat to peace...").
[958] Judgement, para. 6882 (emphasis added).
[959] See the response to Ground 16, esp. paras. 309-12.
[960] "The official reports listed in footnotes 15475 through 15482, which are supposedly *the* basis for saying that Taylor must have known of the notorious and widespread crimes...", Taylor Appeal, fn. 800 (emphasis added).

the Chamber relied on in determining his *mens rea*. The fact the reports would not have been available until late-March 1998[961] is of no consequence since, in reaching its finding on Taylor's knowledge, apart from a plethora of other forms of reports listed in those same footnotes which were available before this time, the Chamber also considered (i) his daily briefings; (ii) other reports he was privy to as a member of ECOWAS;[962] (iii) the fact that the situation in Sierra Leone had a direct impact on the Liberian situation; and (iv) that embargos on arms and military equipment to Sierra Leone were in force at the time.[963]

355. Taylor fails to establish that the Chamber committed any error. Consequently, none of the findings challenged by Taylor[964] merit reversal.

(c) 15 February 1998 - February 1999[965]

1. Taylor's Acknowledgement

356. As illustrated above,[966] and contrary to Taylor's contention,[967] Taylor's acknowledgement that in April 1998 he was aware that serious crimes were being committed in Sierra Leone is *but one* of the factors the Trial Chamber took into consideration in establishing his *mens rea*.

357. Taylor's argument as to what his acknowledgement did or did not amount to is irrelevant.[968] Taylor misrepresents his own testimony when he asserts that he testified that serious crimes had been committed "by elements of the AFRC and RUF" or by "some members of these forces".[969] Rather, Taylor's actual testimony was that at the time there was "a group engaged in a campaign of atrocities against the civilian population of Sierra Leone", that group being the RUF/AFRC.[970] Taylor's statement[971] clearly acknowledges there was a *campaign* of atrocities going on. It is irrelevant that he did not explicitly state this constituted a *modus operandi*. That was for the Trial Chamber to determine.

358. Taylor impermissibly seeks to relitigate his position at trial by merely reproducing selected portions of his own testimony regarding his knowledge, which the Trial Chamber

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[961] Taylor Appeal, fn. 800.
[962] Judgement, paras. 6802, 6804, 6812-13, 6879-80, 6882, 6947.
[963] Judgement, para. 6882.
[964] Taylor Appeal, paras. 408-09.
[965] Taylor Appeal, p. 141, sub-title (iii) and paras. 411, 413-16, 418-20, 423-27, 432-33.
[966] See paras. 344-47 above.
[967] Taylor Appeal, paras. 414-16.
[968] Taylor Appeal, para. 415.
[969] Taylor Appeal, para. 415.
[970] Judgement, para. 6805, 6884.
[971] Judgement, para. 6805, 6884.

correctly rejected, without indicating any error in the Chamber's treatment thereof.[972] The Chamber's findings reflect Taylor's knowledge at more than one stage of the conflict.[973] Further, and contrary to Taylor's assertion,[974] the Chamber's findings recognise that the RUF's military strategy evolved over time into to a strategy of guerrilla tactics based on a campaign of terror against the civilian population.[975] The Chamber correctly and reasonably found that Operation Stop Elections marked a change in tactics and thereafter the evolution to the campaign of terror was complete.[976]

2. Names of Operations

359. The Chamber did not find that the names given to operations were in any way illegitimate or unlawful.[977] Given the instructions to make the area "fearful" which were often given to the commanders,[978] and the commission of atrocities that followed these instructions,[979] the Trial Chamber committed no error in noting this factor as *but one* of the factors it considered in establishing Taylor's intent.[980] Further, the Chamber's findings establish that Taylor was by no means "any outside observer".[981]

3. UN reports

360. The fact that a number of exhibits referred to by Taylor[982] do not explicitly refer to a *modus operandi* as such is irrelevant. It is the Chamber's job to piece together the evidence before it, and based on that evidence, the Chamber properly concluded that there was such a *modus operandi*. What is certainly not "entitled to credence" is Taylor's testimony as to what he did and did not read or have knowledge of,[983] the Chamber rejecting his testimony on numerous occasions as "not credible" and "incredible".[984] Further, the fact that, as Taylor notes, Amnesty International stated that the RUF adopted such tactics as an organisational policy, supports the Chamber's conclusion on operational strategy, regardless of whether Taylor did or did not read Amnesty International's report.

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[972] Taylor Appeal, para. 416.
[973] See Judgement, paras. 6878-79.
[974] Taylor Appeal, para. 417.
[975] Judgement, para. 6788, mirroring the *Perišić* Dissenting Opinion cited to at Taylor Appeal, para. 417.
[976] Judgement, para. 6790.
[977] *Contra* Taylor Appeal, para. 423. *See* Judgement, para. 6905.
[978] See fn. 936 above.
[979] See fn. 936 above.
[980] See paras. 344-47 above.
[981] Taylor Appeal, para. 423.
[982] Taylor Appeal, para. 424.
[983] Taylor Appeal, para. 424.
[984] Judgement, paras. 3111, 5023, 5105-07, 5193, 5514, 5516, 6543.

4. Taylor's hypothesis

361. The Trial Chamber reasonably found that Taylor possessed the required *mens rea* for aiding and abetting. The alternative theories put forward by Taylor,[985] which he did not present at trial, constitute a re-litigation of issues the Trial Chamber decided adversely to him. Taylor provides no basis for overturning the Chamber's finding.

362. The Chamber's findings on knowledge clearly establish Taylor possessed the required *mens rea*. These findings are complemented by other factors which would have led Taylor to know that his assistance would have an impact on future crimes.[986] Not only did the Chamber find that Taylor had knowledge of what was going on in Sierra Leone, but it also found that during this timeframe, *inter alia*, Taylor instructed JPK and Bockarie to capture, maintain control, and re-capture Kono,[987] and that he formulated the plan to use all means to attack Freetown and make that operation fearful[988] and was in contact with Bockarie as the plan was implemented.[989] That Taylor issued such instructions while simultaneously providing assistance leads one to reasonably conclude that he knew that this assistance would be used in the commission of crimes.

363. That Taylor issued these instructions, in light of the ongoing campaign of atrocities being committed by the AFRC/RUF, also excludes any possibility that he did not know that it was the AFRC/RUF policy to commit despicable crimes,[990] and the possibility that he was merely seeking to assist the RUF to hold its positions.[991] Formulating a plan to invade Freetown and encouraging the taking of diamondiferous areas are diametrically opposed to such hypothesis.

364. Taylor's contention that, from April 1998 onwards,[992] "[t]he most severe crimes, according to the reports, were apparently retaliation in defeat against civilians for perceived collaboration" is unsupported by his citation to the Judgement and, in any event, would only confirm that the RUF were strategically targeting civilians.[993] The Chamber's findings about the exchange of diamonds for arms and ammunition between Taylor and the RUF,[994] the

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[985] Taylor Appeal, paras. 425-27.
[986] *Contra* Taylor Appeal, para. 425.
[987] Judgement, para. 6942.
[988] Judgement, para. 3129.
[989] Judgement, para. 3606.
[990] *Contra* Taylor Appeal, para. 426.
[991] *Contra* Taylor Appeal, para. 427.
[992] See Taylor Appeal, p. 144, sub-title (c).
[993] Taylor Appeal, para. 425, fn. 834 citing to Judgement, para. 6830 which only refers to a report which states that "AFRC casualties are known to be high and many civilians have been killed and injured."
[994] Judgement, para. 6898.

duplicitous role played by Taylor,[995] and about his abovementioned instructions to the AFRC/RUF to take Kono and capture Freetown, dispel Taylor's theory that he was only seeking to avoid a repetition of any crimes[996] or that he favoured the return of peace in Sierra Leone.[997] Neither do these findings negate the findings as to Taylor's knowledge that crimes would be facilitated by his assistance.[998]

5. The Freetown invasion

365. Taylor mischaracterises the Chamber's findings about the events during the Freetown invasion.[999] The Chamber found that Gullit resumed communications with Bockarie on the death of SAJ Musa,[1000] that Bockarie and Gullit co-coordinated their efforts to capture Freetown, and that from that point on, Musa's original plan to attack Freetown was abandoned, and Gullit's movements were incorporated into the Bockarie/Taylor plan.[1001] The Chamber found that throughout the Freetown operation, Bockarie issued a number of instructions, "including an order to use terror tactics against the civilian population on the retreat from Freetown, *which were implemented* by Gullit and the fighters in Freetown."[1002]

366. Further, Taylor "gave advice to Bockarie and received updates in relation to the operations in Kono and Freetown in the implementation of their plan."[1003] The Chamber found that Bockarie was in daily contact with Taylor in December 1998 and January 1999.[1004] Taylor was certainly aware of what was going on, having directed Bockarie to send prisoners released from Pademba Road Prison to RUF controlled areas.[1005]

367. Taylor's contention that he did not know what was going on at the time also runs counter to his own testimony that he was the "point President" who "led the whole Sierra Leonean situation"[1006] and to his acknowledgements and statements discussed above.[1007]

(d) 15 March 1999 - 2002[1008]

368. Taylor contends that his state of knowledge would not have substantially changed following the crimes committed in Freetown and during the retreat following the ECOMOG

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[995] Judgement, para. 6288; Sentencing Judgement, para. 88.
[996] Taylor Appeal, para. 425.
[997] Taylor Appeal, para. 425.
[998] *Contra* Taylor Appeal, para. 427.
[999] Taylor Appeal, para. 429.
[1000] Judgement, para. 3481.
[1001] Judgement, para. 3486.
[1002] Judgement, para. 3485 (emphasis added).
[1003] Judgement, para. 3606.
[1004] Judgement, para. 3606.
[1005] Judgement, para. 3609.
[1006] Judgement, para. 6812.
[1007] Judgement, para. 6884.
[1008] Taylor Appeal, p. 149, sub-title (iv) and paras. 429-30, 433.

counter-offensive.[1009] Indeed, Taylor remained President of Liberia[1010] and therefore continued to receive information and briefings about the conflict in Sierra Leone,[1011] he was still a member of the ECOWAS Committee of Five[1012] and was therefore still privy to their reports,[1013] and the situation in Sierra Leone still had a direct impact on the Liberian situation.[1014] Just like Taylor's knowledge, as argued above, the AFRC/RUF's operational strategy did not change.[1015] Taylor certainly knew the operational strategy went on during this timeframe- the numerous findings on, *inter alia*, the materiel he provided at the time[1016] together with the Chamber's findings on his knowledge mean the Chamber committed no error in reaching this conclusion.

(v) Conclusion

369. Taylor merely seeks to relitigate issues decided against him and to substitute his characterisation of the facts for that of the Trial Chamber. He fails to establish any error warranting Appellate intervention. The Appeals Chamber should therefore dismiss this Ground of Appeal.

GROUND 18: *Mens rea* for aiding and abetting

370. Taylor notes in a footnote that "[n]o separate arguments are presented in respect of Ground of Appeal 18, as those arguments are sufficiently expressed in the other grounds concerning *mens rea*" but that "[t]he ground of appeal is nevertheless maintained on the basis of those arguments."[1017] Despite having stated in the footnote that he is maintaining this Ground of Appeal, Taylor does not even set out the caption of the Ground, nor is it listed in his Table of Contents. The Appeals Chamber should dismiss this Ground[1018] since it fails to comply with paragraphs 6(d), 6(e) and 9 of the Practice Direction. Should the Appeals Chamber elect to consider Taylor's Ground 18, the Prosecution's responses to Grounds 16, 17, 19, and 20 should be considered in response to this Ground.

[1009] Taylor Appeal, para. 429.
[1010] Judgement, paras. 8-9.
[1011] Judgement, paras. 6879, 6882.
[1012] See Judgement, paras. 4252, 6275, 6365, 6371, 6400, 6414, 6427, 6441, 6779.
[1013] Judgement, para. 6879.
[1014] Judgement, para. 6882.
[1015] See para. 341 above.
[1016] Judgement, paras. 4965, 5043, 5096, 5110, 5126, 5195, 5250-51. See also the response to Ground 23.
[1017] Taylor Appeal, fn. 641.
[1018] The ICTY Appeals Chamber has stated that "if a ground of appeal is alleged *only* in a notice of appeal and is not elaborated in the relevant appellant's brief, the Appeals Chamber will consider that ground of appeal to be abandoned" *Gotovina & Markač* Abandoned Grounds Decision, p. 2.

GROUND 19: The Trial Chamber correctly found that Taylor had the requisite knowledge in assisting the commission of crimes

(i) Overview

371. The Trial Chamber was not required to make a particularised finding concerning Taylor's *mens rea* with respect to specific acts of assistance. Contrary to Taylor's claim, it is not an error of law for a Trial Chamber to adopt a general approach respecting the assessment of *mens rea.*[1019] How a Trial Chamber assesses the knowledge of an accused falls squarely within its discretion and the Appeals Chamber will only disturb a discretionary finding where it is so unreasonable as to compel the conclusion that the Trial Chamber failed to use its discretion "judiciously."[1020]

(ii) Taylor fails to establish any error of law in the Trial Chamber's assessment of the knowledge requirement for aiding and abetting

372. Taylor's submission that the Trial Chamber seriously abused its discretion in assessing his knowledge by failing to make a *particularised finding* concerning his knowledge in *respect of specific acts* of alleged assistance is unfounded. The Trial Chamber applied the correct standard in finding that Taylor had the requisite *mens rea* for *aiding and abetting* all of the crimes in the Indictment – he knew or was aware at the time he made his contributions of the substantial likelihood that his acts would facilitate the crimes. The Trial Chamber made detailed findings[1021] establishing Taylor's knowledge of the continuing crimes being committed by the RUF and AFRC/RUF and found that Taylor provided assistance to a military force he knew used terror against civilians and whose crimes were inextricably linked to the manner in which it conducted the war.[1022]

373. The Judgement provides a sufficient basis for the Trial Chamber's conclusions. The findings regarding the mental elements of aiding and abetting[1023] must be read together with the underlying factual findings which show how the Chamber reasonably concluded that Taylor knew that his conduct would assist the crimes committed by the AFRC/RUF. The Trial Chamber found that:

[1019] Taylor Appeal, para. 436. Taylor Notice, para. 53; Taylor contends that the Trial Chamber erred in law and fact by adopting a general approach to the knowledge of the accused over a period of six years without seeking to ascertain his alleged contemporaneous intention in respect of specific allegations of assistance.
[1020] *RUF* AJ, para. 35.
[1021] Judgement, paras. 6947-48.
[1022] Judgement, paras. 6793, 6905.
[1023] Judgement, paras. 6947-52.

- Taylor was aware that crimes were being committed by the RUF/AFRC as early as August 1997;[1024]
- throughout the Indictment period the operational strategy of the RUF and AFRC was characterised by a campaign of crimes against the Sierra Leonean civilian population, including murders, rapes, sexual slavery, looting, abductions, forced labour, conscription of child soldiers, amputations and other forms of physical violence and acts of terror;
- these crimes were inextricably linked to the strategy and objectives of the military operations themselves. The RUF/AFRC pursued a policy and strategy of committing crimes against the civilian population in order to achieve military gains, and by attracting the attention of the international community, heighten their negotiating stance with the Sierra Leonean Government. The nature of this terror strategy was explicitly demonstrated by the names chosen for their military campaigns, such as "Operation Pay Yourself", "Operation No Living Thing" and "Operation Spare No Soul;"[1025]
- based on the notoriety of the RUF and AFRC and the information received daily as President of Liberia, Taylor was cognisant of the RUF/AFRC's war strategy;[1026]
- Taylor acknowledged that any assistance to the RUF/AFRC would constitute assistance to a campaign of atrocities against the civilian population of Sierra Leone.[1027]

374. The Trial Chamber understood that Taylor was not present at any of the crime scenes but rather was fuelling the conflict and facilitating the crimes while safe in his Liberian Presidential mansion. It is well established that "the location at which the *actus reus* takes place may be removed from the location of the principal crime."[1028] Establishing the *mens rea* of an accused is a factual finding dependant on the evidence in each case. The distance of the accused from the crime may or may not have any effect. Given the findings in this case, the mere fact that Taylor was physically distant created no reasonable doubt regarding his awareness that his acts would facilitate the crimes. The circumstances and evidence left no doubt that Taylor had the necessary *mens rea* when he provided his assistance to the crimes.

[1024] Judgement, para. 6886.
[1025] Judgement, paras. 6788-93, 6905.
[1026] Judgement, paras. 6879-85, 6947-48. Including *inter alia* reports by ECOWAS and the United Nations agencies, ECOWAS's embargo and media coverage. See also fns. 15466-82.
[1027] Judgement, para. 6884.
[1028] *Mrkšić* AJ, para. 81. See also *Blaškić* AJ, para. 48.

375. The aider or abetter need not be aware of the specific crimes that will be committed but must at least have had awareness that one of a number of crimes would probably be committed, and one of those crimes must then in fact be committed.[1029] The Trial Chamber reasonably found that Taylor knew that the RUF was notorious for its campaign of violence and terror and that crimes would probably be committed.[1030]

376. Furthermore, Taylor's reliance on the ICTY judgement in *Limaj*[1031] to support his argument on the *mens rea* for aiding and abetting is misplaced. The Appeal Judgement in *Limaj* simply confirmed that the Trial Chamber acted within its discretion in making factual determinations for each crime as to whether or not the Accused, Bala, had provided "substantial assistance" to the crime with the requisite knowledge.[1032] The Trial Judgement in *Limaj,* in fact, defeats Taylor's submissions on aiding and abetting. *Limaj* confirms that the test for *mens rea* is mere knowledge and not "purpose", holding "[t]he *mens rea* required is knowledge that, by his or her conduct, the aider and abettor is assisting or facilitating the commission of the offence."[1033]

377. Applying this standard, the *Limaj* Trial Chamber convicted Bala for aiding and abetting torture because he had brought the victim to a barn and stood by during the beating, finding that "[i]n the circumstances, Haradin Bala must have become aware ... that the assailants were committing a crime and their state of mind."[1034] The same Accused was acquitted of the murder of three prisoners whose bodies he helped to bury as "it could also be reasonably inferred form the evidence that Haradin Bala learned about the killings afterwards".[1035] Thus, in *Limaj*, the Trial Chamber reaffirmed the fact-based inquiry approach taken by the *Taylor* Trial Chamber by exercising its discretion to assess whether, in the particular context of the case, the conduct constituted a substantial contribution.[1036]

378. The Trial Chamber reasonably concluded, considering the entirety of the evidence, that Taylor assisted the RUF and AFRC knowing that his support would assist them in the commission of crimes.[1037]

[1029] *AFRC* AJ, para. 243; *CDF* AJ, para. 366; *RUF* AJ, para. 546; *Blaškić* AJ, para. 50; *Haradinaj* AJ, para. 58.
[1030] Judgement, para. 6949.
[1031] Taylor Appeal, para. 440 citing *Limaj* AJ, para. 123; *Limaj* TJ, paras. 654-663.
[1032] *Limaj* AJ, para. 123.
[1033] *Limaj* TJ, para. 518.
[1034] *Limaj* TJ, para. 658.
[1035] *Limaj* TJ, para. 662.
[1036] *Mrkšić* TJ, para. 552; *Boškoski & Tarčulovski* TJ, para. 402; *Kalimanzira* AJ, para. 86.
[1037] Judgement, para. 6950.

(iii) Taylor fails to demonstrate that the Trial Chamber was required to make a distinct finding that Taylor knew his acts would amount to a substantial contribution

379. Taylor's repetitious erroneous assertions that the requisite *mens rea* is "purpose" and that the *actus reus* must be performed with "knowledge" that it would contribute "substantially" to the commission of crimes have been answered in Ground 16 of this Response. Taylor's submission in this Ground repeats the erroneous premise[1038] that the *mens rea* for aiding and abetting requires not just that the accused was aware of the substantial likelihood that his acts would assist the commission of the underlying offence,[1039] but must also be aware that his acts would amount to a substantial contribution. Again, as in his arguments under Ground 16, he cites to no jurisprudence that supports his position.

380. Taylor conjectures that he may have armed and supplied the RUF in order to prevent their defeat and that the defeat of the RUF "could have unleashed more bloodshed, crimes and instability than just holding their positions."[1040] The evidence and findings disprove this assertion. The Trial Chamber found that Taylor did not just seek to prevent the defeat of the RUF. He planned their largest offensive and provided them the weapons they needed to defeat large ECOMOG forces in Kono and Makeni and move on to Freetown. The Trial Chamber found that the RUF was a force with an operational strategy of terror. The findings on crimes show that they enslaved the civilian population in areas they controlled, forcibly conscripted boys and girls into their forces, and forced women and girls into sexual slavery. Even if Taylor's intent was simply to prevent the defeat of the RUF and ensure they held their positions, Taylor admitted[1041] such assistance was contributing to the crimes inflicted upon all of the men, women, boys and girls caught behind the RUF lines he was protecting. Taking into account the context in which this assistance was given, the Trial Chamber reasonably concluded that, in facilitating and providing arms and ammunitions to the RUF/AFRC, Taylor knew or was aware of the substantial likelihood that his support would provide assistance in the commission of the crimes perpetrated by the armed groups.[1042]

(iv) Conclusion

381. Taylor's arguments in Ground 19 largely repeat arguments made in Ground 16 and elsewhere in his Appeal Submissions and lack any support in jurisprudence. The Trial Chamber properly considered the evidence of Taylor's knowledge that his acts would assist

[1038] Taylor Appeal, paras. 434-43 repeat arguments from paras. 394-97 of his Ground of Appeal 16.
[1039] Judgement, para. 486.
[1040] Taylor Appeal, para. 442.
[1041] Judgement, para. 6969.
[1042] Judgement, paras. 6949-50.

the commission of the crimes, and did not err in law or fact in its findings. This Ground of Appeal should, therefore, be dismissed.

GROUND 20: No error of fact in finding Taylor knew about the delivery of supplies

(i) Overview

382. The complete extent of Taylor's submission for Ground 20, in which caption he alleges an error of fact, is that "[f]or the reasons expressed under Ground 23 showing that the Chamber made no, or no sufficient findings, to show that Taylor knew about, or that he facilitated, the delivery of supplies to Liberia, it follows that he could not have possessed the *mens rea* for aiding and abetting those acts."[1043] Other than this cursory referral to a distinct Ground of Appeal which spans some 46 pages,[1044] Taylor points to no specific findings, facts, or law, to support Ground 20. Neither does he provide any additional argument.

383. The Appeals Chamber should summarily dismiss[1045] this Ground since it fails to comply with the Practice Direction.[1046] Specifically, the submissions fail to identify the challenged factual finding/s[1047] and the prejudice caused.[1048] Should the Appeals Chamber elect to consider this Ground, the Chamber should dismiss it since Taylor fails to establish any error/s of fact.[1049]

384. The Trial Chamber correctly found that Taylor was aware of the trans-shipment of arms and ammunition through Liberia to Sierra Leone and of other assistance from or via Liberia, including the three main shipments of arms and ammunition identified by the Trial Chamber. To find otherwise would be to give credence to the impossible notion that, for example, a plane with large amounts of materiel could land at Roberts International Airport, the materiel be temporarily stored at White Flower and then trucked across Liberia into Sierra Leone, all without the President of Liberia's knowledge.[1050]

(ii) Taylor confounds the required mens rea

[1043] Taylor Appeal, para. 447.
[1044] See Taylor Appeal, pp. 168-214.
[1045] See *RUF* AJ, paras. 36-46; *Gatete* AJ, paras. 11-12; *Boškoski & Tarčulovski* AJ, paras. 17-18; *Renzaho* AJ, paras. 11-12; *Muvunyi II* AJ, paras. 11-12.
[1046] Specifically, paras. 6(d), 6(e) and 9. Para. 29 empowers the Appeals Chamber to dismiss submissions where a party fails to comply with these requirements.
[1047] *RUF* AJ, para. 38; see also *Gatete* AJ, para. 12. Taylor Appeal, para. 447 does not cite any specific finding that Taylor seeks to have reversed.
[1048] *RUF* AJ, para. 41; see also *RUF* AJ, para. 43.
[1049] *RUF* AJ, para. 32; *CDF* AJ, para. 33; see also *Kupreškić* AJ, para. 29.
[1050] Judgement, para. 5515; see also para. 4953.

385. Taylor's single-sentence statement in support of this Ground confounds the *mens rea* requirements for aiding and abetting. The Trial Chamber was under an obligation to, and did, establish that Taylor possessed the *mens rea* for aiding and abetting the *commission of crimes,* not the *mens rea* for aiding and abetting *the delivery of supplies* to Liberia, *i.e.* the acts which constitute practical assistance, as Taylor states.[1051]

(iii) The Trial Chamber properly found that Taylor possessed the required mens rea for aiding and abetting the Indictment crimes

386. The Trial Chamber committed no error in reaching any of the findings challenged in Ground 23 of Taylor's appeal to which Taylor here cross-refers.[1052] As discussed below, Taylor has also failed to show that the Chamber incorrectly assessed his *mens rea* for aiding and abetting the Indictment crimes through the impugned acts of assistance. Rather the Chamber correctly found that Taylor possessed the required *mens rea* for aiding and abetting the Indictment crimes. The Prosecution notes that Taylor does not challenge the Trial Chamber's correct definition of *mens rea*[1053] in this Ground.

(a) The Trial Chamber properly concluded that Taylor knew about the delivery of supplies to Liberia and that he facilitated them

387. The totality of the Trial Chamber's findings concerning Taylor's provision of materiel throughout the Indictment period[1054] establish that Taylor knew about the delivery of supplies

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[1051] "For the reasons expressed under Ground 23 showing that the Chamber made no, or no sufficient findings, to show that Taylor knew about, or that he facilitated, *the delivery of supplies to Liberia*, it follows that he could not have possessed the *mens rea* for aiding and abetting *those acts*." Taylor Appeal, para. 447 (emphasis added).

[1052] Taylor Appeal, para. 447. The Prosecution includes its submissions on this Ground of Appeal by reference here.

[1053] Judgement, para. 486; see also *RUF* TJ, para. 280; *RUF* AJ, para. 546; *AFRC* TJ, para. 776; *CDF* AJ, para. 366.

[1054] Including that: (i) during the Junta period the Accused sent ammunition to Bockarie in Sierra Leone via Daniel Tamba (a.k.a. Jungle) (Judgement, para. 4845); (ii) supplies of arms and ammunition were sent to the RUF/AFRC in Buedu between February 1998 and December 1999 by the Accused, through, *inter alia*, Daniel Tamba, Sampson Weah and Joseph (a.k.a. Zigzag) Marzah (para. 4965); (iii) Bockarie made trips to Liberia in 1998 during which he obtained materiel from the Accused (para. 5030); (iv) the RUF/AFRC received sizeable amounts of materiel from the Accused in 1998 (para. 5031); (v) Bockarie made a trip to Liberia at an undefined time after the Freetown invasion during which he obtained arms and ammunitions supplied by the Accused (para. 5043); (vi) on Bockarie's trip to Monrovia around March 1999, he brought back a large shipment of materiel supplied by the Accused (para. 5096); (vii) Bockarie made a trip to Monrovia as part of the Lomé delegation and returned to Sierra Leone in or around late September to October 1999 with a helicopter of materiel supplied by the Accused (para. 5110); (viii) during the Freetown invasion in January 1999, Dauda Aruna Fornie and others transported materiel provided by the Accused from Liberia to Sierra Leone (para. 5130); (ix) Issa Sesay made a trip to Liberia in May 2000 in which he obtained arms and ammunitions from the Accused (para. 5195); (x) during Issa Sesay's reign as Interim Leader of the RUF, TF1-567 was involved in the transportation of materiel frequently over the course of one year and that materiel was provided by the Accused from Liberia to the RUF in Sierra Leone (para. 5250); (xi) in 2000, Albert Saidu brought back two vehicles of ammunition and medicine from Yeaten, Taylor's subordinate, in response to a request from Issa Sesay (paras. 5251, 5126); (xii) the Accused sent Varmuyan Sherif to open a corridor to facilitate the existing trade of the purchase and sale of arms and ammunition between the RUF and ULIMO between Lofa County and RUF-held-

to Liberia and knowingly facilitated them. These findings are based on direct testimony and/or are corroborated by numerous witnesses and documentary evidence.[1055]

388. The Trial Chamber's findings on diamonds also establish that Taylor knew he was providing assistance. The Chamber found there was a *quid pro quo*- Taylor provided the RUF with materiel in exchange for diamonds.[1056] Taylor was certainly aware of these continuous transactions,[1057] as also established by the fact he instructed JPK and Bockarie to capture, maintain, and re-capture Kono for the purpose of maintaining the trade of diamonds for arms and ammunition,[1058] and facilitated a relationship between the RUF and a diamond dealer for the purpose of diamond transactions.[1059] Indeed, the Chamber noted that "[t]wenty Prosecution witnesses testified to supplies of materiel being brought by intermediaries and their accounts are complementary in most respects."[1060]

389. The Chamber's findings on provision of materiel and facilitation thereof often refer to the fact that this materiel came from White Flower and/or went through Roberts International Airport.[1061] Taylor himself admitted that he permitted Musa Cissé, his protocol officer who he also stated was one of those responsible for arranging bribes to be able to transport arms through a country to Liberia,[1062] to travel with Bockarie on his trip to Burkina Faso, and that

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territories after 14 February 1998, that Sherif fulfilled his assignment, as result of which members of ULIMO who were supposed to disarm and surrender their arms to the UN, instead sold or bartered them to the RUF (para. 5329; see also para. 5318); (xiii) the Accused provided financial support to the RUF/AFRC in order to facilitate their purchases of arms and ammunition from ex-ULIMO combatants (para. 5330); (xiv) the Accused sent Ibrahim Bah on his behalf to Freetown to meet with Sam Bockarie and JPK to make arrangements for the procurement of arms and ammunition. Bah was given 90 carats of diamonds and $90,000 US to pay for the shipment which was delivered by plane to Magburaka (paras. 5406, 5408, 5394, 5388-89, 5559); (xv) around November/December 1998, the Accused was instrumental in procuring a large quantity of arms and ammunition for the RUF from Burkina Faso. These arms and ammunitions were distributed to RUF and AFRC commanders in Buedu (para. 5527).

[1055] For example, the Chamber reached its finding that Taylor sent supplies of arms and ammunition to the RUF/AFRC in Buedu between February 1998 and December 1999 through his intermediaries, after considering, *inter alia*: (i) that the account of TF1-579 and Marzah on the matter was corroborated by *thirteen* other witnesses, some of whom also testified that Taylor himself had given them instructions, and *seven* of whom testified they were explicitly told the materiel was supplied from the Accused; (ii) credible contemporary documentary evidence; (iii) that Defence evidence contradicting this finding was belied by "overwhelming evidence" by Prosecution witnesses and even by evidence from other Defence witnesses; (iv) that Defence witnesses testified that removal of materiel from Taylor's warehouse required Taylor's approval; and (v) Bobson Sesay's corroborating testimony that Taylor confirmed at a meeting with RUF leaders in August 1999 that he had supplied food, arms and ammunitions to the Sierra Leonean rebel troops, Judgement, paras. 4944, 4946-49, 4953, 4955, 4957, 4965; see also the response to Grounds 1, 3 and 23.

[1056] Judgement, paras. 6898-99.

[1057] Judgement, paras. 6140, 5874, 5930-31, 5934, 5936, 5947-48, 6057, 6139(i-ii, v-vi), 6141-42, 6145.

[1058] Judgement, para. 6942.

[1059] Judgement, para. 6103.

[1060] Judgement, para. 4943.

[1061] See Judgement, para. 5515; see also Judgement, paras. 4245, 4943, 4953, 5126.

[1062] Judgement, para. 4765.

Cissé briefed him after the mission.[1063] However, the Chamber did not find credible Taylor's testimony that Cissé went with Bockarie in the role of translator,[1064] or that Taylor was not aware of what transpired between Bockarie and Compaoré during Bockarie's trip.[1065]

390. Further, TF1-338 testified that Benjamin Yeaten told Sesay that Taylor said that the arms he (Taylor) had supplied to the rebels and that were not used should not be surrendered as part of the disarmament but returned to Benjamin Yeaten since they belonged to Taylor.[1066] TF1-338 also detailed how Sesay's men then moved arms from Sierra Leone to Liberia to comply with this instruction.[1067]

391. Specifically in relation to Taylor's knowledge about the provision of materiel, the Chamber found that "the Accused had knowledge of and sanctioned the delivery to Bockarie of materiel to take back to Sierra Leone from Liberia" based on the consistent evidence that Tamba, Taylor's subordinate, was involved in these trips.[1068] The Chamber also found Taylor's assertion that he did not know about Bockarie's trips and his denial of involvement in the supply of materiel to Bockarie not credible in light of, *inter alia*, Taylor's own testimony Bockarie could not travel to Monrovia without him being aware of it and evidence that Bockarie crossed the border without exemptions from the travel ban.[1069]

392. Similarly, the Chamber rejected Taylor's claim he did not have a camouflage helicopter in September/October 1999 as not credible in light of his own conflicting testimony, documentary evidence, and multiple witnesses testifying to the contrary.[1070] The Chamber also took note of the "evidence indicating that the Accused's support often satisfied a need or request for materiel at a particular time"[1071] and evidence that Bockarie was communicating with Taylor in relation to arms and ammunitions requests during this period.[1072]

393. By no stretch of the imagination can these shipments, taken together, and often even if take alone, be described as isolated or discrete incidents. None of these instances could have occurred without Taylor's knowledge.

[1063] Judgement, paras. 5472, 5514, 5516. See also Judgement, para. 5507.
[1064] Judgement, paras. 5514, 5516.
[1065] Judgement, para. 5516.
[1066] TF1-338, T. 2 September 2008 pp. 15189-90. Although this incident was not mentioned in the Judgement, the Trial Chamber found TF1-338 to be generally credible (Judgement, para. 329).
[1067] TF1-338, T. 2 September 2008 pp. 15190-92.
[1068] Judgement, paras. 5022, 2718, 4256.
[1069] Judgement, para. 5023.
[1070] Judgement, paras. 5105-07.
[1071] Judgement, para. 5829.
[1072] Judgement, para. 4843.

(b) Taylor knew, or was aware of the substantial likelihood, that his actions would assist the commission of the Indictment crimes

394. When one considers the above findings together with the Trial Chamber's other findings on Taylor's knowledge and intent,[1073] including that as early as August 1997 the Accused knew of the atrocities being committed against civilians in Sierra Leone by the RUF and RUF/AFRC forces and of their propensity to commit crimes,[1074] the only reasonable conclusion is that Taylor was certainly aware of to whom and for what purpose he was sending this materiel. Contrary to Taylor's contention,[1075] the totality of evidence establishes beyond reasonable doubt that Taylor knew, or was aware of the substantial likelihood, that his acts would assist the crimes committed by the RUF during the Indictment period.

(c) Taylor was aware of the essential elements of the crimes committed by the principal offender

395. The Trial Chamber's findings also satisfy the second prong of the *mens rea* requirement, *i.e.*, Taylor was aware of the essential elements of the crimes committed by the principal offender.[1076]

(iv) Conclusion

396. Taylor has shown no error in the Trial Chamber's findings, based on all the evidence before it, that he was aware of the trans-shipment of arms and ammunition through Liberia to Sierra Leone and of other assistance from or via Liberia, including the three main shipments of arms and ammunition identified by the Trial Chamber. The Chamber correctly concluded that Taylor possessed the required *mens rea* for aiding and abetting the Indictment crimes. The Appeals Chamber should dismiss this Ground of Appeal since Taylor has failed to prove any error/s of fact warranting appellate intervention.

GROUND 21: The Trial Chamber properly held that Taylor's military assistance to the RUF, RUF/AFRC constituted assistance to crimes

(i) Overview

397. Contrary to Taylor's claims, the Trial Chamber applied the correct legal standard of aiding and abetting. Based on the totality of the evidence before it, the Trial Chamber properly found that Taylor's actions fulfilled the elements of aiding and abetting by providing

[1073] See Judgement, paras. 6947-49, 6877-86.
[1074] Judgement, paras. 6947, 6886, 6878-79. See also the response to Ground 17.
[1075] Taylor Appeal, para. 447.
[1076] Judgement, paras. 6950-51.

materiel to the RUF, RUF/AFRC in the knowledge or awareness that such actions would assist the commission of crimes and because such actions substantially contributed to the commission of crimes. A Trial Chamber is tasked only with applying the law. The hypothetical implications which Taylor seeks to raise are irrelevant and misplaced. None of the arguments advanced by Taylor under this Ground serve to invalidate the judgement or demonstrate there was a miscarriage of justice.

(ii) The Trial Chamber properly found that Taylor's military assistance fulfilled the actus reus and mens rea requirements of aiding and abetting

398. Contrary to Taylor's contention, the Trial Chamber did not "adopt"[1077] or "interpret" a standard of aiding and abetting,[1078] rather it applied the standard which has been consistently used by this Court[1079] and by the *ad hoc* tribunals when assessing criminal responsibility for aiding and abetting.[1080] Its utilisation thus far in international criminal law has not had any of the detrimental effects to international relations which Taylor ascribes to it,[1081] as Taylor's submissions exaggerate the potential precedential effect of the Trial Judgement. The effect of the Trial Judgement is that those who provide assistance which substantially contributes to the commission of crimes, aware of the essential elements of the crime and state of mind of the perpetrator, will be held criminally responsible for the assistance provided.

399. Contrary to Taylor's claim, the Trial Chamber properly assessed his *mens rea* for aiding and abetting.[1082] Taylor incorrectly contends that the Trial Chamber sought to infer his knowledge of crimes in Sierra Leone merely from Amnesty International reports, and that such reports put him on notice of the commission of crimes.[1083] Instead, the Trial Chamber noted that in 1997 numerous reports were prepared by ECOWAS and various UN agencies establishing that, as early as May 1997, the crimes committed by the Junta were "significantly reported".[1084] The Trial Chamber referred to a total arms and ammunition embargo to Sierra Leone put into effect by ECOWAS in August 1997, and a similar embargo placed in effect by the UN in October 1997 as recognition by the international community that "any military

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[1077] Taylor Appeal, para. 448.
[1078] Taylor Appeal, para. 449.
[1079] *AFRC* TJ, paras. 775-76; *CDF* TJ, paras. 228-29; *RUF* TJ, paras. 276-80; *CDF* AJ, para. 75; *RUF* AJ, para. 1175.
[1080] *Blaškić* AJ, para. 46; *Vasiljević* AJ, para. 102; *Muhimana* AJ, para. 189; *Rukundo* AJ, para. 52; *Kalimanzira* AJ, para. 86; *Ntawukulilyayo* AJ, para. 214.
[1081] Taylor Appeal, para. 448.
[1082] *Contra* Taylor Appeal, para. 450.
[1083] *Contra* Taylor Appeal, para. 450.
[1084] Judgement, para. 6880.

support could facilitate the commission of crimes".[1085] Further, the Trial Chamber referred to a very extensive list of documents emanating from various UN bodies, NGOs, and news outlets to unequivocally state that reports from 1997 onwards demonstrate the "public knowledge that RUF/AFRC forces committed the crimes of unlawful killings, sexual violence, physical violence, conscription and use of child soldiers, abduction and forced labour, looting and terrorism."[1086] The Trial Chamber also noted the manifold reports by international organisations, NGOs and newspapers which described the atrocities committed by the RUF/AFRC troops after the ECOMOG Intervention.[1087] Moreover, Taylor himself said that there was "no one on this planet that would not have heard through international broadcasts or [...] discussions about what was going on in Sierra Leone",[1088] and that by April 1998 if someone was providing support to the RUF/AFRC they "would be supporting a group engaged in a campaign of atrocities against the civilian population of Sierra Leone."[1089] Taylor also admitted to being briefed on international reports of atrocities being committed in Sierra Leone.[1090] These facts fundamentally distinguish the actions of Taylor in Sierra Leone from the examples of State-to-State assistance which he seeks to advance as similar to his own.[1091]

400. Contrary to Taylor's contention, the conviction entered against him does not amount to the criminalisation of conduct not previously criminalised.[1092] In the sphere of international relations, it is not widespread State practice to provide "critical" and "indispensable"[1093] support to rebel groups seeking to destabilise the elected government of a neighbour, who are notorious for committing terrorist attacks against civilians in the guise of military operations.[1094] If it is such practice by State leaders, they are rightly subject to accountability.

401. Taylor incorrectly asserts that there is a requirement under the mode of liability aiding and abetting that assistance be given "to the crime, as such".[1095] Examples advanced by Taylor of a mother providing sustenance to her child who is a criminal, or the manufacturer of

[1085] Judgement, para. 6882.
[1086] Judgement, para. 6883.
[1087] Judgement, para. 6883.
[1088] Taylor, T. 14 July 2009 p. 24329.
[1089] Taylor, T. 25 November 2009 p. 32394.
[1090] Taylor, T. 25 November 2009 p. 32393.
[1091] Taylor Appeal, paras. 450-51.
[1092] *Contra* Taylor Appeal, para. 451.
[1093] Judgement, para. 5842.
[1094] *Contra* Taylor Appeal, paras. 450-51.
[1095] Taylor Appeal, para. 452.

weapons that are used in murders or robberies are entirely irrelevant.[1096] Such examples would not, of course, be considered as assistance substantially contributing to the commission of a crime unless the evidence established the *actus reus* and *mens rea*.

402. Taylor does not cite any authority for the proposition that assistance must be "to the crime, as such".[1097] The assertion that an aider and abettor's assistance must have a causal impact on the commission of crimes has been previously rejected by the ICTY Appeals Chamber in *Blaškić*, which confirmed what is required is that assistance "has a substantial effect upon the perpetration of the crime."[1098] In *Blagojević and Jokić*, the ICTY Appeals Chamber stated that "proof of a cause-effect relationship between the conduct of the aider and abettor and the commission of the crime, or proof that such conduct served as a condition precedent to the commission of the crime, is not required",[1099] reiterating the requirement that the support "have a substantial effect" upon the commission of crime.[1100] In *Furundžija*, an ICTY Trial Chamber, upon an analysis of customary international law, rejected a qualification of proximity between the assistance and the principal act, as this implied that assistance needs to be "tangible" or "have a causal effect" (in the sense of a *conditio sine qua non*) on the crime.[1101]

403. As acknowledged by Taylor himself, the terms "specifically aimed" and "specifically directed" sometimes used in the jurisprudence in defining aiding and abetting relate to the "substantial contribution" which the assistance provides to the commission of crimes.[1102] However, these terms do not serve to show that assistance must be to the criminal conduct itself as Taylor asserts.[1103] Taylor's arguments fail to demonstrate any error in the Trial Chamber's application of the standard of aiding and abetting which would serve to invalidate the decision.

404. Taylor's assertion that his conviction was based on collective responsibility rather than individual criminal responsibility is incorrect.[1104] Contrary to Taylor's claim, jurisprudence about organisations not being deemed criminal organisations despite being

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[1096] *Contra* Taylor Appeal, para. 452.
[1097] Taylor Appeal, para. 452.
[1098] *Blaškić* AJ, paras. 43, 48.
[1099] *Blagojević & Jokić* AJ, para. 187, quoting *Blaškić* AJ, para. 48, and *Simić* AJ, para. 85.
[1100] *Blagojević & Jokić* AJ, para. 187, quoting *Blaškić* AJ, para. 48. See also *Orić* TJ, para. 285.
[1101] *Furundžija* TJ, para. 232.
[1102] Taylor Appeal, para. 453. *Contra* Taylor Appeal, paras. 354-59.
[1103] *Contra* Taylor Appeal, para. 453. This is addressed in the response to Ground 19.
[1104] *Contra* Taylor Appeal, para. 456.

engaged in criminal acts is irrelevant to this case.[1105] The Trial Chamber did not convict Taylor on the basis of his "membership" in the RUF; he was convicted based on the substantial assistance he provided to this notorious organisation aware that it would facilitate their horrendous criminal activity. The Trial Chamber expressly noted that while war is not *per se* a crime under the Court's Statute, before the start of the Indictment period, the war strategy of the RUF had evolved "to a strategy of guerrilla tactics based on a campaign of terror against the civilian population" of Sierra Leone.[1106] Based on its assessment of the totality of the evidence, the Trial Chamber reasonably found that the waging of a campaign of terror crimes against the civilian population of Sierra Leone was "inextricably linked to the strategy and objectives of military operations themselves" and that "any assistance towards these military operations of the RUF and RUF/AFRC constitutes direct assistance to the commission of crimes by these groups."[1107] Indeed, the rebels' war strategy was so widespread and notorious that Taylor himself admitted that no one on the planet was unaware of it.[1108]

405. Contrary to Taylor's contention that the finding on the operational strategy of the RUF was based "on a six paragraph analysis" of alleged crimes,[1109] the Trial Chamber devoted hundreds of pages to the crimes committed by the RUF/AFRC as a basis for its findings regarding the *modus operandi* of the RUF/AFRC.[1110] Further, Taylor incredibly claims that his assistance was "neutral in its nature relative to the crimes",[1111] despite the Trial Chamber properly finding that the nature of the military operations of the RUF/AFRC, which were conducted using the materiel that Taylor supplied, encompassed the commission of a terror campaign against civilians. Even Taylor himself notes that the RUF/AFRC's military operations were not conducted using solely machetes.[1112]

406. Taylor incorrectly conflates *jus ad bellum* and *jus in bello* in relation to the RUF's military operations in Sierra Leone.[1113] Regardless of the right of the RUF to fight,[1114] there has never been a right to wage a campaign of terror against a civilian population, to carry out a campaign of crimes against the civilian population, crimes inextricably linked to the strategy

[1105] Taylor Appeal, para. 455.
[1106] Judgement, para. 6788.
[1107] Judgement, para. 6905.
[1108] Taylor, T. 14 July 2009 p. 24329.
[1109] Taylor Appeal, para. 454.
[1110] Judgement, paras. 583-2192.
[1111] *Contra* Taylor Appeal, para. 458.
[1112] Taylor Appeal, para. 457.
[1113] *Contra* Taylor Appeal, para. 459.
[1114] Taylor Appeal, para. 459.

and objectives of the military operations themselves.[1115] Further, as held by the ICTY Appeals Chamber, even where an operation is considered to be of a legitimate character, this does not exclude an accused's criminal responsibility for crimes committed during the operations.[1116] Moreover, Taylor has consistently denied that he provided any assistance to the RUF, RUF/AFRC during the Indictment period.[1117] Taylor's suggestion at this stage of proceedings that any assistance he was providing was to legitimate war aims[1118] is purely hypothetical and should be dismissed.

407. Taylor's claim that the horrific crimes committed against innocent civilians over the course of more than five years were "a by-product of bad practices, excesses, [and] poor command and control"[1119] does a great disservice to the innumerable victims of crimes and to Sierra Leone itself for all of the devastation wrought. This contention clearly demonstrates that regardless of the extent of witness testimony about the horrors visited upon the civilian population of Sierra Leone as a consequence of the military tactics of the RUF/AFRC, Taylor continues to deny the clear finding regarding how the RUF, RUF/AFRC utilised a terror campaign to achieve its goals.[1120]

408. Further, Taylor's outlandish assertion that findings regarding the RUF's *modus operandi* were used by the Trial Chamber merely as a way to ascribe criminal responsibility to him is without merit and should be dismissed.[1121] Taylor's contention that punishing intentional individual actions which substantially assisted the murder, rape, and enslavement of Sierra Leoneans, as well as the burning of their property and pillage of their homes and conscription of their children, all as part of a campaign of terror, "risks casting an inappropriately wide net of liability over State practice that only serves to undermine the legitimacy of international criminal law"[1122] is an argument for impunity. Where, as here, Taylor's many actions of assistance are proven beyond reasonable doubt to constitute aiding and abetting, such may not go unpunished. Finally, Taylor's claim that the Trial Chamber's

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[1115] Judgement, para. 6905.
[1116] *Boškoski & Tarčulovski* AJ, para. 172.
[1117] See Defence Final Trial Brief, paras. 1195-97.
[1118] Taylor Appeal, para. 459 ("The RUF was entitled to fight, and the material provided was appropriate to that purpose").
[1119] Taylor Appeal, para. 459.
[1120] Exh. P-430B, Bockarie was recorded as saying "When I take Freetown I shall clear every living thing and building. To my God, I'll fight. I'll kill and kill, and the more they tell me to stop, the more I'll kill."
[1121] Taylor Appeal, para. 459.
[1122] Taylor Appeal, para. 459.

imposition of an accepted standard of criminal liability serves to undermine the legitimacy of international criminal law is wholly without merit and deserving of no attention.[1123]

(iii) Conclusion

409. Taylor's submissions under this Ground fail to demonstrate any error in the Trial Judgement which would require appellate intervention and should be dismissed.

GROUND 22: The Trial Chamber properly found that Taylor's supplying materiel which was used to secure further arms and ammunition utilised in the commission of crimes, amounted to practical assistance to the commission of those crimes

(i) Overview

410. The Trial Chamber properly found that attacks in which crimes were committed by RUF/AFRC on the outskirts of Freetown in January 1999 were perpetrated using materiel drawn from arms and ammunition directly supplied by Taylor and materiel captured using materiel supplied by Taylor.[1124] Based on the totality of the evidence before it, the Trial Chamber properly found that the materiel supplied by Taylor substantially contributed to the commission of crimes.

411. Taylor's arguments are based on two incorrect assertions. First, Taylor inaccurately claims that the Trial Chamber's analysis and conclusion regarding the materiel used in crimes committed in Freetown and Western Area differed from the approach employed in relation to other operations in which crimes were committed. Second, Taylor incorrectly suggests that materiel captured by the rebels in December 1998 by means of the supplies Taylor provided in November 1998 and then used to commit crimes in January 1999, could not be attributed to him for the purposes of aiding and abetting liability. For the reasons outlined below, Taylor's arguments lack merit. The Trial Chamber's assessment of the evidence was consistent, and its findings based on that assessment were reflective of the evidence before it. Further, Taylor supplied materiel that was used to capture enemy materiel, which in turn was used to commit crimes. However, no issue of remoteness arose from this fact. There was a sufficient connection in these circumstances between Taylor's supply of materiel and the commission of Indictment crimes.

412. The Trial Chamber properly concluded that the Burkina Faso shipment Taylor facilitated was brought from Liberia to Sierra Leone in late November 1998 by Taylor's

[1123] *Contra* Taylor Appeal, para. 459.
[1124] *Contra* Taylor Appeal, paras. 460-61. See Judgement, para. 5721.

subordinates[1125] along with a plan that Bockarie and Taylor had jointly designed for a two-pronged attack on Kono and Kenema which would culminate in the invasion of Freetown.[1126] This plan of attack was implemented consistent with Taylor telling Bockarie that the operation be "fearful" and that the RUF should use "all means" to get to Freetown.[1127]

413. The Trial Chamber also properly found that materiel from the Burkina Faso shipment was used to capture large quantities of materiel during the attack on Kono in December 1998.[1128] As Defence witness Issa Sesay testified, had it not been for the arms that came from Liberia, the attack on Kono in which materiel was captured would never have taken place.[1129] The Trial Chamber found that, on the basis of the evidence, materiel drawn either from the Burkina Faso shipment directly or from materiel captured through the use of the shipment materiel arrived in Freetown some time *before* the third week of January 1999 and was used in the commission of crimes.[1130]

(ii) The Trial Chamber assessed military operations and resulting crimes consistently

414. Taylor suggests that the use of captured materiel in the commission of crimes, notably during the retreat from Freetown and Western Area, should have been considered by the Trial Chamber to place him beyond the scope of accessorial liability.[1131] However, the Trial Chamber found that the materiel captured in Kono in December 1998 was taken through the use of materiel supplied by Taylor in the Burkina Faso shipment in the previous month, and this captured materiel was used in implementing the Bockarie/Taylor plan in Freetown, along with materiel directly supplied by Taylor.

415. Contrary to Taylor's assertions, the approach of the Trial Chamber in its analysis of the Freetown crimes is not inconsistent with its analysis of crimes committed in 1997 and 1998.[1132] Rather, each analysis was consistently applied to the facts before the Chamber; for this reason, comparisons with operations conducted at other times are inapposite.[1133] For example, it was the factual circumstances of the 1999 Freetown crimes which were fundamentally different, not the analysis applied. The Trial Chamber properly analysed

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[1125] Judgement, para. 5515, referring to TF1-371, T. 31 January 2008 pp. 2703, 2750-51 (CS); T. 28 January 2008 pp. 2404-05(CS); Marzah, T. 12 March 2008 pp. 5885-90.
[1126] Judgement, paras. 3089, 3109, 3111-12, 3129, 3611(vi), 3615, 5524, 5527, 5561, 5702, 5835(xxvi), 5841.
[1127] Judgement, paras. 3117, 3127, 3130, 3449, 3611(vii), 3615. As noted in the TJ, "making an operation fearful means destruction, committing crimes against civilians and the opposing troops." See Judgement, para. 3063.
[1128] Judgement, para. 5713.
[1129] Sesay, T. 12 August 2010, p. 46149.
[1130] Judgement, para. 5720. *Contra* Taylor Appeal, para. 467.
[1131] *Contra* Taylor Appeal, para. 463.
[1132] *Contra* Taylor Appeal, para. 462.
[1133] *Contra* Taylor Appeal, para. 462.

whether materiel used by breakaway AFRC groups in operations in the North in late 1998 was linked to Taylor's supplies in order to establish his responsibility for such crimes.[1134] Taylor's contention that no findings were entered regarding crimes committed by breakaway AFRC troops in the capture of Rosos because of the *possibility* that materiel used for the operation was captured from ECOMOG arises from a flawed reading of the Trial Judgement. As Taylor himself acknowledges, the Prosecution did not advance any evidence in this respect, nor did the witness whom the Trial Chamber relied on regarding military operations at this time testify about the capture of Rosos.[1135] The Chamber made no finding because there was no evidence or argument on this point, not because of some now alleged "potential" that captured materiel rather than materiel provided by Taylor was used in the commission of crimes.[1136] Regarding the Fitti-Fatta operation, in light of evidence that materiel from other sources was used in the attack, the Trial Chamber properly analysed and concluded that materiel supplied by Taylor was also used in the operation.[1137]

416. Further, Taylor's assertion that the Trial Chamber's assessment of crimes committed in Kono in 1998 differed compared to crimes committed in Freetown in 1999 is inapposite.[1138] As noted above, the Chamber assessed the evidence before it relevant to crimes committed in each area. It was the factual circumstances which differed, not the assessment. The Trial Chamber properly assessed whether the many operations of the RUF, RUF/AFRC in 1997 and 1998 in which crimes were committed were conducted using materiel supplied or facilitated by Taylor. As regards the attacks conducted by rebel forces in the retreat from Freetown and in Western Area in early 1999, the Trial Chamber properly found that there were three sources of materiel used in the commission of crimes, all of which were directly attributable to Taylor. Taylor fails to demonstrate any error in the Trial Chamber's approach which would require appellate intervention.

(iii) The Trial Chamber properly applied the actus reus standard in assessing operations committed by the rebel forces in the retreat from Freetown and in the Western Area

417. Contrary to Taylor's contention, the Trial Chamber properly concluded that criminal responsibility could be imposed based on finding that the crimes committed in Freetown were perpetrated using materiel deriving directly or indirectly from Taylor's acts of assistance.[1139]

[1134] Judgement, paras. 5653-59, 5829-30.
[1135] Taylor Appeal, para. 462; Judgement, para. 5658.
[1136] *Contra* Taylor Appeal, paras. 462-63.
[1137] Judgement, paras. 5627-28.
[1138] *Contra* Taylor Appeal, para. 464.
[1139] Taylor Appeal, para. 468.

418. The Trial Chamber properly identified three categories of materiel that were used to reinforce the rebels in Freetown and commit crimes on the outskirts of the city: supplies brought by Rambo Red Goat, materiel brought by Issa Sesay, and that brought by Dauda Aruna Fornie.[1140] The Chamber properly found that materiel brought by Rambo Red Goat came from the Burkina Faso shipment, the procurement of which was facilitated by Taylor and the transport of which to Sierra Leone was provided by him.[1141] Supplies brought by Issa Sesay came either from the Burkino Faso shipment or were captured during the Kono operation in December 1998 using materiel from the Burkina Faso shipment.[1142] The materiel brought by Fornie was that which he had brought from Taylor in Liberia.[1143]

419. As proven by the Defence's own evidence,[1144] the materiel supplied by Taylor was "causally critical" to the capture of materiel during the Kono operation, which added to the resources used in the commission of crimes in the retreat from the capital.[1145] Therefore, the materiel used in the commission of crimes in Freetown and its outskirts emanated directly from Taylor or was causally dependent on supplies directly coming from Taylor.

420. The *actus reus* of aiding and abetting requires assistance which has a substantial contribution to the commission of crimes.[1146] Taylor fails to cite any authority to support his contention that providing arms and ammunition which are used to capture additional materiel that is used in the commission of crimes does not amount to a substantial contribution.[1147] Nor is this contention supported by Taylor's reiteration of his incorrect interpretation of ICTR jurisprudence that acts must be "specifically aimed" at assisting the commission of a *specific* crime.[1148] As addressed earlier,[1149] the use of the term "specifically aimed" relates solely to the requirement that assistance amount to a "substantial contribution" to the crimes.[1150]

421. Taylor's contention that "substantial contribution" has been interpreted by the Appeals Chamber of the ICTY in *Blagojević and Jokić* to require that an aider and abettor's "ability to affect the commission of the crime was substantial" is misplaced.[1151] Rather, in using this

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[1140] Judgement, paras. 5713-14.
[1141] Judgement, paras. 5708, 5713.
[1142] Judgement, paras. 5712-13.
[1143] Judgement, paras. 5128, 5714.
[1144] Sesay, T. 12 August 2010 p. 46149.
[1145] Judgement, paras. 5715, 5830, 5841.
[1146] Judgement, para. 482, citing *AFRC* TJ, para. 775, *Blaškić* AJ, para. 46, *Perišić* TJ, para. 126, *Vasiljević* AJ, para. 102.
[1147] Taylor Appeal, paras. 460.
[1148] Taylor Appeal, para. 469 (emphasis added).
[1149] See the response to Ground 16.
[1150] *Contra* Taylor Appeal, para. 469. See the response to Ground 16, paras. 291-97.
[1151] *Contra* Taylor Appeal, paras. 461, 469.

language, the ICTY Appeals Chamber was distinguishing the role of Blagojević from other members of his military brigade. It found that Blagojević's position "went beyond that of merely relaying orders up and down the chain of command", in that "he assisted in carrying out the orders of the Brigade Commander which were based on his advice and proposals."[1152]

422. Taylor incorrectly contends that his supply of materiel was too remote to the commission of crimes,[1153] referencing a number of variables which he contends affected whether the RUF captured the materiel in Kono.[1154] Taylor erroneously suggests that the capture of the materiel was contingent on, *inter alia*, the autonomous decision of the RUF to attack Kono, the tactics which were adopted, and the decision to continue to Freetown.[1155] Taylor disregards that the plan he was found to have made with Bockarie and the instructions he gave as to how the operation was to be conducted encompassed the decision to attack Kono, the tactics to be employed in the attack, and the advance to the capital.[1156] Moreover, such variables do not serve to undermine the fact that, as acknowledged in Defence evidence, the capture of the materiel would not have taken place had it not been for Taylor's supplies,[1157] and do not raise any reasonable doubt. The RUF did not use harsh words to capture the Kono materiel. They took it by force, using the materiel, the acquisition of which was assured by Taylor.[1158] Further, Taylor's provision of practical assistance which substantially contributed to the commission of crimes cannot be considered as being too remote in the face of a period of mere weeks between the Burkina Faso shipment and the capture of the materiel in Kono, which was subsequently used to commit crimes pursuant to a plan devised by Taylor and Bockarie.[1159]

423. The ICTR jurisprudence cited by Taylor as examples of "where similar steps intervened between alleged support and crime" is irrelevant. The *Kalimanzira* Appeals Chamber overturned the aiding and abetting conviction because it found that testimony of the two witnesses upon whom the Trial Chamber had relied was "vague and devoid of detail",[1160]

[1152] *Blagojević & Jokić* AJ, paras. 190-91.
[1153] Taylor Appeal, para. 470.
[1154] Taylor Appeal, para. 470.
[1155] *Contra* Taylor Appeal, para. 470.
[1156] Judgement, paras. 3089, 3109, 3111-12, 3117, 3127, 3129-30, 3449, 3611(vi, vii), 3615, 5524, 5527, 5561, 5702, 5835(xxvi), 5841.
[1157] Sesay, T. 12 August 2010 p. 46149.
[1158] Judgement, paras. 5527, 5515 (referring to TF1-371, T. 31 January 2008 pp. 2703, 2750-51(CS); T. 28 January 2008, pp. 2404-05(CS); Marzah, T. 12 March 2008 pp. 5885-90).
[1159] *Contra* Taylor Appeal, para. 470.
[1160] *Kalimanzira* AJ, para. 76. *Contra* Taylor Appeal, para. 471, Taylor suggests that the conviction was overturned because of a lack of any proven immediate connection between the Appellant's speech and specific killings.

and that there was "no evidence about even a single incident" of killing relating to the accused.[1161] In *Nahimana*, Ngeze had been convicted of instigating rather than aiding and abetting,[1162] and moreover, no evidence was adduced of any impact of Ngeze's alleged encouragement to commit genocide during a period within the temporal jurisdiction of the ICTR.[1163] The third example adduced by Taylor is equally misplaced.[1164] In *Ndindabahizi*, the Appeals Chamber overturned the aiding and abetting conviction because it found that the alleged date of the criminal conduct was unclear,[1165] and that it was unclear whether those alleged to have been assisted by the accused were the perpetrators of the crime.[1166] None of the arguments raised by Taylor establish that the Trial Chamber committed an error which invalidates the decision.

(iv) The actus reus of aiding and abetting was fulfilled for crimes in Freetown and Western Area

424. Taylor's assertion that, had the Trial Chamber not attributed captured materiel to him, crimes committed in Freetown could not have been held to have been committed with materiel he supplied is incorrect.[1167] Even if the Trial Chamber had not considered the captured materiel as attributable to Taylor, materiel which was supplied by Taylor still formed "an amalgamate of fungible resources" used in the commission of crimes.[1168] As found by the Trial Chamber, the other two categories of materiel used in the retreat from Freetown were the Burkina Faso shipment facilitated by Taylor and the materiel brought by Fornie provided by Taylor.[1169] Contrary to Taylor's assertion, such a finding would be consistent with the Trial Chamber's assessment of materiel used in the commission of crimes in 1997 and 1998.[1170] For instance, the Trial Chamber found that supplies provided by Taylor were one of the sources of materiel used in Operation Fitti-Fatta in mid-1998, holding that evidence of materiel coming from other sources did not preclude some of the materiel being sourced from Taylor.[1171]

[1161] *Kalimanzira* AJ, para. 79.
[1162] *Nahimana* AJ, para. 519.
[1163] *Nahimana* AJ, paras. 517-518.
[1164] *Contra* Taylor Appeal, para. 471.
[1165] *Ndindabahizi* AJ, para. 117.
[1166] *Ndindabahizi* AJ, para. 116.
[1167] *Contra* Taylor Appeal, para. 472.
[1168] Judgement, paras. 5716, 5721, 5835(xxxv).
[1169] Judgement, paras. 5708, 5713-14.
[1170] *Contra* Taylor Appeal, para. 472.
[1171] Judgement, paras. 5628-29, 5632.

425. Contrary to Taylor's contention, his conviction for aiding and abetting crimes by facilitating the Burkina Faso shipment was not based only on assisting crimes committed in Freetown and the Western Area.[1172] The Trial Chamber entered findings regarding the commission of crimes in Kono in the aftermath of the Burkina Faso shipment.[1173] Yengema training base was established at the end of 1998 and recruits were "trained with live ammunition" and "were also assigned to commanders as bodyguards."[1174] The recruits included conscripted children under the age of 15,[1175] and civilians captured from the area and from the front lines around Koidu Town,[1176] with those who attempted to escape being killed.[1177] Based on these facts, the Trial Chamber properly found that from December 1998 onwards, children were forcibly recruited for the purpose of directly participating in hostilities,[1178] and civilians were enslaved at Yengema by members of the RUF/AFRC.[1179] In light of the need which the RUF/AFRC had for materiel support prior to the Burkina Faso shipment,[1180] it is readily apparent that materiel from the Burkina Faso shipment was used in Yengema for the purposes of operating this training base.[1181]

426. Further, Taylor's contention that there was no connection between the materiel he supplied and the commission of crimes in Freetown and the Western Area ignores the evidence on record.[1182] The Chamber found that, with the initial invaders of the capital requiring reinforcement,[1183] the materiel used in the commission of crimes during the retreat from Freetown and in the Western Area came from three sources, two of which came directly

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[1172] *Contra* Taylor Appeal, para. 472.
[1173] *Contra* Taylor Appeal, para. 474.
[1174] Judgement, paras. 1423-24.
[1175] Judgement, para. 1424.
[1176] TF1-371, T. 27 February 2008 p. 4917 (CS).
[1177] TF1-371, T. 28 February 2008 pp. 4926-27, 4929, 4996 (CS).
[1178] Judgement, para. 1424.
[1179] Judgement, para. 1694. See also Judgement, paras. 1424, 1537-39, 1541. There is also credible evidence in the trial record that numerous other crimes were committed in Kono and Makeni after the arrival of the Burkina Faso shipment. For example: the corpses of civilians were seen in Koidu Town following the attack by RUF/AFRC fighters in late 1998; women were raped by RUF/AFRC fighters following the capture of Koidu Town during the late 1998 offensive (TF1-567, T. 2 July 2008 p. 12913. TF1-567 was found "generally credible" at Judgement, para. 317); forced mining was taking place in Kono in late 1998 (Judgement, para. 1720). Note that fn. 3938 of the TJ lists Kokuima as one of the mining sites, which is located in Koidu Town. Civilians were also forced to carry arms and ammunition from Buedu to Superman Ground in Kono in readiness for the attack on Kono as part of the late 1998 offensive (TF1-567, T. 2 July 2008 p. 12913). Mining equipment was looted following the recapture of Koidu Town at the end of 1998 (TF1-367, T. 21 August 2008 p. 14270. TF1-367 was found "generally credible" at Judgement, para. 2446).
[1180] Mongor, T. 11 March 2008 pp. 5783-86; Saidu, T. 5 June 2008 pp. 11064, 11066-68; Mallah, T. 13 November 2008 p. 20217; TF1-371, T. 28 January 2008 p. 2402 (CS).
[1181] *Contra* Taylor Appeal, para. 474.
[1182] *Contra* Taylor Appeal, para. 474.
[1183] Judgement, paras. 3409, 3411, 3417.

from Taylor and the other causally dependent on Taylor's supplies.[1184] The Trial Chamber properly concluded that Taylor's assistance was used in operations in which crimes were committed,[1185] including killings, abductions, burnings, physical violence, and sexual crimes.[1186] The materiel which Taylor supplied or facilitated and that which was causally linked to the capture of further supplies was properly considered by the Trial Chamber to have been "critical" in enabling the RUF and RUF/AFRC to conduct its military operations throughout the indictment period.[1187] Taylor's contentions fail to establish any error of law or fact which would serve to invalidate the judgement or occasion a miscarriage of justice.

(v) Conclusion

427. Taylor has failed to demonstrate the existence of an error in the findings of the Trial Chamber that would necessitate appellate intervention in the findings of the Trial Chamber, and consequently, this Ground should be dismissed.

GROUND 23: The Trial Chamber properly found that Taylor facilitated the transportation of arms and ammunition to the RUF, RUF/AFRC that played a vital role in their military operations

(i) Overview

428. The Trial Chamber properly found that the shipments of materiel provided by Taylor to the RUF, RUF/AFRC throughout the Indictment period substantially contributed to the commission of crimes by those rebel forces. Taylor incorrectly contends that the shipments could not be attributed to him, and that the materiel provided was used in the commission of crimes. Taylor's arguments lack merit given the Trial Chamber's numerous findings regarding the reliance of the RUF, RUF/AFRC on the shipments that he provided, the lack of alternative sources of materiel available to the rebel forces, and the crimes that were committed in Sierra Leone throughout the Indictment period. None of the alleged errors relied on by Taylor under this Ground establish that the Trial Chamber committed any legal or factual error warranting the intervention of the Appeals Chamber. This Ground of Appeal should be dismissed.

(ii) The Trial Chamber properly found that the materiel provided or facilitated by Taylor substantially contributed to crimes during and immediately after the Junta period

[1184] Judgement, paras. 5713-14.
[1185] *Contra* Taylor Appeal, para. 475.
[1186] Judgement, para. 541.
[1187] Judgement, para. 5842.

(a) Overview

429. The Trial Chamber properly found that materiel which Taylor provided and facilitated *throughout the course* of the Indictment period was "indispensable for the RUF/AFRC military offensives" and had a "substantial effect on the commission of crimes".[1188] The findings which Taylor seeks to isolate regarding individual shipments and their substantial contribution to the commission of crimes must therefore be viewed in the context of the totality of the Trial Chamber's findings.

430. Contrary to Taylor's claim, the Trial Chamber properly assessed the evidence which tied Taylor to the supply of the Magburaka shipment.[1189] Taylor's suggestion that the Chamber's finding of his involvement in this shipment was solely based on the testimony of TF1-371 that Ibrahim Bah had told him as much,[1190] is incorrect. The Trial Chamber relied on the evidence of a number of witnesses, including a Defence witness, in finding that Ibrahim Bah "was the key person who facilitated the purchase and transportation" of the Magburaka shipment,[1191] while "*[a] number* of Prosecution witnesses implicated [Taylor] in the supply of the Magburaka arms shipment".[1192] The Trial Chamber relied on a totality of the evidence connecting Taylor to the shipment. For instance, Isaac Mongor testified to the presence of Ibrahim Bah at two meetings with senior RUF officials during which Bah spoke of Taylor's urging for the RUF and AFRC to work together and during which it was clear that military assistance would be provided by Bah, whom the Trial Chamber found was a "trusted emissary" who represented Taylor.[1193] Further, Samuel Kargbo testified to being present at a meeting of the Supreme Council in which JPK said he would send a delegation which included Ibrahim Bah to purchase arms and ammunition.[1194]

(b) The Trial Chamber properly found that Taylor knowingly participated in the Magburaka shipment

1. The testimonies of TF1-371, Isaac Mongor and Samuel Kargbo are corroborative

431. Taylor incorrectly claims that the testimony of Isaac Mongor and Samuel Kargbo do not provide corroboration of TF1-371's evidence, because their testimonies conflict in all

[1188] Judgement, para. 6914.
[1189] *Contra* Taylor Appeal, para. 483.
[1190] Taylor Appeal, para. 482.
[1191] *Contra* Taylor Appeal, para. 482. See Judgement, para. 5389 referring to TF1-371, T. 28 January 2008 pp. 2308-09, 2313-14, 2374-75 (CS); Mongor, T. 11 March 2008 p. 5714; Kargbo, T. 21 May 2008 pp. 10455-59; T. 2 June 2008 p. 10710; Sesay, T. 7 July 2010 p. 43866.
[1192] Judgement, para. 5390.
[1193] Judgement, paras. 2752, 5390.
[1194] Judgement, para. 5390.

significant details.[1195] As the Chamber found, the evidence of Kargbo and Mongor both make reference to Taylor's role in the facilitation of the shipment through Bah.[1196] These testimonies do not have to be identical in their account of the sequence of connected facts as witnesses experience the same events from differing view points; they corroborate one another if they support each other in relation to the same fact or a sequence of linked facts.[1197]

432. As noted by the Trial Chamber, Mongor testified to Bah's presence at a meeting at which Bah stated that Taylor wanted the AFRC and RUF to work together.[1198] Mongor was also told by JPK that Taylor was going to "send something" for the Junta government.[1199] Similarly, Kargbo testified to hearing JPK tell Taylor of a delegation including Ibrahim Bah that JPK was sending to Taylor in order to procure arms and ammunition.[1200]

2. The Trial Chamber properly assessed the evidence of TF1-371

433. [See this paragraph in full in Confidential Annex A]

3. The Trial Chamber properly assessed the source of the hearsay evidence

434. Taylor's claim that the Trial Chamber failed to properly assess the evidence of Ibrahim Bah given the potential that he was likely to boost his own credibility is misplaced.[1201] As previously discussed, the Trial Chamber was only required to assess circumstantial guarantees of trustworthiness in relation to issues, such as motive, affecting the source of the hearsay, and the Chamber implicitly took this approach in this case.[1202] Moreover, already noted above, Taylor's assertion that TF1-371 was the sole source of evidence that Ibrahim Bah was acting on behalf of Taylor is inaccurate. Within the context of the totality of the evidence, the presence of circumstantial guarantees supports the conclusions drawn by the Trial Chamber. For example, Taylor's relationship with the RUF/AFRC was not based solely on isolated instances of cooperation conducted through Bah, rather the relationship was one of long-standing collaboration involving numerous acts over a span of many years.[1203]

435. Moreover, the right to cross examination applies to the witness testifying before a Trial Chamber and not to the initial declarant whose statement has been transmitted by the

[1195] *Contra* Taylor Appeal, para. 488.
[1196] *Contra* Taylor Appeal, para. 488.
[1197] See the response to Ground 1. See also *Karera* AJ, para. 173; *Nahimana* AJ, para. 428.
[1198] Judgement, para. 5390 referring to Mongor, T. 11 March 2008 pp. 5712-14.
[1199] Judgement, para. 5390 referring to Mongor, T. 11 March 2008 pp. 5724.
[1200] Judgement, para. 5390 referring to Kargbo, T. 21 May 2008 p. 10455.
[1201] Taylor Appeal, para. 491.
[1202] See the response to Ground 2.
[1203] See, e.g., Judgement, paras. 2480-81, 2526, 6191, 6451(i), 6231, 6512, 6520.

witness.[1204] Instead, the absence of cross-examination of the declarant can be used to challenge the weight to be given to the hearsay testimony and identify issues which might assist the Trial Chamber to evaluate the evidence.[1205] Taylor did not seek to challenge the potential motive of the source of the hearsay while any of the relevant witnesses were giving their evidence.

436. Based on a thorough assessment of the witnesses' testimony in question, the Chamber decided upon the weight to give to the evidence. Taylor has not demonstrated any error in that assessment of the evidence which would occasion a miscarriage of justice and therefore his submissions in this regard should be dismissed.

4. The Trial Chamber properly assessed the hearsay evidence

437. Taylor's claim that Ibrahim Bah could have brokered the Magburaka delivery without his knowledge is inaccurate.[1206] The Trial Chamber held that the evidence relating to Ibrahim Bah showed an individual who was "a trusted emissary who represented the RUF at times and [Taylor] at times, and served as a liaison between them at times."[1207] In this role, Bah "helped arrange arms and diamonds transactions".[1208] The reasonableness of the Trial Chamber's conclusion can be shown by its careful assessment of the consistent evidence which linked Bah to Taylor and demonstrated Taylor's role in the facilitation of the acquisition of arms and ammunition.[1209]

438. Moreover, the Trial Chamber was conscious that some of the witnesses' evidence was hearsay.[1210] Taylor fails to establish that the Trial Chamber accorded undue weight to the probative value of the hearsay evidence, nor does he demonstrate that such hearsay evidence was unreliable for the purpose of proving the truth of its contents.[1211] Taylor fails to establish any error in the Trial Chamber's finding that Taylor facilitated the Magburaka shipment that would occasion a miscarriage of justice.

(c) The Trial Chamber properly found that materiel from the Magburaka shipment was used to commit crimes

1. The Trial Chamber properly assessed the size of the Magburaka shipment

[1204] *Blaškić* Decision on Admission of Hearsay, para. 12.
[1205] *Blaškić* Decision on Admission of Hearsay, para. 12.
[1206] Taylor Appeal, paras. 492-93.
[1207] Judgement, paras. 2752-53.
[1208] Judgement, para. 2752.
[1209] *Contra* Taylor Appeal, para. 493.
[1210] Judgement, para. 4948.
[1211] *Contra* Taylor Appeal, paras. 492-94.

439. Contrary to Taylor's assertion, the Trial Chamber did not make inconsistent findings on the size of the Magburaka shipment.[1212] The Trial Chamber relied on the totality of the evidence for its finding on the size of the shipment. TF1-371 testified that the shipment was "huge".[1213] Kargbo testified that the shipment comprised of a "large quantity" of materiel,[1214] while Issa Sesay spoke of "two truckloads" of materiel in testimony which the Trial Chamber considered was downplaying the quantity of the shipment.[1215] Further, Mongor gave evidence that the shipment included "two anti-aircraft guns" and GMG rounds.[1216] The Chamber also referred to evidence regarding the large group of fighters and large number of vehicles that were present to take delivery of the shipment.[1217] The Trial Chamber accepted that a variation between witnesses in the description of the quantity and context of the shipment was inevitable given that it was delivered "during the night with little lighting and hurriedly loaded on to trucks" and that each faction was focused on receiving their share of the materiel.[1218] The thread running through the evidence heard by the Trial Chamber regarding the quantity of the materiel shows that, overall, though the exact details of what the shipment contained may have varied, the evidence in relation to the size of the shipment was consistent. Taylor fails to demonstrate that the Trial Chamber committed any error in its assessment of witness evidence which would invalidate the decision or that the finding regarding the size of the Magburaka shipment was one which no reasonable trier of fact could have arrived at.[1219]

440. Taylor's claim that only TF1-371 testified to the inclusion of AK-47 ammunition in the shipment is mistaken.[1220] Evidence that the shipment contained such AK-47 supplies was also testified to by Kargbo,[1221] who was deemed a generally credible eyewitness,[1222] and was further corroborated by the evidence of Alimamy Bobson Sesay,[1223] and Witness TF1-338.[1224] Taylor's assertion that it was an error to prefer the evidence of TF1-371 regarding the presence of AK-47 ammunition, which was corroborated by three other witnesses, instead of

[1212] Taylor Appeal, para. 495
[1213] TF1-371, T. 28 January 2008 pp. 2316-17(CS).
[1214] Kargbo, T. 21 May 2008 pp. 10479-82; T. 2 June 2008 p. 10718.
[1215] Judgement, para. 5398.
[1216] Judgement, para. 5397, referring to Mongor, T. 11 March 2008 pp. 5724, 5726-28; T. 4 April 2008 p. 6644.
[1217] Judgement, para. 5398.
[1218] Judgement, para. 5399.
[1219] *Contra* Taylor Appeal, para. 496.
[1220] Taylor Appeal, para. 496.
[1221] Judgement, para. 5362, referring to Kargbo, T. 21 May 2008 pp. 10479-82, T. 2 June 2008 p. 10718.
[1222] Judgement, para. 295.
[1223] Judgement, para. 5365, referring to Bobson Sesay, T. 28 April 2008 pp. 8701-03.
[1224] Judgement, para. 5367, referring to TF1-338, T. 5 September 2008 pp. 15557-58.

Mongor's evidence to the contrary,[1225] which was corroborated only by Issa Sesay whose evidence was to be treated with caution,[1226] is without merit. The Trial Chamber properly assessed the hearsay evidence and used its discretion as to the weight to attach to it.[1227] Taylor fails to demonstrate any error in the manner in which the Trial Chamber dealt with evidence which would serve to invalidate the findings. He also fails to prove that the Trial Chamber erred in its finding regarding the size of the Magburaka shipment or in its finding that the shipment contained AK-47 ammunition. Consequently, the assertion regarding this finding should also be dismissed.[1228]

2. The Trial Chamber properly held that children under the age of 15 were used to participate directly in hostilities at Tongo Fields using materiel provided by Taylor

441. Contrary to Taylor's claim, the Trial Chamber properly found that the use of children under the age of 15 to guard mining sites constituted a violation of international law.[1229] The jurisprudence of this Court is clear: 'using' children to participate actively in hostilities encompasses putting their lives directly at risk in combat, which includes participation in activities linked to combat.[1230] It is also clear from the evidence that Tongo Fields was a military target,[1231] control of which changed hands between opposing sides following armed attacks.[1232] There is nothing in the customary international law definition of participating in hostilities that would exclude the guarding of a military target.[1233]

3. The Trial Chamber properly held that crimes committed during and after the Intervention, including in Freetown, in 'Operation Pay Yourself' and Kono were committed with materiel from the Magburaka shipment

442. Contrary to Taylor's contention, the Trial Chamber properly found that materiel from the Magburaka shipment facilitated by Taylor were used in the commission of crimes in operations in early 1998.[1234] Taylor incorrectly asserts that the Trial Chamber shifted the

[1225] Taylor Appeal, para. 496.
[1226] Judgement, para. 372. The Trial Chamber also held was deliberately downplaying the details of the shipment, see Judgement, para. 5398.
[1227] See the response to Ground 1, paras. 15-16, 18-20.
[1228] Taylor Appeal, para. 497.
[1229] *Contra* Taylor Appeal, para. 498.
[1230] Judgement, para. 444; *AFRC* TJ, paras. 736-37.
[1231] *Contra* Taylor Appeal, para. 498 in which Taylor describes Tongo Fields as "economic facility".
[1232] Judgement, para. 5843. See also Kanneh, T. 8 May 2008 pp. 9367-68, 9378; Ngebeh, T. 23 March 2010 pp. 37864, 37886-87.
[1233] *Contra* Taylor Appeal, para. 498. See, e.g., Commentary, Additional Protocol I, Art. 51(3), para. 1943, "It seems that the word "hostilities" covers not only the time that the civilian actually makes use of a weapon, but also, for example, the time that he is carrying it, as well as situations in which he undertakes hostile acts without using a weapon."
[1234] *Contra* Taylor Appeal, para. 499

burden of proof and based its finding on a 'likelihood' that the rebels had access to the Magburaka shipment.[1235] Taylor takes this finding from the Trial Judgement out of context,[1236] as the Trial Chamber made a series of findings which provide the basis which led to the holding that the Magburaka shipment was used in the commission of crimes. The Trial Chamber properly found that at the time of the Magburaka shipment the Junta "had depleted its existing sources of supply";[1237] the shipment itself was "very large";[1238] the rebel forces retreated from Freetown after the Intervention with materiel from the shipment;[1239] that the RUF did not capture much arms and ammunition during this period;[1240] that the rebel forces were involved in offensives in Kono and conducted 'Operation Pay Yourself' after the Intervention;[1241] and, that the rebel forces were almost entirely out of materiel again in June 1998 and requesting more assistance from Taylor.[1242]

443. Further, Taylor's contention that the Trial Chamber reversed the burden of proof by circumstantial evidence is incorrect.[1243] There was no shift in the burden of proof,[1244] as the evidence that materiel from the Magburaka shipment was used in crimes is not "purely circumstantial" as Taylor suggests.[1245] The Defence itself accepted "that the Magburaka shipment was used in fighting in Freetown during the ECOMOG Intervention."[1246]

444. Taylor also previously relied on Exhibit P-066 indicating that at the time of the writing of that letter, dated 24 June 1998, from Sam Bockarie to Taylor, that the materiel from the Magburaka shipment had been exhausted.[1247] This exhibit is important for two reasons. First, it is clear from the letter that the rebel forces still possessed ammunition, albeit a small amount, in June 1998. Second, the letter states "[The rebel forces] appreciate the assistance we have been receiving and we want you to believe that we have no where else to cry for help besides [Taylor]."[1248] It is clear, therefore, that the rebel forces had maintained supplies of materiel from the Magburaka shipment for the time period encapsulating 'Operation Pay

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[1235] Taylor Appeal, para. 499.
[1236] See the response to Ground 4.
[1237] Judgement, para. 5829, referring to TF1-371, T. 28 January 2008 pp. 2310-11 (CS).
[1238] Judgement, para. 5409.
[1239] Judgement, para. 5550.
[1240] Judgement, para. 5826.
[1241] Judgement, para. 5551.
[1242] Judgement, para. 5548.
[1243] *Contra* Taylor Appeal, para. 500.
[1244] See the response to Ground 4.
[1245] Taylor Appeal, para. 500.
[1246] Judgement, para. 5547, referring to Taylor's Final Trial Brief, para. 1055.
[1247] Judgement, para. 5548, referring to TF1-371, T. 1 February 2008 pp. 2839-41 (CS).
[1248] Exh. P-066.

Yourself' and the offensives in Kono District in February/March 1998.[1249] Further, the rebel forces by their own admission did not have an alternative source of armaments other than Taylor, thereby contradicting Taylor's argument that the Trial Chamber's finding that the Magburaka shipment was used in the commission of crimes was based solely on the absence of evidence to the contrary.[1250]

445. In light of the totality of the evidence, Taylor fails to demonstrate that the Trial Chamber's finding that the Magburaka shipment was used in 'Operation Pay Yourself' and in crimes during offensives in Kono in early 1998 was one that no Trial Chamber acting reasonably would have come to.[1251]

446. Contrary to Taylor's claim, the Trial Chamber did not shift the burden onto the Defence to prove the relative significance of other sources of materiel available to the rebels.[1252] Taylor's references to existing supplies of the Kabbah Government, captured supplies from ECOMOG and UN peacekeepers, and supplies from trade with ULIMO, AFL and ECOMOG commanders are inapposite.[1253] The Trial Chamber made extensive findings relating to these reputed sources of supplies to the rebels, meaning that no prejudice was caused to Taylor.[1254] In relation to existing military stores in Freetown, the Junta had depleted this source in or around August 1997, more than 6 months before the crimes at issue.[1255] Materiel purchased or traded from ULIMO and Guinea was "small in quantity and insufficient to sustain the operations of the rebel groups".[1256] Defence witness Issa Sesay testified that "trade with AFL commanders resulted only in small amounts of ammunition."[1257] Further, "there is little evidence that the RUF were able to capture much by the way of arms and ammunition [after the Intervention through 1998]".[1258] These findings clearly give the lie to Taylor's assertion that the Trial Chamber made no findings showing that these sources were insubstantial and that the Trial Chamber "impermissibly resolved ambiguity and doubt in favour of the Prosecution."[1259] Taylor fails to demonstrate any error in the Trial Chamber's

[1249] *Contra* Taylor Appeal, para. 499.
[1250] *Contra* Taylor Appeal, para. 500.
[1251] *Contra* Taylor Appeal, paras. 502-03.
[1252] Taylor Appeal, para. 501.
[1253] Taylor Appeal, para. 501.
[1254] *Contra* Taylor Appeal, para. 501.
[1255] Judgement, paras. 5811-12.
[1256] Judgement, para. 5819.
[1257] Judgement, para. 5822, referring to Sesay, T. 8 July 2010 pp. 44107-14, 44116-17.
[1258] Judgement, para. 5826.
[1259] Taylor Appeal, para. 501.

finding that crimes were committed using materiel from the Magburaka shipment, which would serve to occasion a miscarriage or invalidate the decision.

(d) The Trial Chamber properly found that Taylor provided supplies brought by Tamba in 1997

447. Contrary to Taylor's claim regarding the reliability and credibility of four witnesses relied upon in the Trial Judgement, the Trial Chamber properly assessed and relied on the evidence of these witnesses who corroborate his involvement in the provision of supplies brought by Tamba in 1997.[1260]

448. Witness TF1-375 testified that the truck in which Tamba carried the materiel broke down and that the witness himself was in the convoy that collected and brought the supplies with Tamba to Kenema.[1261] Witness TF1-375 also testified that he later got to know Tamba well and that Tamba had told him of his work as a liaison between Bockarie and Taylor, bringing ammunition to Sierra Leone in return for diamonds.[1262] The Trial Chamber found that Witness TF1-375's evidence required corroboration,[1263] and from the generally credible Jabaty Jaward testifying to "the unique detail" that Tamba and the supplies had gotten stuck, reasonably inferred that the evidence of both witnesses evidence related to the same event.[1264] The Trial Chamber also referred to the evidence of Jabaty Jaward,[1265] Isaac Mongor,[1266] TF1-371,[1267] Karmoh Kanneh,[1268] Albert Saidu,[1269] Augustine Mallah,[1270] and Mustapha M. Mansaray[1271] variously testifying to Tamba's delivery of supplies on behalf of Taylor.

449. The Trial Chamber referred to documentary evidence and the "overwhelming" witness evidence showing that Tamba "worked for the SSS and was a subordinate of [Taylor]",[1272] and that he worked "as a courier of arms, diamonds and messages back and forth between [Taylor] and the RUF/AFRC throughout the Indictment period."[1273] In light of these findings and witness testimony such as that of Karmoh Kanneh who said that Tamba was "[Taylor's]

[1260] *Contra* Taylor Appeal, paras. 504-08.
[1261] Judgement, para. 4810, referring to TF1-375, T. 23 June 2008 pp. 12487-92, 12495-96.
[1262] Judgement, para. 4811, referring to TF1-375, T. 23 June 2008 pp. 12490-91.
[1263] Judgement, para. 4832.
[1264] Judgement, para. 4833, referring to Jaward, T. 16 July 2008 pp. 13827-39; T. 9 July 2008 pp. 13354-56.
[1265] Judgement, para. 4806, referring to Jaward, T. 9 July 2008 pp. 13355-58; T. 16 July 2008 pp. 13830-31.
[1266] Judgement, para. 4813, referring to Mongor, T. 7 April 2008 pp. 6727-28.
[1267] Judgement, para. 4817, referring to TF1-371, T. 28 January 2008, pp. 2372-73 (CS).
[1268] Judgement, para. 4819-20, referring to Kanneh, T. 8 May 2008 pp. 9356-59, 9380-85.
[1269] Judgement, para. 4822, referring to Saidu, T. 4 June 2008 pp. 11027-28.
[1270] Judgement, para. 4823, referring to Mallah, T. 12 November 2008 pp. 20148-49.
[1271] Judgement, para. 4826, referring to Mustapha M. Mansaray (TF1-337), T. 5 March 2008 pp. 5296-98.
[1272] Judgement, para. 2713.
[1273] Judgement, paras. 2717-18.

eye in the movement",[1274] Taylor fails to demonstrate that no reasonable trier of fact could have found that he supplied the materiel to the rebel forces which Tamba brought in 1997.[1275]

(e) The Trial Chamber properly found that the supplies brought by Tamba were used in the commission of crimes

450. Contrary to Taylor's assertion,[1276] the Trial Chamber properly found that the materiel brought by Tamba in 1997 was used in the commission of crimes in Kenema. Taylor incorrectly contends that the Trial Chamber shifted the burden of proof,[1277] suggesting that the Chamber inferred that the materiel was used by the rebels in military operations in the absence of any direct evidence.[1278] The trial record shows that the supplies brought by Tamba included ammunition for AK-47s, GMGs and RPGs,[1279] and that the materiel supplied was brought to Kenema.[1280] In light of the findings that the Junta had "depleted its existing stores of supplies in late 1997",[1281] and that other supplies at this time were small in quantity and insufficient to sustain operations,[1282] Taylor failed to demonstrate any error in the Trial Chamber's finding.[1283]

(iii) The Trial Chamber properly found that the materiel provided or facilitated by Taylor substantially contributed to the crimes committed in 1998 and early 1999

(a) Kono

1. The Trial Chamber properly found that Taylor facilitated the supply of materiel for the Kono operation by supplying Bockarie or by facilitating intermediaries

451. Taylor incorrectly asserts that "almost all of the evidence" regarding his involvement with Bockarie obtaining supplies in Liberia is based on the hearsay source of Bockarie himself.[1284] It requires noting, however, that there is no error of law in relying decisively on hearsay evidence.[1285] In relying on uncorroborated hearsay evidence, a Trial Chamber must take into consideration the indicia which it set out at paragraphs 166, and 168 to 169 of its Judgement. Having considered all of these factors, the Chamber found this evidence reliable. In this respect, the Prosecution recalls that a trier of fact does not have to articulate every step

[1274] Judgement, para. 4821, referring to Kanneh, T. 13 May 2008 pp. 9671-73.
[1275] *Contra* Taylor Appeal, para. 508.
[1276] Taylor Appeal, para. 511.
[1277] See the response to Ground 4.
[1278] *Contra* Taylor Appeal, para. 509.
[1279] TF1-375, T. 23 June 2008 pp. 12487-92, 12495-96; Mongor, T. 7 April 2008 pp. 6727-28.
[1280] TF1-375, T. 23 June 2008 pp. 12487-92, 12495-96; Jaward, T. 9 July 2008 pp. 13356-57.
[1281] Judgement, para. 5557.
[1282] See para. 446 above.
[1283] Taylor Appeal, paras. 509-11.
[1284] *Contra* Taylor Appeal, para. 519.
[1285] See the response to Ground 1.

of its reasoning for each particular finding it makes. Nor, does it have to set out in detail why it accepted a particular testimony.[1286]

452. Taylor incorrectly considers as "the danger of hearsay testimony" the Trial Chamber noting that a witness was "simply reporting what he was told by Bockarie" regarding an implausibility in his testimony of a particular meeting with Taylor.[1287] The Trial Chamber recognised that a witness was not required to explain in precise detail what had transpired in a meeting involving Bockarie and Taylor, and failure to do so did not undermine the general credibility of his testimony that Bockarie had travelled to Monrovia and had had returned with a supply of materiel.[1288]

453. Contrary to Taylor's claim, there is no foundation to support that Bockarie was lying and exaggerating Taylor's support of him in order to enhance his own image and bolster his position within the RUF. If embellishing his own role and authority was Bockarie's goal, then sharing credit with Taylor for planning the biggest military operation of the civil war would be unlikely, and there is no evidence that Bockarie would have considered the potential for criminal prosecution and was therefore trying to shift blame for the commission of crimes to Taylor. Bockarie was known as a ruthless commander, feared by his subordinates and known to take measures against those perceived to be disloyal.[1289] The authority wielded by Bockarie over the RUF/AFRC forces is clear, with even the AFRC group which has previously broken away from the rebel alliance in mid-1998 accepting and following his command for the Freetown operation.[1290] Further, the weight of the findings regarding the relationship between Taylor and Bockarie; coupled with the findings regarding Bockarie's direct and indirect provision of what was the RUF's biggest resource, diamonds, to Taylor in 1998 and 1999,[1291]

[1286] *RUF* AJ, paras. 761, 1058; *AFRC* AJ, para. 268; *Nchamihigo* AJ, para. 165; *Musema* AJ, paras. 18, 20.
[1287] Taylor Appeal, para. 521.
[1288] Judgement, para. 5016.
[1289] *See, e.g.,* DCT-146, T. 12 April 2010 p. 38660 (Sam Bockarie was a "bad leader" since 1997 and a "wicked commander"); DCT-172, T. 13 August 2010 p. 46218 (Bockarie was proud of being feared – it made him feel powerful – and he wanted people to know how violent he could be); DCT-306, T. 13 April 2010 pp. 38885-38888 (Sam Bockarie was a "devil"); Exh. P-431 (Bockarie threatened to wage a campaign of genocide and said he would order his troops "to kill every living thing including chickens" if Sankoh was not released); Exh. P-430B (in a November 1998 interview with *For di People* newspaper, Bockarie said he was a ruthless commander and that when he took Freetown, he'd clear every living thing and building; "I'll kill and kill, and the more they tell me to stop, the more I'll kill."). See also Judgement, para. 40 regarding Bockarie's arrest and detention of the External Delegation sent to Abidjan.
[1290] *See, e.g.,* Judgement, paras. 3464, 3479, 3486-86, 3611 (xii)-(xiii), 3617.
[1291] For instance, Taylor's own admission regarding meeting Bockarie in Liberia, as well as his declared affinity for Bockarie which could not be explained were the relationship one that Bockarie had lied about. See Judgement, para. 5514, referring to Taylor, T. 17 September 2009 pp. 29250, 29261; T. 26 October 2009 p. 30221 "look, I loved that boy and I am saying – you didn't ask me this question; I volunteered, I would never

serve to give the lie to Taylor's assertion.[1292] Moreover, Taylor's contention regarding Bockarie's propensity to embellish their relationship is fatally undermined by the Trial Chamber's finding that following his arrest, Foday Sankoh "instructed Bockarie to take orders from (Taylor)".[1293] This, in effect, represented the continuation of the link between Taylor and the RUF,[1294] with the relationship even closer under Bockarie's reign as rebel leader. The trial record is replete with circumstantial guarantees provided by the long-standing collaboration between Taylor and the RUF, from its very inception,[1295] through the leadership of Sankoh,[1296] Bockarie[1297] and Sesay.[1298]

454. Moreover, the Trial Chamber had witness evidence before it which did not constitute hearsay sourced from Bockarie, and properly referred to this evidence.[1299] Taylor's cherry-picking of the witnesses' testimony is misleading.[1300]

455. For instance, Dauda Aruna Fornie testified that he himself accompanied Bockarie on a number of trips to Monrovia in which arms and ammunition were collected with the assistance of Tamba and Yeaten, and brought back to Sierra Leone.[1301] Karmoh Kanneh testified to being present at Foya when a helicopter of materiel arrived from Monrovia with Yeaten on board.[1302] Samuel Kargbo testified to twice being part of a group that either accompanied or unloaded a convoy of arms and ammunition brought by Bockarie and Tamba to Buedu.[1303] Varmuyan Sherif testified to being instructed by Taylor to collect Bockarie from Sierra Leone and to Taylor providing Bockarie with a satellite phone.[1304] Yanks Smythe testified that arms and ammunition were kept in a warehouse next to White Flower, from which it was not possible to take any significant amount without Taylor's approval.[1305] A number of witnesses testified that the arms and ammunition delivered to Buedu came from

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have turned him over to Tejan Kabbah, you understand me?". See also Judgement, para. 5948 regarding provision of diamonds to Taylor by Bockarie.

[1292] *Contra* Taylor Appeal, para. 520.

[1293] Judgement, para. 6480.

[1294] Judgement, paras. 2321, 2330-32, 2337, 2378-81, 2390-91.

[1295] Judgement, paras. 2321, 2330-32, 2337-81, 2390-91. Taylor provided a training base as well as instructors, recruits and materiel support to the RUF in Liberia prior to the invasion of Sierrra Leone in 1991. Further, the majority of the invading force was made up of NPFL soldiers.

[1296] See Judgement, paras. 2480, 2481, 2526, 6191, 6451(i), 6231.

[1297] Judgement, paras. 3605, 3454, 3591, 3609, 3611(xvii), 3618.

[1298] Judgement, para. 6414, 6728.

[1299] Taylor Appeal, para. 522.

[1300] Taylor Appeal, para. 519-20.

[1301] Judgement, paras. 4969-77.

[1302] Judgement, paras. 4978-79.

[1303] Judgement, paras. 4995-97.

[1304] Judgement, para. 4999.

[1305] Smythe, T. 24 February 2010 pp. 35933-34.

that same warehouse at White Flower.[1306] TF1-539 testified that he accompanied Bockarie and Musa Cissé on the trip to Burkina Faso in which arms and ammunition were obtained.[1307] TF1-367 also testified to accompanying Bockarie to Monrovia and bringing back arms and ammunition to Buedu.[1308] There was a wealth of evidence probative of Taylor's involvement in supplying Bockarie,[1309] and consequently no question of Taylor's conviction being based solely on an uncross-examined statement.[1310]

456. Contrary to Taylor's claim, the evidence regarding his use of intermediaries to supply materiel to the rebels was not based solely on oral and documentary hearsay, and did not require corroboration by direct evidence.[1311] As Taylor himself points out, the Trial Chamber acknowledged the hearsay element of the evidence linking him to the provision of supplies.[1312] However, there is no requirement that hearsay evidence be corroborated by direct evidence.[1313] The Trial Chamber properly assessed the relevance, reliability and probative value of each witness's testimony and each piece of documentary evidence.[1314]

457. Moreover, the Trial Chamber referred to evidence which was not based on hearsay, such as Abu Keita, who testified that Marzah and Jungle were sent to Sierra Leone by Yeaten,[1315] whom the Trial Chamber found to be a representative of Taylor.[1316] TF1-579 testified to personally taking materiel to Bockarie in Buedu accompanied by Jungle and Sampson Weah, with Yeaten providing the ammunition from a warehouse beside Taylor's house on one occasion.[1317] Defence witness Yanks Smythe testified that in order to get arms and ammunition from this warehouse, a request would have to be made to Taylor.[1318] Contrary to Taylor's claim,[1319] the Trial Chamber was entitled to give particular weight to the evidence of TF1-516 for the reasons stated.[1320] Taylor fails to demonstrate that there was an error in the Trial Chamber's approach to the evidence which invalidated the decision.[1321]

[1306] TF1-585, T. 8 September 2008 p. 15658; T. 9 September 2008 p. 15794 (PS); Marzah, T. 12 March 2008 p. 5875; TF1-579, T. 5 November 2008 pp. 19837-39.
[1307] TF1-539, T. 10 June 2008 pp. 11478-83.
[1308] Judgement, para. 5001.
[1309] *Contra* Taylor Appeal, para. 522.
[1310] *Contra* Taylor Appeal, para. 519.
[1311] *Contra* Taylor Appeal, para. 524.
[1312] *Contra* Taylor Appeal, para. 524.
[1313] *Musema* TJ, para. 51.
[1314] *Contra* Taylor Appeal, para. 524.
[1315] Judgement, para. 4870, referring to Keita, T. 23 January 2008 p. 1991.
[1316] Judgement, para. 2626.
[1317] Judgement, paras. 4906, 4610.
[1318] Judgement, para. 4934.
[1319] *Contra* Taylor Appeal, para. 524.
[1320] Judgement, paras. 4871-77.
[1321] *Contra* Taylor Appeal, para. 524.

2. The Trial Chamber properly held that materiel supplied by Taylor substantially contributed to the commission of crimes in Kono in 1998

458. Taylor incorrectly contends that the Trial Chamber relied on two erroneous findings to conclude that Taylor contributed substantially to the crimes committed in Kono in 1998.[1322] First, Taylor confuses the findings of the Trial Chamber as regards the size of the supplies brought by Bockarie and those brought by intermediaries to Sierra Leone.[1323] The Trial Chamber acknowledged that the evidence was insufficient to establish that the materiel provided by Taylor in 1998 through intermediaries was large.[1324] As regards the materiel provided by Taylor which was brought to Sierra Leone through trips Bockarie made to Liberia in 1998, the Trial Chamber found that this was "sizeable".[1325] Given the findings that the rebel forces were often short of supplies,[1326] precipitating frequent requests to Taylor,[1327] it is clear from the context that the supplies which he provided through intermediaries *and* through Bockarie did amount to a substantial contribution to the commission of crimes.[1328] In fact, the Trial Chamber held that the provision and facilitation of materiel by Taylor was "critical in enabling the RUF and the AFRC to carry out offensives and maintain territories".[1329]

459. Second, Taylor's suggestion that the evidence that materiel he supplied was used in military operations depends on Alimamy Bobson Sesay's uncorroborated hearsay evidence is inaccurate.[1330] As already noted, in light of the evidence that the rebel forces were continuously seeking additional materiel; that sources of supplies other than those emanating from Taylor were limited; and that crimes were being committed in Kono at this time, the Trial Chamber properly entered findings regarding Taylor's participation and its effect on the commission of crimes on the ground.[1331] The trial record shows that in 1998, weapons emanating from Taylor were used in fighting in Freetown,[1332] in "Operation Pay Yourself", in offensives in Kono, as well as in the commission of crimes during those operations.[1333] Taylor

[1322] *Contra* Taylor Appeal, para. 525.
[1323] Taylor Appeal, para. 526.
[1324] Judgement, para. 4965.
[1325] Judgement, para. 5031.
[1326] Judgement, para. 6914.
[1327] Judgement, para. 6914.
[1328] *Contra* Taylor Appeal, para. 527.
[1329] Judgement, para. 5835(xl).
[1330] Taylor Appeal, para. 529.
[1331] *Contra* Taylor Appeal, paras. 528-29.
[1332] Judgement, paras. 5550, 5559, 5835(xxvii), 5840.
[1333] Judgement, paras. 5559, 5835(xxvii), 5840.

fails to demonstrate that no reasonable trier of fact could have found that the materiel he supplied substantially contributed to the commission of crimes in Kono in 1998.

(b) Fitti-Fatta

1. The Trial Chamber properly found that Taylor supplied materiel used in 'Operation Fitti-Fatta'

460. The Trial Chamber did not make any findings as regards the commission of crimes committed during the Fitti-Fatta operation.[1334] As a result, the Trial Chamber did not seek to hold that Taylor had aided and abetted the commission of crimes and there is consequently no conclusion to challenge.[1335] Contrary to Taylor's claim, in the event that the Trial Chamber did enter such a finding, then same would be a reasonable finding on the basis of the evidence before the Trial Chamber.[1336]

461. TF1-375 testified to himself being involved in the transportation of arms and ammunition from Taylor's farm in Gbarnga which were used in the operation. Having noted that this witness's evidence was to be treated with caution, the Trial Chamber found that TF1-375's evidence of Taylor being the source of the supplies was corroborated by Mongor, Pyne and Kamara, all found to be generally credible witnesses.[1337] Given the findings regarding the shortage of supplies of the rebel forces already noted, the Trial Chamber's finding that there were a number sources of supplies for 'Operation Fitti-Fatta' is not dispositive of the fact that Taylor's contribution was substantial.

(c) Operations in the North

1. The Trial Chamber properly found that materiel supplied by Taylor substantially contributed to the commission of crimes by the AFRC in the North

462. The Trial Chamber properly found that materiel supplied by Taylor was used in the commission of crimes by Brima's group during their military activities from mid-1998 to October 1998. Contrary to Taylor's claim, the Trial Chamber properly found that ammunition delivered in mid-1998[1338] would have lasted until October 1998.[1339] Taylor incorrectly asserts that the Trial Chamber shifted the burden of proof,[1340] taking out of context the Chamber's

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[1334] Judgement, paras. 5632, 5835 (xxx).
[1335] *Contra* Taylor Appeal, para. 534.
[1336] *Contra* Taylor Appeal, para. 534.
[1337] *Contra* Taylor Appeal, para. 531.
[1338] *Contra* Taylor Appeal, para. 538. Taylor suggests in reference to the evidence of Alimamy Bobson Sesay that the materiel in question was delivered in early 1998, however, Bobson Sesay testified that the ammunition was delivered *after* the attack on Koidu Geiya, which occurred in April/May 1998. See Judgement, para. 709.
[1339] *Contra* Taylor Appeal, paras. 537-38.
[1340] See the response to Ground 4.

finding that it was not "implausible",[1341] and that it could "reasonably infer" that materiel lasted this time.[1342] Instead, the Trial Chamber looked at the entirety of the evidence, for instance, that many of the operations conducted were against primarily undefended civilian targets,[1343] and that the rebels "never had any other supply" of materiel.[1344]

463. Contrary to Taylor's claim,[1345] the witness Bobson Sesay was in a position to know of the sources of the ammunition obtained and used by Brima's group in the commission of crimes in the North,[1346] with the Trial Chamber noting the witness's consistent and credible account of his participation in operations conducted by Brima's group from mid-1998 to October 1998.[1347] Further, the Trial Chamber referred to the evidence of witnesses who had been captured by Brima's group and held that it closely corroborated Bobson Sesay's account of the operations of Brima's troops throughout this period.[1348] Taylor does not cite any of the apparent "abundant contextual evidence (and findings by the Chamber)" as to the existence of sources of materiel alternative to Taylor's supplies.[1349] Taylor's assertions fail to demonstrate any error on the part of the Trial Chamber occasioning a miscarriage of justice.

464. Contrary to Taylor's assertion, the Trial Chamber properly found that materiel he supplied was used by Denis Mingo and SAJ Musa in attacks on Mongor Bendugu and Kabala, and that the materiel amounted to a substantial contribution to the crimes committed.[1350] The Trial Chamber accepted the evidence of TF1-375, who testified to transporting the ammunition from Taylor's farm in Gbarnga to Bockarie, and to subsequently transporting part of the materiel to Mingo on Bockarie's instruction.[1351] The Trial Chamber properly assessed the credibility concerns regarding the evidence of TF1-375, and found that his account was supported by the evidence of Perry Kamara and Alice Pyne.[1352] Contrary to Taylor's claim, the Trial Chamber properly accepted that TF1-375 could identify the difference between ammunition used in Liberia and Sierra Leone, in light of the length of time that the witness

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[1341] *Contra* Taylor Appeal, paras. 538-39.
[1342] *Contra* Taylor Appeal, para. 60.
[1343] Judgement, para. 5655, referring to Bobson Sesay, T. 21 April 2008 pp. 8092, 8112, 8114, 8120-21, 8135, and DCT-068, T. 11 March 2010 pp. 37125-26.
[1344] Judgement, para. 5653, referring to Bobson Sesay, T. 21 April 2008 pp. 8136-39.
[1345] Taylor Appeal, para. 539.
[1346] Taylor Appeal, para. 539.
[1347] Judgement, para. 5655.
[1348] Judgement, para. 5656, referring to TF1-143, T. 5 May 2008 pp. 9005-06; TF1-028, T. 7 May 2008 pp. 9142-46.
[1349] *Contra* Taylor Appeal, para. 539.
[1350] *Contra* Taylor Appeal, para. 540.
[1351] Judgement, paras. 5660, 5664, referring to TF1-375, T. 23 June 2008 pp. 12540-41, 12553-54.
[1352] Judgement, para. 5660.

spent in Liberia.[1353] Further, the Trial Chamber noted that the witness was not challenged on this fact during his testimony,[1354] despite Taylor's assertion that this was "such obvious nonsense".[1355]

465. TF1-375's evidence was corroborated by Perry Kamara,[1356] who testified to Mingo getting the ammunition from Bockarie in Buedu.[1357] Contrary to Taylor's assertion, the finding that materiel he supplied was used by Denis Mingo and SAJ Musa in attacks on Mongor Bendugu and Kabala does not therefore rely solely on TF1-375's evidence, and the Trial Chamber properly analysed the evidence to conclude that the materiel he provided amounted to a substantial contribution to the crimes committed.[1358] Taylor fails to establish any error in the Trial Chamber's finding that materiel he supplied substantially contributed to the commission of crimes in the North which would invalidate the decision or serve to occasion a miscarriage of justice.

(d) Freetown

1. The Trial Chamber properly found that Taylor facilitated the supply of materiel to the December 1998-January 1999 offensive by facilitating the Burkina Faso Shipment and ammunition transported by Fornie

466. Taylor's contention that the evidence relied on by the Trial Chamber to find that he facilitated the Burkina Faso shipment was based on a single hearsay source and that the Chamber's treatment of hearsay was inadequate is incorrect.[1359] Contrary to Taylor's approach, merely referring to the paragraphs of the Trial Judgement in which the Trial Chamber discussed the evidence of certain witnesses does not serve to prove that the Trial Chamber "relied heavily" on these witnesses.[1360]

467. Taylor fails to acknowledge that the Trial Chamber noted that some witness testimony contained hearsay evidence, which it "fully considered when assessing the weight of their evidence."[1361] The Trial Chamber then went on to hold that these witnesses' testimonies

[1353] *Contra* Taylor Appeal, para. 541.
[1354] Judgement, para. 5661.
[1355] Taylor Appeal, para. 541.
[1356] Taylor Appeal, paras. 542-43.
[1357] Judgement, para. 5660, referring to Kamara, T. 5 February 2008 p. 3169.
[1358] *Contra* Taylor Appeal, para. 543.
[1359] *Contra* Taylor Appeal, paras. 544-45.
[1360] *Contra* Taylor Appeal, para. 544.
[1361] Judgement, para. 5513.

"effectively complement each critical element of the allegation" and that the witnesses' evidence was in turn partly corroborated by documentary evidence.[1362]

468. Taylor incorrectly asserts that the evidence of eight witnesses regarding his involvement in the Burkina Faso shipment was based solely on one hearsay source, Sam Bockarie.[1363] Taylor neglects to acknowledge: that Isaac Mongor testified to a meeting of commanders at Waterworks prior to the shipment at which a letter was drafted to Taylor requesting ammunition and that Jungle brought the letter to Taylor;[1364] that TF1-567 was told by Issa Sesay that Bockarie had brought back a lot of arms and ammunition from Liberia and that Taylor had said that there would be no more supplies unless the RUF/AFRC recaptured mining areas;[1365] that Karmoh Kanneh testified that Tamba had spoken at a meeting convened after the shipment and told the meeting about the materiel that Bockarie had brought back;[1366] and that Dauda Aruna Fornie testified to accompanying Bockarie to Liberia, to remaining at Base 1 for a week while Bockarie and the rest of the group travelled to Burkina Faso, and to witnessing the two trucks of ammunition travelling from Monrovia accompanied by Marzah and Tamba.[1367] Taylor's assertion that the Trial Chamber's treatment of hearsay was "manifestly inadequate" is therefore a baseless argument.[1368] Further, the Trial Chamber was not required to assess the credibility of Sam Bockarie,[1369] as Bockarie was demonstrably not the single source of information for witnesses' testimony.[1370] Taylor's contention regarding Bockarie also disregards the reality that Bockarie's words regarding his relationship with Taylor are corroborated by the entirety of the evidence before the Trial Chamber.

469. Taylor's own testimony provided further corroboration. He admitted to meeting with Sam Bockarie before the trip and to sending Musa Cissé,[1371] who arranged Taylor's own arms deals,[1372] on the trip with Bockarie to Burkina Faso. Further, it would be utterly unreasonable to believe that a large arms shipment could land at Roberts International Airport and be trucked across Liberia and through the border without the knowledge of the President of Liberia.

[1362] Judgement, para. 5514.
[1363] Taylor Appeal, para. 545.
[1364] Judgement, para. 5432, referring to Mongor, T. 11 March 2008 pp. 5776-81.
[1365] Judgement, para. 5443, referring to TF1-567, T. 2 July 2008 p. 12913.
[1366] Judgement, para. 5453, referring to Kanneh, T. 9 May 2008 pp. 9431-33.
[1367] Judgement, paras. 5425, 5427, 5429, referring to Fornie, T. 3 December 2008 pp. 21550-21552, 21544-47; T. 2 December 2008, p. 21441.
[1368] Taylor Appeal, para. 545.
[1369] *Contra* Taylor Appeal, para. 547.
[1370] *Contra* Taylor Appeal, para. 544.
[1371] Judgement, para. 5514, referring to Taylor, T. 17 September 2009 pp. 29250, 29261.
[1372] Judgement, para. 4765, referring to Taylor, T. 2 December 2009 p. 32910.

470. Taylor's assertion that Marzah's evidence could not have been accepted as reliable by a reasonable trier of fact is incorrect in law and in fact.[1373] First, the law is clear that a Trial Chamber can find a witness credible in certain aspects of their testimony and not in others,[1374] and can accept part of a witness's testimony without accepting all of it.[1375] Second, the Trial Chamber found that Marzah's testimony corroborated the testimony of other witnesses in relation to central aspects of the shipment.[1376]

471. Likewise, Taylor's suggestion that the evidence of Varmuyan Sherif was "not probative" of Taylor's role ignores the facts.[1377] Sherif testified that in his then position of Assistant Director for Operations of the Special Security Services (SSS) at the Executive Mansion in Monrovia, he was instructed by Taylor to go to Roberts International Airport to receive an expected shipment of arms and ammunition.[1378] Sherif encountered Bockarie and Musa Cissé at the airport discussing the shipment and the witness himself escorted the cargo to White Flower, where Taylor was in charge of an arms and ammunition warehouse.[1379] To suggest that Taylor may have believed that the Burkina Faso shipment was for the exclusive use of Liberian forces is a completely incongruous suggestion in light of the facts.[1380] Moreover, in seven months of testimony, Taylor never made such a suggestion.

472. Contemporary documentation also serves to give the lie to Taylor's suggestion that there was no documentary evidence of his involvement.[1381] Exhibit P-067,[1382] which the Trial Chamber found to be "a faithful reproduction of what it purports to be",[1383] states that "[f]rom [the Intervention], [Taylor] gave huge quantity of logistics (ammunition) to the High Command".[1384] The document also refers to bringing parcels of diamonds to Taylor.[1385]

473. The evidence on record clearly shows that Taylor was instrumental in procuring the shipment.[1386] Taylor acknowledged that he met with Bockarie in Liberia.[1387] Taylor also

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[1373] Taylor Appeal, para. 549.
[1374] *RUF* AJ, paras. 219-224, 259.
[1375] *Setako* AJ, para. 48.
[1376] Judgement, para. 5515.
[1377] Taylor Appeal, paras. 497-98.
[1378] Judgement, para. 5447, referring to Sherif, T. 9 January 2008 p. 868.
[1379] Judgement, para. 5447, referring to Sherif, T. 9 January 2008, pp. 868-69.
[1380] Taylor Appeal, para. 551.
[1381] Taylor Appeal, para. 552.
[1382] A situation report of the Black Revolutionary Guards to Foday Sankoh detailing events occurring circa 1996 to January 1999.
[1383] Judgement, para. 392. See Judgement, paras. 382-391.
[1384] Exhibit P-067.
[1385] Exhibit P-067.
[1386] *Contra* Taylor Appeal, para. 553.
[1387] Judgement, para. 5514, referring to Taylor, T. 17 September 2009 pp. 29250, 29261.

admitted that he sent his Chief of Protocol Musa Cissé to accompany the delegation to Burkina Faso, with the Trial Chamber rejecting his explanation that this was done solely to provide an interpreter to the delegation.[1388] The shipment was brought to Roberts International Airport in Liberia.[1389] The shipment was subsequently brought to White Flower,[1390] and then materiel was transported to Buedu.[1391] Taylor subsequently received diamonds in exchange for his assistance in obtaining the shipment.[1392] Witness TF1-367 testified that at the time of the Burkina Faso shipment the rebels "did not have anywhere else to get ammunition from except Liberia from Charles Taylor."[1393] Taylor fails to establish that a miscarriage of justice was occasioned as a result of the Trial Chamber's findings, and his submissions in this regard should consequently be dismissed. Taylor fails to demonstrate any error in the Trial Chamber's finding that he facilitated the Burkina Faso shipment which would require appellate intervention.

2. The Trial Chamber properly held that Taylor facilitated the supply of ammunition transported by Fornie

474. Contrary to Taylor's contention, the Trial Chamber properly found that he supplied a delivery of arms through Dauda Aruna Fornie during the Freetown invasion in January 1999.[1394] Taylor's claim that Benjamin Yeaten could have been acting independently in arranging the shipment was properly dismissed by the Trial Chamber at trial, and should be similarly dismissed by the Appeals Chamber.[1395] The Trial Chamber's findings in relation to Yeaten are unequivocal. The Trial Chamber noted that both Prosecution and Defence witnesses testified that Yeaten was "extremely powerful but still subject to [Taylor's] authority."[1396] Only a single witness testified that Yeaten was acting independently of Taylor when arms trading, a witness that conceded that he had changed his testimony,[1397] whose evidence was "wholly inconsistent" with other Defence and Prosecution witnesses regarding Yeaten's acting independently,[1398] and "contradictory and implausible" at other times,[1399] who

[1388] Judgement, para. 5514.
[1389] Judgement, para. 5515, referring to the evidence of TF1-371 (CS), Fornie, Marzah, Sherif.
[1390] Judgement, para. 5515, referring to the evidence of TF1-371 (CS), Marzah and Sherif.
[1391] Judgement, para. 5515, referring to the evidence of TF1-371 (CS), and Marzah.
[1392] Judgement, para. 5515, referring to the evidence of TF1-371 (CS), Marzah, Mongor and Saidu.
[1393] Judgement, para. 5458, referring to TF1-367, T. 20 August 2008 pp. 14162, 14181-82.
[1394] *Contra* Taylor Appeal, para. 556.
[1395] *Contra* Taylor Appeal, para. 556.
[1396] Judgement, para. 2621.
[1397] Judgement, para. 374, referring to DCT-008, T. 6 September 2010 p. 48010.
[1398] Judgement, para. 375.
[1399] Judgement, para. 378.

had an "evasive" approach to testifying,[1400] and whose evidence required treating with caution.[1401] Even Taylor's testimony did not corroborate DCT-008.[1402] The Trial Chamber referred to "*substantial evidence* that Yeaten was representing, and was perceived to be representing, [Taylor]."[1403]

475. In his own evidence Taylor testified that if in a position to do so he would appoint Yeaten again today, a sentiment "inconsistent with a belief that Yeaten was trading arms and ammunition without his knowledge."[1404] Varmuyan Sherif also testified that Taylor was himself in charge of the arms and ammunition warehouse at White Flower and strictly controlled access to the materiel contained therein, as well as the quantities.[1405] The Trial Chamber further noted that evidence relied on by the Defence about an environment of informal trading did not rebut "the direct evidence that Yeaten was acting with [Taylor's] knowledge and direction."[1406]

476. The Trial Chamber properly held that the Defence theory that Yeaten was acting independently of Taylor was difficult to accept in light of Taylor's own evidence concerning Yeaten's inability to obtain supplies without Taylor's knowledge.[1407] The Chamber referred to the testimony of Taylor himself that formal requests had to be made for arms and ammunition and strict records were kept.[1408] The Chamber further found that Taylor's denial that he had access to the arms and ammunition warehouse at White Flower "lacks credibility" given his evidence that it was located next door to his own residence and that the arms and ammunition were there for his own security.[1409] The evidence on record serves to clearly demonstrate that Yeaten was not acting independently of Taylor in the provision of materiel to Fornie in January 1999, and Taylor's fails to demonstrate that there was any other reasonable inference available on the facts.[1410]

(e) The Trial Chamber properly held that the Burkina Faso shipment/materiel supplied to Fornie was used in the commission of crimes

1. Crimes committed during initial Operations in Kono and Makeni

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[1400] Judgement, para. 376.
[1401] Judgement, para. 380.
[1402] Judgement, para. 2625.
[1403] Judgement, para. 2626 (emphasis added).
[1404] Judgement, para. 2622.
[1405] Sherif, T. 9 January 2008 p. 869.
[1406] Judgement, para. 2627.
[1407] Judgement, para. 4953.
[1408] Judgement, para. 4953, referring to Taylor, T. 31 August 2009 pp. 28007-09.
[1409] Judgement, para. 4953.
[1410] *Contra* Taylor Appeal, para. 556.

477. Contrary to Taylor's claim, the Trial Chamber entered findings on the commission of crimes in Kono in December 1998.[1411] The Trial Judgement clearly shows that an unknown number of children under the age of 15 were conscripted into the RUF/AFRC, and that civilians were enslaved by members of the RUF/AFRC in Yengema from approximately December 1998.[1412] The Trial Chamber was therefore correct in convicting Taylor of aiding and abetting crimes which it found to have been committed.[1413]

2. Crimes committed in Freetown and the Western Area using materiel brought by Issa Sesay

478. Contrary to Taylor's suggestion that the Trial Chamber was "merely inferring" the likelihood that Issay Sesay brought materiel to Gullit's forces in Freetown which was used to commit crimes,[1414] the Trial Chamber properly held that in light of "the *consistent evidence* of Prosecution witnesses that there was" cooperation between AFRC forces in Freetown and RUF reinforcements of which Sesay was part,[1415] it accepted Alimamy Bobson Sesay's evidence that Issa Sesay coordinated with retreating troops and brought supplies of ammunition for the purposes of coordination.[1416]

479. The Trial Chamber properly found that the rebel forces used materiel that they acquired from or through Taylor to commit crimes on the outskirts of Freetown and the Western Area, and so properly found that Taylor substantially contributed to the commission of those crimes.[1417]

3. Crimes committed in Freetown and the Western Area using materiel brought by Idrissa Kamara (a.k.a. Rambo Red Goat)

[1411] *Contra* Taylor Appeal, para. 558.

[1412] Judgement, paras. 1424, 1596 (v), 1694. See also Judgement, paras. 1537-39, 1541. There is also credible evidence in the trial record that numerous other crimes were committed in Kono and Makeni after the arrival of the Burkina Faso shipment. For example: the corpses of civilians were seen in Koidu Town following the attack by RUF/AFRC fighters in late 1998; women were raped by RUF/AFRC fighters following the capture of Koidu Town during the late 1998 offensive (TF1-567, T. 2 July 2008 p. 12913. TF1-567 was found "generally credible" at Judgement, para. 317); forced mining was taking place in Kono in late 1998 (Judgement, para. 1720). Note that fn. 3938 of the TJ lists Kokuima as one of the mining sites, which is located in Koidu Town. Civilians were also forced to carry arms and ammunition from Buedu to Superman Ground in Kono in readiness for the attack on Kono as part of the late 1998 offensive (TF1-567, T. 2 July 2008 p. 12913). Mining equipment was looted following the recapture of Koidu Town at the end of 1998 (TF1-367, T. 21 August 2008 p. 14270. TF1-367 was found "generally credible" at Judgement, para. 2446).

[1413] Judgement, para. 6994 (a).

[1414] *Contra* Taylor Appeal, para. 559.

[1415] Judgement, para. 5710 (emphasis added).

[1416] Judgement, para. 5711.

[1417] Judgement, para. 5715. The three sources being the Burkina Faso shipment, the materiel brought by Dauda Aruna Fornie, and the materiel captured in Kono.

480. Contrary to Taylor's claim that the Trial Chamber relied solely on the evidence of Bobson Sesay that Idrissa Kamara entered Freetown with materiel from the Burkina Faso shipment,[1418] the Trial Chamber properly referred to the evidence of a number of witnesses who testified that Kamara had arrived in Freetown some time before the third week of January 1999,[1419] with some of those witnesses testifying that the reinforcements led by Kamara had weapons[1420] and were well armed.[1421] In light of the findings that Bockarie distributed the Burkina Faso materiel to commanders in Buedu,[1422] and that prior to the arrival of that shipment the RUF and AFRC did not receive any other supplies,[1423] the Trial Chamber properly concluded that the materiel which Idrissa Kamara brought with reinforcements to Freetown was drawn from the Burkina Faso shipment.[1424]

481. Moreover, Taylor incorrectly claims that the Trial Chamber did not find that Idrissa Kamara's group committed any crimes.[1425] Having found that Kamara had brought reinforcing materiel, had successfully joined Gullit's troops in Freetown after Gullit's forces had captured the State House,[1426] and that a litany of grievous crimes were committed during the Freetown attack and retreat by "rebels comprising members of the AFRC, RUF, STF and other Liberian fighters",[1427] the Trial Chamber was not required to make specific findings as to which particular soldiers had committed the crimes in question.[1428] Further, contrary to Taylor's suggestion, the Trial Chamber did make findings that crimes were committed by Idrissa Kamara's group.[1429] The Trial Judgement clearly shows that findings were made regarding the commission of crimes, including rape and sexual slavery by Idrissa Kamara's forces that entered Freetown.[1430] The Trial Chamber also heard evidence that upon Gullit's departure from Freetown, he passed the instruction to make the attack "fearful" to Kamara

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[1418] Taylor Appeal, para. 560. Note the Trial Chamber considered Bobson Sesay's evidence to be of particular relevance given that Sesay participated in the Freetown attack and withdrew with those forces from Freetown, Judgement, para. 3468.
[1419] Judgement, para. 5707, referring to the evidence of Kamara, TF1-375, Sumana and TF1-174.
[1420] TF1-174, T. 27 January 2009 pp. 23695-96.
[1421] TF1-375, T. 24 June 2008 p. 12610.
[1422] Judgement, para. 5708.
[1423] Judgement, para. 5708.
[1424] Judgement, para. 5720.
[1425] *Contra* Taylor Appeal, para. 560.
[1426] Judgement, paras. 3435, 3611(x).
[1427] See, e.g., Judgement, paras. 788, 805-07, 831, 839-41, 854, 983, 989, 1016 (i, ii, iv, ix), 1191, 1205, 1206 (i, ii, iv), 1207, 1272, 1279, 1290-93, 1301-02, 1309, 1314-15, 1323-25, 1329-31, 1347, 1351-54, 1575, 1582, 1591, 1596 (xli-xliv), 1598-99, 1874-76, 1930, 1934, 1937, 1952, 1954, 1960, 2068, 2082, 2132, 2138-39, 2151, 2162, 2179-80, 2185, 2188-89, 2191-92.
[1428] Judgement, para. 3479, *contra* Taylor Appeal, para. 560.
[1429] *Contra* Taylor Appeal, para. 560.
[1430] Judgement, para. 5718.

and left Kamara in charge of the operation and that crimes were committed thereafter.[1431] Consequently, Taylor has failed to demonstrate any basis for appellate interference with these findings.

(iv) The Trial Chamber properly found that Taylor substantially contributed to the crimes committed in 1999, 2000 and 2001

(a) The Trial Chamber properly held that Taylor participated in the March 1999 shipment

482. Contrary to Taylor's claim, the Trial Chamber properly relied on the evidence of TF1-371, TF1-567, TF1-585 and Karmoh Kanneh[1432] all of whom the Trial Chamber considered to be generally credible,[1433] to find that Taylor supplied a large shipment of materiel to Bockarie.[1434] Contrary to Taylor's claim,[1435] the Chamber properly found that the evidence of these witnesses corroborated each other as to the salient details of the shipment and Taylor's involvement therein.[1436]

483. As regards TF1-371, the Trial Chamber noted that the witness was in a position to know of the arrival of arms and ammunition.[1437] TF1-371 testified that between February and March 1999, before the Lomé negotiations began, Bockarie received a "major" shipment of weapons from Monrovia, which came directly from White Flower.[1438] Having accepted that the witness had omitted to mention the shipment in a previous interview,[1439] the Trial Chamber gave full consideration to the entirety of the evidence of this incident and reasonably relied on the testimony of TF1-371, a witness for whom the Trial Chamber held no general reservations and that was considered to be in a position to know about the incident in question.[1440] The Trial Chamber's approach to the evidence of the witness is one that any reasonable trier of fact was entitled to adopt.

484. Though Karmoh Kanneh described the shipment of the arms and ammunition as occurring at a later time, the Trial Chamber considered that the context of the witness's description of the incident in question, including that it arrived after LURD forces invaded

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[1431] Judgement, para. 3450, referring to Kamara, T. 6 February 2008 pp. 3241-42. See also Judgement, para. 3452.
[1432] *Contra* Taylor Appeal, para. 568.
[1433] Judgement, para. 5093.
[1434] Judgement, para. 5096.
[1435] *Contra* Taylor Appeal, para. 566.
[1436] Taylor Appeal, paras. 566-69.
[1437] Judgement, para. 5089.
[1438] Judgement, para. 5089.
[1439] Judgement, para. 5089.
[1440] Judgement, para. 5089.

Lofa which occurred in the first half of 1999; that the first shipment that Kanneh witnessed occurred in early 1998; and that the materiel was transported by air to Foya, all served to support that the witness was testifying to the same incident as TF1-371.[1441] The Trial Chamber found that while TF1-567's testimony did not cite a specific shipment, that the witness's testimony supported the conclusion that arms and ammunition arrived at the time in question.[1442] The Trial Chamber properly and reasonably assessed the evidence of these witnesses, noting that while their accounts of the timing differed, the identification of known events at the time in question and the lapse of time in the interim did not serve to undermine the general credibility of their accounts.[1443] It has been recognised that Appeals Chambers will defer to a Trial Chamber's judgement regarding the resolution of disparities between witnesses' accounts.[1444]

485. Further, the Trial Chamber properly found that the shipment originated with Taylor. TF1-567 and Karmoh Kanneh testified that Taylor sent the shipment, while TF1-371 testified that Taylor was paid for the shipment by several consignments of diamonds from Bockarie, and TF1-585 stated that Bockarie had gone to Monrovia for ammunition at Taylor's invitation.[1445]

486. Contrary to Taylor's claim, the Trial Chamber properly found that this shipment of materiel in March 1999 was large.[1446] In contrast to Taylor's contention,[1447] the Trial Chamber was entitled to rely on the evidence of one witness over another in relation to this point. A Trial Chamber is not required to set down in detail why it chose to accept or reject a particular testimony.[1448] Having found that TF1-371 was generally credible and was in a position to know about the shipment,[1449] the Trial Chamber's reliance on the testimony of this witness was proper and reasonable. The law of this Court is clear that "[w]hen faced with competing versions of events, it is the prerogative of the Trial Chamber to determine which one is more credible."[1450] The Trial Chamber was therefore not required to provide any detailed reasons for its reliance of the testimony of a particular witness.[1451] Taylor fails to

[1441] Judgement, paras. 5090, 5092.
[1442] Judgement, para. 5091.
[1443] Judgement, para. 5092.
[1444] *Setako* AJ, para. 31; *Munyakazi* AJ, paras. 71, 118, 154.
[1445] Judgement, paras. 5093
[1446] *Contra* Taylor Appeal, para. 570.
[1447] Taylor Appeal, para. 570.
[1448] *Nchamihigo* AJ, para. 165; *Musema* AJ, para. 20; *Krajišnik* AJ, para. 139.
[1449] Judgement, para. 5089.
[1450] *AFRC* AJ, para. 121.
[1451] *Contra* Taylor Appeal, para. 570.

establish any error in the Trial Chamber's finding that he facilitated the March 1999 shipment which would occasion a miscarriage of justice.

(b) The Trial Chamber properly found that Taylor provided Bockarie with a helicopter of materiel between August and October 1999

487. Taylor's claim that the Trial Chamber's finding regarding his provision of materiel to Bockarie in late 1999 was based on uncorroborated hearsay evidence is inaccurate.[1452] TF1-567 testified to accompanying Bockarie to Monrovia during the Lomé peace talks and to boarding a helicopter with Bockarie and Yeaten which contained materiel on the return journey to Sierra Leone.[1453] TF1-567 gave evidence that Yeaten had stated that the materiel came from Taylor, and that the helicopter which was painted in camouflage colour belonged to Taylor.[1454]

488. Further, the Trial Chamber properly looked at the totality of the trial record in which circumstantial guarantees were to be found, such as the evidence that Bockarie made trips to Monrovia during 1999 from which he returned with ammunition as support of TF1-567's account.[1455] Moreover, the Trial Chamber referred to the evidence of other witnesses. Karmoh Kanneh also testified that material was supplied from Liberia to Sierra Leone in 1999 in camouflage coloured helicopters,[1456] which corroborates the evidence of TF1-567 and contradicts the testimony of Taylor that the government of Liberia did not own a camouflage helicopter in October 1999.[1457] TF1-516 also testified that Taylor was using helicopters for transport in 1999,[1458] further contradicting Taylor's claims. Contrary to Taylor's assertions, the evidence before the Trial Chamber corroborated the salient details of the testimony of TF1-567 and the finding that Bockarie returned from a trip to Monrovia in or around late September to October 1999 with a helicopter full of materiel supplied by Taylor.[1459]

489. Taylor's contention in relation to the credibility of Benjamin Yeaten as a source of hearsay evidence, as well as the potential that Yeaten was acting independently of Taylor is a reiteration of arguments made and addressed above.[1460] Taylor has not shown previously, or

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[1452] *Contra* Taylor Appeal, paras. 573-74.
[1453] Judgement, para. 5099, referring to TF1-567, T. 4 July 2008 pp. 12982-83.
[1454] Judgement, para. 5099, referring to TF1-567, T. 4 July 2008 pp. 12983-84.
[1455] Judgement, para. 5108.
[1456] Judgement, para. 5049, referring to Kanneh, T. 9 May 2008 pp. 9458-62.
[1457] Judgement, para. 5100, referring to Taylor, T. 14 September 2009 pp. 28764-67.
[1458] Judgement, para. 5107, referring to TF1-516, T. 8 April 2008 p. 6970.
[1459] *Contra* Taylor Appeal, paras. 572-73.
[1460] *Contra* Taylor Appeal, para. 522. See above, paras. 474-76.

here, that the Trial Chamber committed an error in its assessment of hearsay evidence which would invalidate the decision.

(c) The Trial Chamber properly found that Taylor participated in providing the RUF materiel while Issa Sesay was leader in 2000, 2001

1. Taylor supplied the RUF through Tamba, Marzah and Weah

490. Contrary to Taylor's claim, the Trial Chamber properly found that he participated in the shipment of materiel brought by Tamba, Marzah and Weah to the RUF in 2000 and 2001.[1461] TF1-516 testified that the practice of requesting materiel from Yeaten via radio was the same when Issa Sesay took over command of the RUF.[1462] This clearly shows the continuity of supply that existed between Taylor and the RUF regardless of the leader in charge of the RUF at the time.[1463] Similarly, TF1-516 testified that the individuals involved in the transport of such materiel did not change from Bockarie's leadership to Sesay's either, with Zigzag, Jungle, Sampson Weah, and Dopoe Menkarzon continuing their roles in the transport of supplies, as well as the addition of Roland Duoh and Liberian Mosquito.[1464] Further, TF1-516 testified to his own participation in the transportation of ammunition, having been assigned to do so by Yeaten.[1465]

491. Taylor incorrectly contends that evidence of Sesay requesting materiel from Yeaten relies on TF1-516's uncorroborated hearsay,[1466] ignoring the evidence of Marzah that he himself was involved in the provision of materiel to Issa Sesay.[1467] The Trial Chamber noted that Marzah's testimony was to be treated with caution and properly and reasonably held that the evidence regarding his continuing to supply materiel to the RUF during this time was corroborated by that of TF1-516.[1468] Even the Defence witness DCT-008 testified that Marzah was involved in the transportation of arms and ammunition from Liberia to the RUF.[1469] Corroboration was also provided by contemporary documentary evidence in the form of Exhibit P-099A, which the Trial Chamber found to be reliable and to be "particularly valuable

[1461] *Contra* Taylor Appeal, para. 578.
[1462] Judgement, para. 5134.
[1463] Judgement, para. 5134, referring to TF1-516, T. 9 April 2008 pp. 7010-11.
[1464] Judgement, para. 5134, referring to TF1-516, T. 8 April 2008 pp. 6956-58; T. 9 April 2008 p. 7011.
[1465] Judgement, para. 5137, referring to TF1-516, T. 9 April 2008 pp. 7094-95.
[1466] Even if the Trial Chamber had relied solely on TF1-516's hearsay evidence, Taylor fails to demonstrate any error serving to invalidate the decision. See the response to Ground 1.
[1467] Judgement, para. 5140, referring to Marzah, T. 12 March 2008 p. 5895.
[1468] Judgement, para. 5154.
[1469] DCT-008, T. 27 August 2010 pp. 47391-92; T. 3 September 2010 p. 47936; T. 7 September 2010 p. 48182.

corroboration of the oral evidence".[1470] The exhibit documents a message from Yeaten to Sesay stating that the former had dispatched ammunition via Sesay's men.[1471]

492. Varmuyan Sherif and TF1-567 also testified specifically to the role played by another of Taylor's intermediaries, Roland Duoh, in transporting ammunition to Sierra Leone during this time.[1472] Taylor's arguments fail to demonstrate that no reasonable trier of fact would have found that materiel from Taylor through intermediaries continued whilst Issa Sesay was leader of the RUF.

2. Taylor supplied materiel to the RUF through Issa Sesay in May 2000

493. Contrary to Taylor's claim,[1473] the Trial Chamber properly found that Taylor supplied Issa Sesay with materiel in May 2000. Taylor incorrectly contends that the testimonies of TF1-567, Keita and Kamara,[1474] all of whom were found to be generally credible witnesses,[1475] do not corroborate each other regarding the details of this shipment.[1476]

494. As is clear from Taylor's own suggestion that the witnesses' evidence should be viewed in chronological order,[1477] all of the witnesses identified, as well as Taylor and Issa Sesay, testified to a meeting between Sesay and Taylor in May 2000.[1478] TF1-338, TF1-567 and Kamara all testified that Taylor supplied Sesay with a helicopter loaded with materiel in the aftermath of the meeting,[1479] while Keita also testified to the supply and did not give evidence as to the means of delivery.[1480]

495. The Trial Chamber properly relied on the evidence of TF1-338 who testified with direct knowledge and in significant detail about the shipment.[1481] Further, the Trial Chamber properly assessed the evidence and addressed Taylor's concerns about differences in the prior statements of TF1-338 in the Trial Judgement, holding that the account of events was credible and consistent.[1482] As the testimonies of TF1-567, Keita and Kamara were "on the whole

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[1470] Judgement, para. 5158.
[1471] Judgement, para. 5158.
[1472] Judgement, paras. 5139, 5141, referring to Sherif, T. 10 January 2008 p. 907 and TF1-567, T. 7 July 2008 p. 13109.
[1473] *Contra* Taylor Appeal, para. 579.
[1474] *Contra* Taylor Appeal, para. 579.
[1475] Judgement, para. 5184.
[1476] *Contra* Taylor Appeal, para. 579.
[1477] Taylor Appeal, para. 580.
[1478] Judgement, paras. 5167-71.
[1479] Judgement, paras. 5167, 5170-71, referring to TF1-338, T. 1 September 2008 p. 15136, T. 2 September 2008 pp. 15207-09(PS); TF1-567, T. 7 July 2008 p. 13040; Kamara, T. 6 February 2008 p. 3270, T. 7 February 2008 p. 3395.
[1480] Judgement, para. 5169, referring to Abu Keita, T. 23 January 2008 pp. 2031-32.
[1481] Judgement, para. 5188.
[1482] Judgement, para. 5188.

consistent" amongst themselves and with the testimony of TF1-338,[1483] the Trial Chamber properly and reasonably found that TF1-338's evidence was corroborated by the evidence of these witnesses.[1484] In view of the whole of the evidence, Taylor fails to demonstrate any error in the Trial Chamber's finding that he supplied materiel to Sesay in 2000 that would require appellate intervention.

3. The materiel supplied by Taylor provided substantial and practical assistance to the commission of crimes

496. Contrary to Taylor's claims, the Trial Chamber properly found that the assistance he provided through intermediaries amounted to a substantial contribution to the commission of crimes.[1485] The comparatively smaller size of the shipments Taylor provided in 2000 and 2001 in relation to much larger provisions supplied in 1998 is inapposite in determining the substantial nature of his assistance.[1486] While fewer crimes were committed during this period,[1487] crimes including the killing of civilians, the conscription and use of child soldiers actively in hostilities, sexual slavery, outrages upon personal dignity and enslavement continued to be perpetrated.[1488] Further, it is clear in light of the paucity of other sources of materiel,[1489] and the often depleted state of the rebel's supplies,[1490] that the materiel provided by Taylor continued to play a central role in the operations conducted by the rebel forces.[1491] This was expressly confirmed in the Trial Judgement when the Trial Chamber found that:

> although there were instances in which the materiel that [Taylor] gave to the RUF/AFRC was more limited in quantity, on a number of occasions the arms and ammunitions which he supplied or facilitated were in fact indispensable for the RUF/AFRC military offensives. The materiel provided or facilitated by [Taylor] was critical in enabling the operational strategy of the RUF and the AFRC *during the Indictment period.*[1492]

497. That same operational strategy of the RUF/AFRC was "characterized by a campaign of crimes against the Sierra Leonean civilian population" and the rebels "deliberately use(d) terror against the Sierra Leonean population as a primary *modus operandi* of their political and military strategy."[1493]

[1483] *Contra* Taylor Appeal, para. 581.
[1484] Judgement, para. 5191, *contra* Taylor Appeal, paras. 581-82.
[1485] Taylor Appeal, para. 583.
[1486] Taylor Appeal, para. 583.
[1487] Judgement, para. 5161.
[1488] Judgement, paras. 5744, 5750.
[1489] Judgement, para. 6913.
[1490] Judgement, para. 6914.
[1491] *Contra* Taylor Appeal, para. 583.
[1492] Judgement, paras. 5842, 6914 (emphasis added).
[1493] Judgement, paras. 6790, 6905.

498. Further, Taylor's focus on the size of such deliveries fails to acknowledge the *frequency* with which Taylor made such provisions available to the rebel forces.[1494] For instance, the Trial Chamber found that during Issa Sesay's time as leader of the RUF: TF1-567 was "frequently" involved in the transportation of materiel from Taylor between 2000 and 2001;[1495] TF1-375 was involved in the transportation of such materiel on four occasions;[1496] in addition, in 2000 and 2001, Marzah, Tamba, Sampson Weah, Dopoe Menkarzon, Roland Duoh, Christopher Varmoh and others transported materiel from Taylor.[1497] While the Trial Chamber noted that TF1-516 did not give any evidence that ammunition supplied by intermediaries of Taylor between 2000 and 2001 was used in Sierra Leone,[1498] the Trial Chamber found that "at least part of that materiel was used in Sierra Leone".[1499] Moreover, the Trial Chamber held that "the arms and ammunition sent by [Taylor] to the RUF during 2000 and 2001 were part of an overall supply of materiel used by the RUF in its activities, *including the commission of crimes*".[1500] Taylor fails to demonstrate that no reasonable Trial Chamber could have concluded that the shipments in question constituted substantial assistance to the commission of crimes.[1501]

(d) The Trial Chamber properly found that the materiel supplied by Taylor in 1999-2001 was used in the commission of crimes

499. Taylor incorrectly argues that holding him responsible for aiding and abetting is impermissible because individual supplies of materiel were found to be part of an overall supply used in the commission of crimes rather than individually found to have been used in committing crimes.[1502] The Trial Chamber properly found that crimes committed by the rebel forces in 1999 included children being forcibly conscripted and used to participate actively in hostilities, women and girls being raped and forced into sexual slavery with outrages upon their personal dignity being committed, and civilians being enslaved.[1503] Further, the Chamber found that crimes such as the forced conscription of children and the enslavement of civilians were perpetrated in 2000, and an unknown number of killings were committed up until the

[1494] *Contra* Taylor Appeal, para. 583.
[1495] Judgement, paras. 5249-50.
[1496] Judgement, para. 5252.
[1497] Judgement, para. 5163.
[1498] Judgement, para. 5161.
[1499] Judgement, para. 5743.
[1500] Judgement, para. 6915 (emphasis added).
[1501] *Contra* Taylor Appeal, para. 584.
[1502] Taylor Appeal, paras. 586-587.
[1503] Judgement, para. 5744.

time of disarmament.[1504] The Trial Chamber properly looked to the nature of the crimes committed; noting that the crimes by their nature were such that necessarily involved the use of arms and ammunition.[1505] Though there were sources of alternative material available to the rebel forces, such alternative sources of materiel "were of minor importance in comparison to that supplied or facilitated by [Taylor]."[1506] Moreover, Taylor's supplies were found to have been "critical in enabling the RUF and the AFRC to carry out offensives and maintain territories until the end of the Indictment period."[1507]

500. Taylor incorrectly suggests that isolated findings regarding the non-use of some supplies provided by him meant that shipments he provided could not be considered as amounting to a substantial contribution to crimes.[1508] Taylor's reference to a single instance of witness evidence that 50 rifles that were brought from Liberia were not used in fighting,[1509] does not serve to undermine the findings made by the Trial Chamber as regards the "critical" nature of the materiel supplied by Taylor to military operations of the rebels.[1510] Assistance to the commission of crimes may take many forms and that a fraction of materiel is not found to have been used does not negate the effect that the whole of the assistance has had. Further, Taylor refers to witness evidence of the RUF using materiel for operations in Buedu to regain control of Foya, which does not as he suggests support the contention that supplies were never used or could not be considered to have substantially contributed to crimes.[1511] Taylor has failed to show that the Trial Chamber acted unreasonably in finding that the materiel he supplied in 1999-2001 was used in the commission of crimes and, therefore, has failed to demonstrate any error that would require appellate intervention.

(v) Conclusion

501. Based on all the evidence before it, which the Chamber rigorously and reasonably evaluated, the Trial Chamber properly found that Taylor's provision and facilitation of arms and ammunition to the RUF/AFRC was critical in enabling the operational strategy of the RUF and AFRC during the Indictment period and had a substantial effect on the commission of Indictment crimes. Taylor has failed to demonstrate the existence of an error in the findings

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[1504] Judgement, paras. 1439, 1833, 5750.
[1505] Judgement, paras. 5744-45, 5751.
[1506] Judgement, para. 5833.
[1507] Judgement, para. 5835(xl).
[1508] *Contra* Taylor Appeal, para. 587.
[1509] Taylor Appeal, para. 587.
[1510] Judgement, para. 5835(xl).
[1511] *Contra* Taylor Appeal, para. 587.

of the Trial Chamber that would serve to invalidate the judgement or occasion a miscarriage of justice. This Ground should be dismissed.

GROUND 24: The Trial Chamber committed no error in finding Taylor provided persons who had a substantial effect on the commission of crimes by the RUF and RUF/AFRC

(i) Overview:

502. The Trial Chamber predicated its finding that Taylor sent Senegalese and 20 former NPFL fighters to Bockarie on more than Alice Pyne's sole testimony, since it carefully examined the evidence of many witnesses who testified about a complex sequence of events relating to Taylor's sending of the Liberian fighters who joined the RUF/AFRC forces in Sierra Leone.[1512] Moreover, it did not matter that Taylor had no effective control over these soldiers for his sending them to constitute assistance to the commission of crimes. Taylor fails to demonstrate any error of law or that no reasonable trier of fact could have reached this conclusion, and so Ground 24 should be dismissed.

(ii) (a) The Chamber properly relied on the totality of the evidence including that of Alice Pyne

503. Contrary to Taylor's assertion that the Chamber relied solely on Pyne's evidence in arriving at its conclusion,[1513] Pyne's testimony was corroborated in material respects. The Chamber closely examined the entire body of evidence before it, and properly applied the beyond reasonable doubt standard after its careful and holistic evaluation of the evidence.[1514]

504. Pyne testified that following the Fitti-Fatta attack in June 1998, she met Senegalese in Yomandu. He told her he had come from Liberia and was sent by Taylor with "others" to Bockarie. [1515] With regard to Senegalese, all witnesses identified him as Liberian, and some testified that he worked for Charles Taylor's Special Forces.[1516]

505. Pyne's evidence was supported by TF1-375 and Bobson Sesay who gave corroborating accounts that Senegalese and these 20 fighters came from Liberia following the Fitti-Fatta attack in June 1998. TF1-375 testified to meeting 30 Liberian fighters with Senegalese in Koinadugu in August 1998. The fighters told him they were former NPFL fighters. TF1-375 clearly distinguished these Liberian fighters from Superman's existing

[1512] Judgement, paras. 4366, 4396.
[1513] Taylor Appeal, paras. 592-93.
[1514] *Nchamihigo* AJ, para. 213.
[1515] Judgement, para. 4269.
[1516] See Judgement, para. 4380, fn. 9801.

Liberian bodyguards.[1517] Bobson Sesay confirmed 20 Liberian men he met in Colonel Eddie Town in September 1998 came from Liberia in order to reinforce the troops in Koinadugu, that Superman went to Kailahun to get reinforcements, and that Bockarie provided him with these Liberian men, who were former NPFL fighters from the AFL.[1518]

506. Based on the overall evidence before it and the totality of the circumstantial guarantees, the Chamber reasonably concluded that the Prosecution had established beyond reasonable doubt that Taylor sent 20 former NPFL fighters from the AFL where they joined the RUF/AFRC forces.[1519] There is no basis to reverse this finding.

(ii) (b) Senegalese and 20 fighters were Liberian fighters not STF fighters

507. In regard to the inconsistency between Pyne's previous statement (that Senegalese and the fighters were STF) and her oral testimony (they were "Charles Taylor's forces"),[1520] it was within the discretion of the Chamber to give probative value to her trial testimony, especially given that the said testimony was given before the Chamber subject to cross examination, as opposed to the prior statement.

508. During direct and cross-examination on this issue,[1521] Pyne repeatedly explained that the STF members she knew, having long been in Sierra Leone, knew the names of towns and villages and spoke Krio fluently, unlike Senegalese who spoke Liberian English only and the Liberian fighters accompanying him who spoke Kpelle.[1522] TF1-585 corroborated the testimony, stating that Senegalese and his men spoke Liberian English.[1523] Bobson Sesay also clearly distinguished the STF fighters in the Red Lion Battalion from the 20 former NPFL fighters who were from the AFL, alongside whom he fought.[1524]

509. Having regard to the consistency with which Pyne responded to the questions on this issue, and the corroborative accounts given by other witnesses, it was reasonable for the Trial Chamber to be satisfied that Senegalese and the fighters were not STF. There is no basis for reversing this finding.

(iii) No requirement of effective control for aiding and abetting

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[1517] Judgement, para. 4369.
[1518] Judgement, paras. 4293, 4370.
[1519] Judgement, para. 4394.
[1520] Taylor Appeal, para. 596.
[1521] Taylor Appeal, para. 596 citing TF1-584, T. 19 June 2008 pp. 12250-54; T. 20 June 2008 pp. 12382-85.
[1522] Kpelle is a Liberian dialect spoken by the largest tribe in Liberia. See Taylor, T. 27 July 2009 p. 25251.
[1523] Judgement, para. 4285.
[1524] Judgement, paras. 4294, 4370-73, 4378, 4380.

510. The issue of whether Taylor had "effective control" – the ability to punish or prevent crimes – over Senegalese and the 20 men after he sent them to Sierra Leone[1525] has no relevance to the issue of whether his act of sending these fighters to bolster the RUF/AFRC forces assisted the commission of crimes. Effective control is part of the test for 6(3) liability but is not an element of aiding and abetting.

511. Further, Taylor's claim that these fighters were free agents acting of their volition ignores the Trial Chamber's finding that he sent Senegalese and these AFL fighters to Bockarie after the Fitta-Fatta attack,[1526] and is merely an unsubstantiated attempt to relitigate an issue decided against him. Taylor has not shown why a reasonable trier of fact could not have reached the Chamber's finding.

512. Moreover, Taylor's assertion is wrong in law and fact that the eventual deployment of Senegalese and the 20 AFL fighters was not evident when they were sent and so there is no basis to find that they were sent to facilitate the commission of crimes.[1527] Taylor was aware of the operational strategy of the RUF which entailed the commission of crimes against the civilian population of Sierra Leone throughout the indictment period.[1528] These 20 AFL fighters formed part of the Red Lion Battalion that attacked and committed crimes in Karina and Kamalo in Bombali District,[1529] and were part of a larger group that attacked and committed crimes in Freetown and the Western Area.[1530] Therefore, "any assistance towards these military operations of the RUF and RUF/AFRC constitute[d] direct assistance to the commission of crimes by these groups".[1531] Taylor does not deny the obvious fact that these fighters enhanced the ability of the RUF/AFRC to conduct military operations in the course of which crimes were committed.

(iv) No error in finding these fighters assisted RUF/AFRC crimes

513. Whether or not an accused's assistance has a substantial effect on the commission of the crimes requires a fact-based inquiry.[1532] The Trial Chamber found that "taken cumulatively … the military personnel provided by the Accused constituted practical

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[1525] Taylor Appeal, para. 600.
[1526] Judgement, para. 4396.
[1527] Taylor Appeal, paras. 601-03.
[1528] Judgement, para. 6949.
[1529] Judgement, para. 4394.
[1530] Judgement, para. 4395.
[1531] Judgement, para. 6905.
[1532] See *Blagojević & Jokić* AJ, para. 134. *Contra* Taylor Appeal, para. 605.

assistance which had a substantial effect on the commission of crimes by the RUF and RUF/AFRC."[1533]

514. In addition, the military personnel Taylor also sent included Sierra Leonean refugees to fight,[1534] Abu Keita and 150 men – the "Scorpion Unit",[1535] and former SLA soldiers that were reorganised, armed and sent to Sierra Leone to fight in the Kono and Freetown operations.[1536] Further, the Chamber found that the 20 AFL fighters who fought in the Red Lion Battalion boosted the morale of other RUF fighters during the Freetown Invasion, in the course of which crimes were committed.[1537]

515. Finally, contrary to Taylor's assertion, the Trial Chamber did not find that his contribution of military personnel constituted substantial assistance only when taken together with his arms shipments.[1538] Although there would be no error had the Chamber considered their cumulative effect, the Trial Chamber in fact found that his provision of military personnel constituted substantial assistance "in addition" to his substantial assistance to the crimes through his provision of arms and ammunition.[1539]

(v) Conclusion

516. Taylor has not demonstrated any error on the part of the Trial Chamber that either invalidated its decision or occasioned a miscarriage of justice. There is no basis for reversing his convictions on Counts 1 to 11 for aiding and abetting crimes committed in Bombali District and in Waterloo, Fisher Lane, Hastings and Freetown and the Western Area in December 1998/January 1999.

GROUND 25: The Trial Chamber committed no error in finding that Taylor provided safe haven to the RUF in Liberia, returned deserters or other "aliens" in Liberia to the RUF/AFRC in Sierra Leone and that these actions assisted the commission of crimes

Overview

[1533] Judgement, para. 6924.
[1534] Judgement, para. 4583.
[1535] Judgement, para. 4493.
[1536] Judgement, para. 4581.
[1537] Taylor Appeal, para. 608. See also Judgement, para. 4395. The group attacked and committed crimes in Waterloo, Fisher Lane, Hastings, Freetown Eastern Police, Pademba Road Prison, Kingtom, Fourah Bay and Upgun in Freetown and the Western Area on or about December1998/January 1999.
[1538] Taylor Appeal, paras. 609-10.
[1539] Contrary to Taylor's assertion at para. 609, the Trial Chamber found Rambo Red Goat entered Freetown with weapons from the Burkina Faso shipment distributed by Bockarie to commanders in Buedu (Judgement, para. 5708). He joined Gullit's troops in Freetown after Gullit's forces had captured the State House, following which crimes were committed by "rebels comprising members of the AFRC, RUF, STF and other Liberian fighters" – see Judgement, paras. 3435, 5706, 5708, and 788, 807, 983, 989, 1191, 1205, 1309, 1575, 1876, 1930, 2068, 2132, 2151, 2162, 2185, 2192.

517. Taylor's challenge to the Trial Chamber's findings that he sent former SLA soldiers and deserters back to the RUF/AFRC and provided safe haven to RUF combatants and thus aided and abetted crimes is without merit. Such military personnel and operational support Taylor provided to the RUF/AFRC, considered within the entirety of the other forms of practical assistance he provided, assisted the RUF/AFRC forces to undertake military operations characterised by a campaign of terror against civilians.

518. The Chamber properly applied the correct law to the factual findings. Taylor fails to demonstrate any error of law or that no reasonable trier of fact could have reached the contested factual findings. Ground 25 should be dismissed.

(i) No error in finding that Taylor returned former SLA soldiers and this action assisted RUF/AFRC crimes in Kono in December 1998

519. The Trial Chamber reasonably concluded on the totality of the evidence that Taylor reorganised, armed and sent a group of at least four former SLA soldiers who had fled to Liberia back to the RUF/AFRC in Sierra Leone to support the attack on Freetown.[1540] This group of men had fled to Liberia after the ECOMOG Intervention, and Taylor had called, organised, armed and sent them to Bockarie to reinforce the advance toward Freetown.[1541] The Chamber found this group of SLA soldiers sent by Taylor arrived in Kailahun in or around late November 1998.[1542]

520. Some of the SLA soldiers were then deployed in Kono where at least four participated in the attacks in December 1998 during which crimes listed in the Indictment were committed.[1543] The Chamber committed no error when it considered sending former SLA soldiers to fight in Sierra Leone as part of the cumulative calculus of assistance to RUF/AFRC crimes.[1544] Taylor has shown no legal or factual error that justifies reversing this finding.

(ii) No error in finding that Taylor provided safe-haven and returned deserters and that these actions assisted RUF/AFRC crimes

521. First, the Chamber reasonably concluded on the totality of the evidence that safe haven in Liberia was provided in the Indictment Period for RUF fighters during their retreat from Zogoda.[1545] Several witnesses presented consistent evidence that when Zogoda came

[1540] Judgement, paras. 4566, 4581.
[1541] Judgement, para. 4557.
[1542] Judgement, para. 4563.
[1543] Judgement, paras. 4564-65, 4582. See also the response to Grounds 11 and 23(iii)(e)(2).
[1544] Taylor Appeal, para. 614.
[1545] Taylor Appeal, para. 619.

under attack, Sankoh was in Abidjan attending peace talks,[1546] having been instructed by Taylor to do so in order to get arms and ammunition.[1547] The evidence also established that, because there was nowhere for the RUF to base, Sankoh said, "My brother [Taylor] has *allowed you* to go to Liberia".[1548] Considering the overall evidence on the retreat of the RUF combatants, and that those who retreated into Liberia returned to resume membership in the RUF/AFRC,[1549] the Chamber reasonably concluded that the Prosecution had established beyond reasonable doubt that safe haven was provided in the Indictment period.[1550] Taylor has not shown why a reasonable trier of fact could not have reached this conclusion. There is no basis to reverse this finding.

522. To the contrary,[1551] there is no requirement to prove that Taylor intended that those to whom he provided safe haven or those RUF fighters whom he returned to the RUF (Fonti Kanu and Dauda Aruna Fornie) commit crimes, so long as he was aware of the substantial likelihood that his conduct would facilitate the commission of the crimes at issue.[1552] The Chamber properly found that Taylor was aware of the campaign of atrocities being committed by the RUF/AFRC and that he would "have been aware of the likelihood that the RUF/AFRC would commit similar crimes in the future."[1553] It further found that, even before Taylor became President, he knew of the crimes committed by the RUF in Sierra Leone,[1554] and as early as August 1997, he was aware of past and ongoing[1555] crimes committed by the RUF/AFRC forces against civilians.[1556] Taylor himself testified that by April 1998 if "someone was providing support to the AFRC/RUF [...] they would be supporting a group engaged in a campaign of atrocities against the civilian population of Sierra Leone".[1557]

523. Taylor's conduct in respect of "safe haven" and "deserters" supported, sustained and enhanced the functioning of the RUF and its capacity to undertake military operations in the course of which crimes were committed,[1558] bearing in mind that the RUF/AFRC military campaign was inextricably linked to the commission of crimes throughout the Indictment

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[1546] Taylor Appeal, fn. 1210.
[1547] Judgement, para. 6227.
[1548] Judgement, para. 4169. See also Judgement, paras. 4176, 4260.
[1549] See Judgement, paras. 220, fn. 514, 247.
[1550] Judgement, para. 4175.
[1551] Taylor Appeal, para. 620.
[1552] See the response to Ground 16.
[1553] Judgement, paras. 6882, 6947.
[1554] Judgement, para. 6878.
[1555] See Judgement, para. 6879.
[1556] Judgement, paras. 6882, 6886.
[1557] Judgement, paras. 6805, 6884.
[1558] Judgement, para. 6936. *Contra* Taylor Appeal, paras. 618-619.

period.[1559] Therefore, the Chamber reasonably concluded that the military support Taylor provided, the "safe haven" he gave, the return of "deserters", and other forms of operational support all assisted the well-functioning and "existence" of the RUF/AFRC[1560] and had a substantial effect on the commission of the Indictment crimes.[1561]

524. Third, Taylor's claim that Fonti Kanu of the AFRC and Dauda Aruna Fornie of the RUF were expelled because they were illegal aliens in Liberia[1562] ignores the fact that they were not simply taken to the border or turned over to the Sierra Leone government authorities, but rather handed to RUF personnel in late 1998 and late 1999.[1563] These acts must be evaluated in the context of the Chamber's finding that Taylor's forces cooperated with the RUF on the return of deserters[1564] and arrested, detained and forced Sierra Leonean refugees residing in Liberia to return to Sierra Leone to fight.[1565] Taylor himself supports the Chamber's findings in his testimony that Liberia "was set up as a place of asylum"[1566] and used that to characterise his actions in not only giving asylum but citizenship by Presidential Executive Order to Sam Bockarie and hundreds of RUF fighters whom he did not expel as illegal aliens but rather integrated into his own forces.[1567]

525. Taylor does not demonstrate any legal or factual error that either invalidated the Trial Chamber's decision or occasioned a miscarriage of justice. There is no basis for reversing his conviction for aiding and abetting the commission of crimes by sending former SLA soldiers and deserters back to the RUF/AFRC and providing safe haven to RUF combatants as part of his overall practical assistance. Ground 25 should be dismissed.

[1559] Judgement, para. 6905.
[1560] *Contra* Taylor Appeal, para. 618.
[1561] Judgement, paras. 6935, 6937.
[1562] Taylor Appeal, para. 621.
[1563] Judgement, paras. 4616, 4617.
[1564] Judgement, para. 4615. Issa Sesay told both Samuel Kargbo and TF1-371 about the overall account of the arrest of Fonti by "Liberian police in Vahun" (see Judgement, para. 4608). He also told both witnesses he was the one who received Kanu from detention by the Liberian police (see Judgement, paras. 4608-4610). Mohamed Kabbah testified that had he deserted to Liberia, the NPFL commanders in Foya would have arrested and surrendered him on Bockarie's instruction. Fornie's reasons for his arrest by an AFL commander in Liberia fell in line with that of Kabbah (see Judgement, para. 4614).
[1565] Judgement, paras. 4583, 6920.
[1566] Taylor, T. 19 November 2009 p. 32189.
[1567] Judgement, para. 66. See also Taylor, T. 19 November 2009 pp. 32189-90; Jaward, T. 10 July 2008 pp. 13446-49.

GROUND 26: The Trial Chamber did not err in finding Taylor gave military or operational advice to the RUF and AFRC and that such advice constituted assistance to crimes[1568]

(i) Overview

526. The Trial Chamber reasonably found that Taylor gave military or operational advice to the RUF/AFRC, and that such advice constituted assistance to crimes. It is for the Trial Chamber to determine whether a witness is credible and to decide which witness's testimony to prefer.[1569] Taylor has thus demonstrated no error in the Chamber's determinations warranting appellate intervention.

(ii) No error in the Chamber's determination that Taylor gave military and operational advice to the RUF and AFRC

(a) Taylor's 'advice' to capture Kono

1. Taylor's 'advice' to JPK to capture Kono

527. Taylor erroneously claims that the Trial Chamber erred in fact in finding that he advised JPK to capture Kono.[1570] While the Trial Chamber's finding that Taylor 'told' or 'instructed'[1571] JPK to capture Kono is based upon the testimony of a single witness, Samuel Kargbo,[1572] it is permissible as a matter of law for a Trial Chamber to convict an accused on the basis of a single witness, provided the evidence is assessed with the appropriate caution.[1573]

528. Kargbo testified that prior to the first attack on Kono, Taylor was in contact with JPK by satellite phone, making arrangements to get to Liberia, and that Taylor twice instructed JPK to capture Kono.[1574] JPK first spoke to Taylor from his village in Magbonkineh after the retreat from Freetown in mid-February 1998.[1575] Bobson Sesay and Issa Sesay corroborate Kargbo's testimony that he (Kargbo) drove JPK to Magbonkineh, where the first call to Taylor was made.[1576] Kargbo testified that prior to JPK's first call with Taylor, he made a call

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[1568] The Trial Chamber found the advice and direction Taylor gave on matters concerning or directly relating to their military strategy encouraged and morally supported the commission of Indictment crimes (Judgement, para. 6944), and that, taken cumulatively and considering the other forms of practical assistance Taylor provided, Taylor contributed substantially to the commission of Indictment crimes by rendering encouragement and moral support to the RUF and RUF/AFRC (Judgement, para. 6946).
[1569] See the response to Ground 1.
[1570] Taylor Appeal, para. 626.
[1571] Judgement, para. 2855 uses the word 'instructed' and para. 2863 uses the word 'told'.
[1572] Judgement, paras. 2832, 2834.
[1573] See Judgement, para. 166. See also the response to Ground 1.
[1574] Judgement, paras. 2832, 2834.
[1575] Judgement, para. 2832.
[1576] Judgement, para. 2835.

to the BBC saying that he was "up the hills" in Freetown and would soon return to the city.[1577] Issa Sesay[1578] and Exhibit P-132[1579] corroborate Kargbo's testimony about this broadcast, describing the content almost identically.[1580]

529. Kargbo's testimony that JPK passed on the order to attack Kono soon after these calls with Taylor was corroborated by Issa Sesay, Isaac Mongor and Foday Lansana.[1581] The Chamber found broad correlation among the accounts.[1582]

530. The Trial Chamber was aware that part of Kargbo's evidence was hearsay, and after weighing the probative value concluded that it was reliable for the purpose of proving the truth of its contents, being voluntary, truthful and trustworthy.[1583]

531. It is clear from the detailed analysis in the Judgement dealing with the instruction to attack Kono[1584] that the Trial Chamber applied the methodology set out in paragraphs 166, 168 and 169 of the Judgement, in reaching its finding that Taylor 'instructed' or 'told' JPK to attack Kono. After approaching Kargbo's testimony with appropriate caution and carefully assessing all the evidence,[1585] the Chamber concluded that Kargbo's evidence was "substantially corroborated in various aspects" and that, although there were inconsistencies in relation to "some details", those inconsistencies did "not challenge his credibility".[1586] There was nothing improper about the Trial Chamber's evaluation of the evidence pertaining to this matter and Taylor's argument should be dismissed.

2. Taylor's 'advice' to Bockarie to maintain control of Kono

532. The Trial Chamber properly found on the evidence that Taylor advised Bockarie to maintain control of Kono.[1587] Taylor fails to demonstrate that no reasonable trier of fact could have reached this conclusion.

[1577] Judgement, para. 2774.
[1578] Judgement, para. 2822.
[1579] Judgement, para. 2827.
[1580] Judgement, paras. 2774, 2836.
[1581] Judgement, para. 2839.
[1582] Judgement, para. 2855.
[1583] See the response to Ground 1.
[1584] Judgement, paras. 2849-50.
[1584] Judgement, paras. 2831-54.
[1585] See in particular Judgement para. 2834 which states: "The Trial Chamber recalls that Samuel Kargbo is a generally credible witness. However, as the evidence of the phone calls with the Accused relies entirely on the testimony of Kargbo, the Trial Chamber has carefully reviewed the extent to which his account of these particular events is corroborated in other respects by witnesses who testified with regard to the attack on and recapture of Kono".
[1586] Judgement, para. 2855.
[1587] Taylor Appeal, paras. 627-28.

533. The Trial Chamber's finding is based upon the evidence of Perry Kamara and TF1-371, both of whom it found to be 'generally credible'.[1588] The Chamber accepted Kamara's evidence that he had taken down a radio message from Bockarie to Sesay and Superman. The message indicated that Taylor had told Bockarie not to lose Kono. Bockarie repeated this message frequently.[1589] The Chamber also found that Kamara's testimony was corroborated by Isaac Mongor.[1590] The Trial Chamber also accepted TF1-371's evidence that Bockarie told him of Taylor's instruction to "maintain Kono".[1591]

534. As the primary trier of fact, the Trial Chamber was entitled to find Kamara and TF1-371 credible and to rely upon their evidence to find that Taylor told Bockarie to be sure to maintain Kono.[1592] While Taylor complains that their testimony concerned different times,[1593] he ignores the fact that this was specifically addressed by the Trial Chamber, which concluded that most likely the trip TF1-371 referred to occurred later in time.[1594] The Trial Chamber also took into account that TF1-371's evidence was consistent with Kamara's testimony and that Kamara had testified that Bockarie had repeated Taylor's instruction frequently.[1595]

535. The Trial Chamber was clearly conscious that Kamara and TF1-371's evidence was hearsay. The Chamber's methodology in assessing all hearsay evidence it heard was clearly set out in the Judgement.[1596] Contrary to Taylor's assertion, there is no prohibition upon using the hearsay evidence of one witness to corroborate the hearsay evidence of another witness.[1597]

536. Taylor's claim that the Trial Chamber erred by failing to assess the veracity of the hearsay source, Bockarie,[1598] is also erroneous. A party can test the probative value of a hearsay statement and the motive of its source by cross-examining the person before the court.[1599] Here, as the Trial Chamber expressly said in paragraphs 168 and 169 of the Judgement, in assessing hearsay evidence, it considered, among other factors, circumstantial guarantees of reliability, and this latter criterion must pertain to the trustworthiness of the

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[1588] Judgement, paras. 2856-57. See also Judgement, paras. 226, 236.
[1589] Judgement, para. 2856.
[1590] Judgement, para. 2858.
[1591] Judgement, para. 2857.
[1592] See the response to Ground 1.
[1593] Taylor Appeal, para. 627.
[1594] Judgement, para. 2857.
[1595] Judgement, para. 2857.
[1596] Judgement, paras. 168-69. See also the response to Ground 1.
[1597] Taylor Appeal, para. 627.
[1598] Taylor Appeal, para. 628. Taylor does not cite to any authority for the proposition that no reasonable chamber could have relied on such evidence.
[1599] See Judgement, paras. 168, 169.

source. Kamara was cross-examined concerning radio messages from Bockarie about mining diamonds in order to secure supplies from Taylor.[1600] Taylor has failed to demonstrate that no reasonable trier of fact could have reached the conclusion, on the basis of all of the evidence, that Taylor instructed Bockarie to maintain control of Kono, and his argument should thus be dismissed.

3. Taylor's 'advice' to Bockarie to attack Kono that resulted in the Fitti-Fatta attack in mid-June 1998

537. Taylor erroneously claims that the Trial Chamber erred in fact in finding that he advised Bockarie to attack Kono in the Fitta-Fatta offensive[1601] and fails to demonstrate that no reasonable trier of fact could have reached this conclusion.

538. The Trial Chamber analysed in detail the totality and context of the evidence relating to the Fitti-Fatta offensive.[1602] It found proved beyond reasonable doubt that Taylor advised Bockarie to recapture Kono so that diamonds there would be used to purchase arms and ammunition;[1603] that Taylor discussed the offensive with Bockarie and gave him advice, and sent both ammunition and herbalists for the Fitti-Fatta attack.[1604] In particular, the Trial Chamber accepted evidence from three witnesses: Karmoh Kanneh, Albert Saidu and Mohamed Kabbah, all found to be generally credible,[1605] about the forum at which Bockarie, Daniel Tamba and Ibrahim Bah conveyed Taylor's advice that they should try to get hold of Kono so as to get resources to fund the purchase of materiel.[1606] Bockarie explained that he met Taylor in Monrovia who told him they should "clear" or "try to get" Kono.[1607] The Trial Chamber also relied upon other evidence to the effect that Bockarie had visited Monrovia prior to the meeting.[1608] The Chamber stated that "although Kanneh's evidence includes some aspects which appear displaced in time, this does not detract from the evidence provided regarding the planning of Fitti-Fatta which is largely corroborated by Saidu and Kabbah".[1609] The Trial Chamber carefully contemplated the prior inconsistent statements of Saidu about the meeting, but preferred Saidu's testimony that he was at the meeting, "noting that he

[1600] Kamara, T. 7 February 2008 pp. 3333-41.
[1601] Taylor Appeal, paras. 629-32.
[1602] Judgement, paras. 2865-2951 (some eighty six paragraphs).
[1603] Judgement, para. 2951.
[1604] Judgement, para. 2946.
[1605] Judgement, paras. 2941-43.
[1606] Judgement, para. 2948.
[1607] See the evidence of Kanneh and Kabbah as discussed at Judgement, para. 2939.
[1608] Judgement, para. 2939, which provides "that Bockarie had visited Monrovia before this meeting is corroborated by Exhibit P-067's reference to Bockarie's monthly briefings in Monrovia".
[1609] Judgement, para. 2941.

described it with detail and that the detail described was substantially consistent with the evidence of the other witnesses who attended the meeting".[1610]

539. The Trial Chamber was entitled to find the evidence of Kanneh, Kabbah, and Saidu credible[1611] and to rely upon their evidence to find that Taylor advised Bockarie to attack Kono.[1612] Taylor's argument[1613] concerning Saidu's prior inconsistent statements ignores the Trial Chamber's conclusion that Saidu's evidence about the meeting was detailed and corroborated by other witnesses who attended the meeting.[1614]

540. Further, Taylor's claim[1615] that the Trial Chamber erred by failing to assess the veracity of the sources of the hearsay is misguided.[1616] Taylor chose not to cross-examine either Saidu or Kanneh about what Bockarie and/or Daniel Tamba had said at the meeting, and put the issue to one side during the cross-examination of Kabbah.[1617] Having considered all relevant factors, the Chamber found their evidence reliable.[1618] Taylor has failed to demonstrate any error.

(b) Taylor's 'advice' to Bockarie regarding the December 1998 offensive

541. Taylor erroneously claims that the Trial Chamber erred in fact in finding that he gave advice to Bockarie in relation to the December 1998 - January 1999 offensive.[1619] The Trial Chamber found that Taylor gave advice to Bockarie and received updates on progress of the operations in Kono and Freetown.[1620] Taylor's complaint that no reasonable chamber could have found that he directed Bockarie to send prisoners released from Pademba Road Prison to Buedu[1621] is without merit.

542. The Trial Chamber relied upon the evidence of two witnesses in reaching its finding on this issue, Dauda Aruna Fornie and TF1-516. Fornie testified that Bockarie called Benjamin Yeaten on the satellite phone, and that Yeaten told Bockarie that Taylor wanted him to ensure that the prisoners released were transferred to Buedu.[1622] The Trial Chamber also relied upon TF1-516's testimony that an instruction to send the released prisoners to Buedu

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[1610] Judgement, para. 2943.
[1611] See the response to Ground 1.
[1612] See the response to Ground 1.
[1613] Taylor Appeal, para. 630.
[1614] Judgement, para. 2943.
[1615] Taylor Appeal, paras. 631-32.
[1616] Judgement, paras. 168-69.
[1617] Kabbah, T. 17 September 2008 p. 16422.
[1618] Judgement, paras. 2942-43.
[1619] Taylor Appeal, paras. 633-34.
[1620] See Judgement, paras. 3109, 3111, 3588, 3606, 3609.
[1621] Taylor Appeal, paras. 633-34.
[1622] Judgement, para. 3588.

came after a conversation with Yeaten's radio base.[1623] The Trial Chamber found both Fornie and TF1-516 to be generally credible witnesses, noted that "their accounts differ slightly" but found any discrepancies to be "inconsequential".[1624] Taylor complains that Fornie testified that he heard Bockarie tell Mohamed Kabbah that Taylor had instructed him, through Yeaten, to release the prisoners but that when Kabbah testified, he did not mention Taylor's instruction.[1625] Taylor ignores the fact that the Trial Chamber directly addressed this issue in its Judgement:

> The Trial Chamber considered that having testified prior to Fornie, Kabbah was not questioned further on his testimony concerning the release of the Pademba Road prisoners. The Trial Chamber considers that the failure to mention such an instruction is explicable by the passage of time and does not undermine Fornie's evidence.[1626]

543. As the primary trier of fact, the Trial Chamber was entitled to find the evidence of Fornie and TF1-516 credible and to rely upon their evidence in finding that the Prosecution had proved beyond reasonable doubt that Taylor advised Bockarie, through Yeaten, to transfer the released prisoners to Buedu.[1627] The Trial Chamber considered the issues raised by Taylor but reached a conclusion with which Taylor disagrees.[1628] This does not render the Trial Chamber's conclusion unreasonable and does not justify appellate intervention.

544. The Trial Chamber was clearly conscious that Fornie and TF1-516's evidence was hearsay, but weighed the probative value of portions of that evidence and concluded that it was reliable for the purpose of proving the truth of its contents.[1629] Taylor has failed to demonstrate that no reasonable Trial Chamber could have reached the finding or that the finding represents a miscarriage of justice.

(c) Taylor's 'advice' to Bockarie to open a training camp in Bunumbu

545. The Trial Chamber reasonably found on the evidence that Taylor advised Bockarie to open a training camp in Bunumbu.[1630] Taylor fails to demonstrate that no reasonable trier of fact could have reached this conclusion.

546. The Trial Chamber explicitly recognised that the evidence of TF1-362, the *sole witness* who testified regarding Taylor's involvement in the creation of the Bunumbu training

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[1623] Judgement, para. 3588.
[1624] See Judgement, para. 3589.
[1625] Taylor Appeal, para. 634.
[1626] Judgement, para. 3589.
[1627] See Judgement, para. 3591.
[1628] Judgement, para. 634.
[1629] See the response to Ground 1.
[1630] Taylor Appeal, paras. 635-36.

camp in 1998, was hearsay.[1631] Nevertheless, the Trial Chamber weighed the probative value of portions of that evidence and concluded that it was reliable for the purpose of proving the truth of its contents, being voluntary, truthful and trustworthy.[1632]

547. The Trial Chamber found TF1-362 to be a generally credible witness.[1633] Although the Trial Chamber recognised that TF1-362 was the only witness to give evidence that Taylor gave the instruction to Bockarie to open the training base, the Trial Chamber went on to find that TF1-362's evidence was corroborated by TF1-516's testimony of Yeaten's command.[1634] The Trial Chamber specifically noted Taylor's argument that the evidence of TF1-516 directly contradicts the evidence of TF1-362,[1635] but rejected his argument.[1636] The Trial Chamber relied upon evidence in the case that "Yeaten was Director of the SSS, working for the Accused, transmitting and carrying out orders on his behalf" to conclude that the evidence of TF1-516, that Yeaten commanded Bockarie to open a training base, was consistent with the evidence of TF1-362, that the training camp was opened on the 'order' of the Accused.[1637] Taylor criticises the Trial Chamber for providing no justification about why it believed TF1-516 "erroneously places the event in 1999".[1638] However, the justification is axiomatic: it was "undisputed that in 1998 an RUF training base called "Camp Lion" was set up in Bunumbu.[1639] The Trial Chamber's conclusion on this point is one that a reasonable trier of fact could have reached.

(d) Taylor's 'advice' to Bockarie to construct an airfield in Buedu

548. Taylor erroneously claims that the Trial Chamber erred in fact in finding that he advised Bockarie to construct an airfield in Buedu.[1640] The Trial Chamber relied upon the evidence of three witnesses: Perry Kamara, Albert Saidu and TF1-585 in finding that Taylor 'told'[1641] Bockarie to construct an airfield, finding all three witnesses to be generally credible.[1642] The Trial Chamber relied upon evidence from Kamara that he had transmitted a message from Bockarie in which Taylor told Bockarie that they should try to re-organize and

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[1631] Judgement, para. 4106.
[1632] See the response to Ground 1.
[1633] Judgement, para. 4106. See also Judgement, para. 253.
[1634] Judgement, para. 4107.
[1635] Judgement, para. 4106.
[1636] Judgement, para. 4107.
[1637] Judgement, para. 4107.
[1638] Taylor Appeal, para. 636.
[1639] Judgement, para. 4105.
[1640] Taylor Appeal, paras. 637-40.
[1641] At Judgement, para. 4152.
[1642] Judgement, para. 4149.

re-prepare the airfield at Buedu.[1643] The Trial Chamber relied upon evidence from Saidu about the meeting at which Daniel Tamba, a.k.a. Jungle, spoke on Taylor's behalf and said that the AFRC/RUF should try to construct the airstrip at Buedu.[1644] The Trial Chamber also found that TF1-585's evidence, that Bockarie's wife told her that Bockarie was at Taylor's farm to discuss construction of an airfield, supported its conclusion.[1645]

549. The Trial Chamber was conscious that Kamara, Saidu, and TF1-585's evidence was hearsay,[1646] but concluded that it was reliable for the purpose of proving the truth of its contents.[1647] As regards Kamara's testimony, Taylor argues that having found one part of Bockarie's message unreliable, the rest of the message could not be relied upon.[1648] Taylor ignores the detailed justification articulated by the Trial Chamber.[1649] The Trial Chamber provided a cogent basis for finding proved beyond reasonable doubt that Taylor 'told' Bockarie to construct the airfield, whilst declining to find that Taylor instructed that civilian labour should be used.

550. Likewise, Taylor raises the same objection on appeal as he raised before the Trial Chamber that the evidence of Mohamed Kabbah discredits the evidence of the other prosecution witnesses.[1650] The Trial Chamber rejected Taylor's contention that Kabbah's testimony to the effect that Bockarie spoke of the need to construct an airfield so that the RUF/AFRC could receive arms and ammunition from Libya, rather than Liberia, discredited the evidence of the prosecution witnesses.[1651] Rather, the Trial Chamber concluded that "an anticipated use of the airfield to receive arms and ammunition from Libya is not inconsistent with a need perceived by the Accused for an airfield to receive arms and ammunition from Liberia."[1652]

551. The testimony of TF1-585[1653] supports Kamara and Saidu's evidence because it supports the conclusion that Taylor discussed the airfield with Bockarie. Saidu's testimony can reasonably be relied upon to prove that Taylor's advice was to construct the airfield at

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[1643] Judgement, paras. 4132, 4148, 4150.
[1644] Judgement, paras. 4135, 4148, 4150.
[1645] Judgement, para. 4148.
[1646] Judgement, para. 4171.
[1647] See the response to Ground 1.
[1648] Taylor Appeal, para. 639.
[1649] Judgement, para. 4150.
[1650] Taylor Appeal, para. 638. See Judgement, para. 4149.
[1651] Judgement, para. 4149.
[1652] Judgement, para. 4149.
[1653] Judgement, para. 4148.

Buedu. The Trial Chamber accept that Daniel Tamba was Taylor's subordinate,[1654] that he spoke at the meeting on behalf of Taylor when he stated that they should construct an airfield at Buedu. The fact that other witnesses who were present at the meeting did not mention this in their evidence does not make it unreasonable for the Trial Chamber to rely on Saidu's testimony. This is particularly so when the witnesses referred to were not cross-examined on the issue.[1655]

(iii) No error in the Chamber's determination that the military and operational advice given by Taylor to the RUF and AFRC constituted assistance to crimes

552. Taylor's assertion that no reasonable Trial Chamber could have concluded that his advice substantially contributed to the alleged crimes is without merit.[1656] Contrary to Taylor's contention that there was no evidence that the AFRC/RUF would use forced labour for the construction of an airfield, the Trial Chamber found that the evidence on record "unequivocally demonstrates that after 1997" it was "public knowledge" that AFRC/RUF forces committed the crime of forced labour.[1657] Consequently, irrespective of whether the airfield was ever used,[1658] Taylor telling the AFRC/RUF to open the airfield substantially contributed to the imposition of forced labour upon at least 200 civilians.[1659]

553. Taylor's assertion that all other advice he gave did not alter the behaviour of Bockarie or JPK or had any impact on the commission of crimes is not borne out by the evidence.[1660] The Trial Chamber found that Taylor "held a position of authority as an elder statesman and as President of Liberia. As such, he was accorded deference by the RUF and RUF/AFRC and, as demonstrated by the evidence, his advice was generally heeded by them".[1661]

554. The RUF, RUF/AFRC's dependence on Taylor for critical ongoing provision of support,[1662] gave further weight to his words and the RUF and AFRC leaders consistently heeded his directions as to the timing and targets of their military operations. Among the advice or instructions Taylor gave to the RUF and AFRC leaders were: (i) Taylor's instruction to JPK to "capture Kono", (ii) Taylor's instruction to Bockarie to "maintain control of Kono", (iii) Taylor's instruction to open a training base in Bunumbu, and (iv)

[1654] Recall para. 2718 of the Judgement.
[1655] See the argument at Taylor Appeal, para. 638.
[1656] Taylor Appeal, paras. 641-42.
[1657] Judgement, para. 6883.
[1658] Taylor Appeal, para. 641.
[1659] Judgement, paras. 1778-79.
[1660] *Contra* Taylor Appeal, para. 642.
[1661] Judgement, para. 6945.
[1662] See, e.g., Judgement, paras. 3730, 3914, 3918, 4249, 4254, 4256, 4262, 5031, 5527, 5559, 5829-31, 5834, 6913-15, 6931-37.

Taylor's instruction to construct an airfield in Buedu. Each instruction was heeded and within the context of all of the circumstances, the Trial Chamber reasonably found that Taylor's advice substantially contributed to the commission of crimes.[1663]

(iv) Conclusion: No error in the Trial Chamber's determination that Taylor was aware of the substantial likelihood that crimes would be committed as a result of his 'advice'

555. Notably, Taylor raises the issue of *mens rea* only in the 'conclusion' to his submissions on this issue,[1664] and the *mens rea* was not part of the Notice of Appeal for this Ground.[1665] Taylor raises the issue of the *mens rea* for aiding and abetting under Ground 16 of his Appeal to which the Prosecution has responded fully.

556. Taylor does not show that the Trial Chamber erred in finding that he gave military or operational advice to the RUF or AFRC. Nor did the Trial Chamber err in law or in fact in finding that the advice constituted assistance to the crimes charged in the Indictment. It is unnecessary for the Appeals Chamber to quash any of the relevant factual findings or set aside any legal conclusion. This Ground of Appeal should be dismissed.

GROUND 27: The Trial Chamber correctly found that Taylor's provision of communication devices, radio training and "warning messages" amounted to practical assistance which as part of the overall operational support he provided substantially contributed to the commission of crimes

(i) Overview

557. Taylor's arguments regarding alleged errors of law and fact fail to demonstrate that the Trial Chamber erred under either standard of review. The Trial Chamber reached a reasonable conclusion when it found that Taylor's provision of communication devices, radio training and "warning messages" to the RUF, AFRC/RUF constituted practical assistance to the commission of crimes.[1666] The Trial Chamber considered the totality of the evidence before concluding that "taken cumulatively", Taylor's numerous acts of support had a substantial effect on the crimes committed.[1667] In adopting this holistic approach, the Chamber focused on the contribution of each form of assistance in the context of all of the evidence in deciding whether the *actus reus* for aiding and abetting was satisfied. Taylor's piecemeal approach in relation to these Grounds fails to reveal any error in the Trial Chamber's reasoning.

[1663] *Contra* Taylor Appeal, para. 642.
[1664] *Contra* Taylor Appeal, para. 642.
[1665] See Taylor Notice, paras. 74-76.
[1666] Judgement, para. 6930, 6931, 6936, 6937.
[1667] Judgement, para. 6937.

(ii) The provision of satellite phones by Taylor

558. As noted by the Trial Chamber, Taylor does not dispute that he gave Bockarie a satellite phone in October 1998,[1668] with the Trial Chamber noting that Bockarie had at least one other such phone.[1669] Contrary to Taylor's assertion that the Trial Chamber was unable to determine whether Bockarie used either of the two satellite phones in relation to military activities,[1670] the Trial Judgement expressly states that there was "*overwhelming evidence* that Bockarie used satellite phone communications to speak with [Taylor] and others *in furtherance of RUF/AFRC military activities.*"[1671]

559. The Trial Chamber also found that after the meeting at Waterworks at which Bockarie told commanders of the AFRC/RUF about the plan drawn up with Taylor to attack Kono-Makeni-Freetown, Bockarie contacted Taylor by satellite phone and Taylor told Bockarie to use "all means" to get to Freetown.[1672] The Trial Chamber, therefore, clearly found a link between the use of a satellite phone by Bockarie and the commission of crimes.[1673]

560. Taylor's submissions regarding the contribution to Bockarie's communications infrastructure also fail to take account of the Trial Chamber's critical finding that as well as providing a satellite phone, the calls were paid for through "top-up cards" sent through Benjamin Yeaten,[1674] indicating ongoing support for satellite phone communications. The Trial Chamber's inability to ascertain whether calls made by Bockarie to Taylor and others in relation to the RUF/AFRC activities were made on the satellite phone that Taylor provided to Bockarie,[1675] did not preclude its finding that Bockarie's use of both satellite phones, one of which was provided by Taylor, as well as the use of top up cards provided by Yeaten, enhanced Bockarie's communication infrastructure which he used in furtherance of RUF, RUF/AFRC military activities.[1676]

[1668] Judgement, para. 3722, 6928.
[1669] Judgement. para. 3726.
[1670] Taylor Appeal, para. 647.
[1671] Judgement, para. 3725 (emphasis added). See also Judgement, para. 3723, referring to Kabbah, T. 15 September 2008 p. 16178; TF1-516, T. 8 April 2008 pp. 6861, 6934-35; T. 9 April 2008 pp. 6977-78; Keita, T. 23 January 2008 pp. 2020-22; Judgement, para. 3724, referring to Fornie, T. 3 December 2008 pp. 21581-88; T. 10 December 2008 pp. 22109-12; TF1-585, T. 8 September 2008 pp. 15717-24. All of these witnesses were found to be generally credible by the Trial Chamber. See Judgement, paras. 3723-24.
[1672] Judgement, para. 3114, referring to TF1-371, T. 28 January 2008, pp. 2412-13 (CS). See also Judgement paras. 3117, 3615, 3724, referring to Kanneh, T. 9 May 2008 pp. 9416-19, 9433-37; T. 13 May 2008 p. 9728.
[1673] *Contra* Taylor Appeal, para. 648.
[1674] Judgement, paras. 3726, 3730.
[1675] Taylor Appeal, para. 647.
[1676] Judgement, paras. 3726, 3729-30.

561. The Trial Chamber acted within its discretion in not accepting Taylor's assertions that he used a satellite phone in order to facilitate peace negotiations.[1677] No basis has been established to overturn that credibility assessment.

562. Taylor asserts without justification that the Trial Chamber made errors of law and fact in its findings connecting the use of satellite phone communications during the invasion of Freetown to crimes committed, suggesting that the calls never occurred, or if they did, the contents are unknown.[1678] Taylor does not identify the error of law or fact which he posits, relying instead on the general assertion that such errors occurred.[1679] The claim that the only thing the Trial Chamber was able to find from these communications was that he received updates is manifestly incorrect.[1680] The findings make clear that during such communications Bockarie consulted with Yeaten on operational and military decisions,[1681] and that Taylor gave advice to Bockarie during such communications.[1682]

563. In relation to Issa Sesay's use of a satellite phone, Taylor misstates the record in suggesting that though the Trial Chamber was unable to determine whether Sesay used a satellite phone provided by Taylor, it resorted to making a finding that the phone provided by Taylor contributed to Sesay's "communication capability".[1683] First, the finding specifically relates to the Trial Chamber's determination of whether the satellite phone provided by Taylor was used during a *particular call* referred to in the testimony of Perry Kamara, and *not* as to Sesay's use of a satellite phone generally.[1684]

564. Taylor fails to establish any error on the part of the Trial Chamber in finding that the provision of the satellite phone to Issa Sesay was used in furtherance of the rebel's military activities.[1685] Perry Kamara testified that Sesay would send messages to all RUF commanders regarding his satellite phone conversations,[1686] while Dennis Koker testified that he witnessed Sesay discussing the takeover and control of Kono on a satellite phone.[1687] While it is correct that Issa Sesay testified he had another satellite phone beside the one provided by Taylor,[1688]

[1677] Judgement, para. 3725.
[1678] Taylor Appeal, para. 648.
[1679] Taylor Appeal, para. 648.
[1680] *Contra* Taylor Appeal, para. 648.
[1681] Judgement, paras. 3596, 3605.
[1682] Judgement, para. 3606.
[1683] Taylor Appeal, para. 647.
[1684] Judgement, para. 3727 (emphasis added).
[1685] *Contra* Taylor Appeal, paras. 648-49.
[1686] Judgement, para. 3727, referring to Kamara, T. 5 February 2008 p. 3083.
[1687] Judgement, para. 3727, referring to Koker, T. 15 January 2008 pp. 1239-40.
[1688] Taylor Appeal, para. 647.

Taylor omits Sesay's testimony that he was unable to use the other satellite phone in his possession as it had no phone credits.[1689]

(iii) The use of Liberian Communication equipment by the AFRC/RUF

565. Taylor's contention that the Trial Chamber "only accepted one instance of Sankoh using the NPFL communication network" is incorrect.[1690] The Trial Chamber found that Sankoh used the NPFL communications network "to communicate to the RUF, and sent messages to Bockarie via (Taylor)".[1691] These communications included Sankoh promoting Bockarie and instructing Bockarie to take instruction from Taylor. Foday Lansana,[1692] TF1-338,[1693] and Augustine Mallah,[1694] all of whom were found to be generally credible by the Trial Chamber,[1695] testified to these communications. Taylor's submission that because the Trial Chamber did not find him liable for ordering, Sankoh's communication that Bockarie should take orders from Taylor could not have constituted practical assistance to the commission of crimes is without merit, as what is at issue here is the assistance occasioned by the operational support provided by Taylor.[1696]

566. Taylor's contention regarding communications between Memunatu Deen and Bockarie in 1997 fundamentally misinterprets the basis of the Trial Chamber's finding.[1697] The Trial Chamber did not find the Prosecution had proven that the shipment of ammunition brought by Memunatu Deen and Fonti Kanu to Sierra Leone in 1997 was sent by Taylor.[1698] But the Chamber did find that the Prosecution had proved beyond reasonable doubt that communication took place between Bockarie's operator Dauda Aruna Fornie (DAF) and Memunatu Deen, an RUF operator based in Liberia, regarding a shipment of ammunition to be sent by Taylor to Bockarie. The Trial Chamber found that this communication using Liberian radio equipment was part of the operational support provided by Taylor which amounted to practical assistance to military operations of the rebel forces during which crimes were committed.[1699]

[1689] Judgement, para. 3727, referring to Sesay, T. 11 August 2010 pp. 46054-55; T. 14 July 2010 pp. 44485-88; T. 23 August 2010 pp. 46909-10.
[1690] *Contra* Taylor Appeal, para. 651. See Judgement, paras. 3833-34.
[1691] Judgement, para. 3834.
[1692] Judgement, para. 3809, referring to Lansana, T. 21 February 2008 p. 4490.
[1693] Judgement, para. 3813, referring to TF1-338, T. 1 September 2008 pp. 15114-16.
[1694] Judgement, para. 3812, referring to Mallah, T. 12 November 2008 pp. 20124-28.
[1695] Judgement, para. 3830.
[1696] *Contra* Taylor Appeal, para. 651.
[1697] Taylor Appeal, para. 652.
[1698] Judgement, para. 4854.
[1699] *Contra* Taylor Appeal, para. 652. See Judgement, para. 4262.

567. Similarly, Taylor's contention regarding communications to Eddie Kanneh in Liberia in 1998 is equally misguided.[1700] First, Taylor erroneously implies that these concerned a single instance of Eddie Kanneh moving between Liberia and Sierra Leone, while in fact, the evidence relied on by the Trial Chamber shows that these trips took place regularly over a period of three years.[1701] Moreover, the communications did not pertain only to Kanneh's movements, but also involved conversations regarding diamond mining.[1702] Taylor's contentions disregard the importance of diamond mining and diamond transactions in the course of the conflict, as well as the key role that diamonds played in the facilitation of arms and ammunition which fuelled the war.[1703]

568. In relation to communications between Dauda Aruna Fornie and Sam Bockarie in 1998, Fornie testified that he provided Bockarie with updates on the front lines in Sierra Leone.[1704] Taylor fails to establish any error on the part of the Trial Chamber in finding that the giving of military updates to a military commander away from the scene of the battle, when such reports form part of an ongoing provision of operational support, could constitute practical assistance,[1705] more so in light of findings that the RUF/AFRC operational strategy was characterised by a campaign of crimes against the Sierra Leonean civilian population.[1706]

569. In relation to the sending of a radio operator by the RUF to Liberia during the Mosquito Spray incident, Taylor's assertion that this could not be considered practical assistance is based on a misreading of the Judgement.[1707] The Trial Chamber considered this episode significant because it occurred "in order to coordinate communications between Yeaten and the RUF."[1708] The Defence fails to demonstrate any error on the part of the Trial Chamber in considering the heightened cooperation between the RUF and Taylor's subordinates in the context of the overall evidence relevant to Taylor's practical assistance to the RUF/AFRC.[1709]

570. The practical assistance inherent in warning a rebel force of impending attacks which might otherwise serve to diminish their capacity to continue to conduct an operation

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[1700] *Contra* Taylor Appeal, para. 653.
[1701] Judgement, paras. 3845-46.
[1702] Judgement, para. 3847.
[1703] Judgement, paras. 5874, 5948, 4247.
[1704] Judgement, para. 3851, referring to Fornie, T. 2 December 2008 pp. 21448-51.
[1705] Taylor Appeal, para. 654.
[1706] Judgement, para. 6905.
[1707] *Contra* Taylor Appeal, para. 655.
[1708] Judgement, para. 3884.
[1709] *Contra* Taylor Appeal, para. 655.

encompassing acts of terror is obvious.[1710] Taylor's contentions to the contrary appear to suggest that in order to be convicted for aiding and abetting, an individual must provide practical assistance to the commission of a specific crime.[1711] Such a contention is incorrect in law. An accused is not required to know the exact crime to which his assistance is contributing.[1712]

571. Contrary to Taylor's contention that there was a lack of clarity as to whether "448 messages" emanated from Liberia or from Sierra Leone,[1713] Mohammed Kabbah,[1714] TF1-585,[1715] Abu Keita,[1716] Isaac Mongor,[1717] and Alimamy Bobson Sesay[1718] all testified that radio operators in Liberia were transmitting "448 messages", and all of the witnesses testified that the messages were transmitted during 1998 or January 1999. Consequently, Taylor's contentions that there was an absence of time-frame regarding when "448 messages" were sent from Liberia, or that they emanated from Liberia at all, are without merit.[1719]

(v) Conclusion

572. Taylor fails to demonstrate any legal or factual errors in the findings entered by the Trial Chamber regarding his provision of operational support to the rebel forces which would require appellate intervention.

GROUND 28: The Trial Chamber correctly found that the provision of a guesthouse for the RUF in Monrovia constituted practical assistance that taken cumulatively with the other operational support Taylor provided had a substantial effect on the commission of crimes

(i) Overview

573. Taylor fails to demonstrate any error of law or fact in the Trial Chamber's finding that his provision of a Guesthouse to the RUF in Monrovia amounted to practical assistance for the commission of crimes.[1720] As Taylor correctly points out, the Trial Chamber found that

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[1710] *Contra* Taylor Appeal, para. 658.
[1711] Taylor Appeal, para. 658.
[1712] *AFRC* AJ, para. 243; *Blaškić* AJ, paras. 49-50; *Haradinaj* AJ, para. 58; *Tadić* AJ, para. 229; *Mrkšić* TJ, para. 621.
[1713] Taylor Appeal, para. 658.
[1714] Judgement, para. 3889, referring to Kabbah, T. 12 September 2008 pp. 16129-30.
[1715] Judgement, para. 3890, referring to TF1-585, T. 5 September 2008 pp. 15597-600; T. 8 September 2008 pp. 15628-32; T. 9 September 2008, pp. 15855-58; T. 10 September 2008, pp. 15884-88, 15890-97, 15901-15906.
[1716] Judgement, para. 3891, referring to Keita, T. 23 January 2008 pp. 2024-25.
[1717] Judgement, para. 3893, referring to Mongor, T. 11 March 2008 p. 5826.
[1718] Judgement, para. 3894, referring to Bobson Sesay, T. 18 April 2008 pp. 8018-19.
[1719] *Contra* Taylor Appeal, para. 659.
[1720] *Contra* Taylor Appeal, para. 661.

the Guesthouse was used in part for matters related to the peace process.[1721] However, the Trial Chamber made clear that in the time it was used by the RUF, "the message from [Taylor] to the RUF was not in support of the peace process".[1722] Instead, the provision of the Guesthouse by Taylor provided "sustained and significant support" to the RUF and was "vital" to their military operations in which crimes were committed.[1723] The Guesthouse provided a base for the RUF in Monrovia through which the relaying of arms and ammunition in exchange for diamonds took place,[1724] the critical elements that perpetuated the conflict.

(ii) The Guesthouse was a hub for transactions involving arms, money and diamonds in which Taylor was "directly involved"

574. Taylor fails to provide any support for his contention that no reasonable trier of fact could have found that he knew or was involved in the transactions that occurred through the Guesthouse.[1725] This assertion fails to take account of the Trial Chamber's finding that "*most of the evidence* relating to the transfer of arms and ammunition, the provision of funds, and the delivery of diamonds *directly involved* [Taylor]". Moreover, the Trial Chamber found that "RUF members who stayed at the Guesthouse went to deliver diamonds *directly* to Taylor".[1726]

575. As has been addressed elsewhere,[1727] the fact that every delivery of diamonds to Taylor was not found to have corresponded to a delivery of materiel, does not in any measure negate the fact that Taylor received diamonds in payment for the provision of such materiel.[1728] As held by the Trial Chamber, the evidence "clearly indicates that diamonds were given to [Taylor] in order to get arms and ammunition from him."[1729] Taylor's contention is submitted without any suggestion as to why the AFRC/RUF was crossing an international boundary in order to give him their most valued resource.[1730] To view the findings regarding diamonds in isolation from the extensive findings regarding the continued provision of war supplies by Taylor to rebel forces who were operating under an international

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[1721] Taylor Appeal, para. 663.
[1722] Judgement, para. 4241.
[1723] Judgement, para. 4262.
[1724] Judgement, paras. 4261, 6933.
[1725] Taylor Appeal, para. 664.
[1726] Judgement, para. 4245 (emphasis added), *contra* Taylor Appeal, para. 665.
[1727] See also paras. 290-91 (response to Ground 16) and 420 (response to Ground 22).
[1728] *Contra* Taylor Appeal, para. 664.
[1729] Judgement, para. 5936.
[1730] Taylor Appeal, para. 664.

arms embargo, and for whom arms and ammunition were often scarce, is manifestly illogical.[1731]

576. Contrary to Taylor's claim there was no evidence that provision of the Guesthouse provided any practical assistance on the commission of crimes,[1732] the Trial Chamber expressly found that the transactions of arms and ammunition for diamonds between Taylor and the RUF which were conducted through the Guesthouse "played a vital role in the military operations of the RUF in which crimes were committed."[1733] As noted by the Trial Chamber, the *actus reus* of aiding and abetting does not require proof of a direct causal link between every individual act of assistance and the resulting crime,[1734] as Taylor appears to be arguing.[1735] Further, Taylor's assertion that the Trial Chamber was required to pinpoint a specific crime to which the assistance was made is a reiteration of an argument incorrect in law.[1736] The law is clear that it need not be proven that assistance was made to a specific identifiable crime.[1737] Instead, the Trial Chamber correctly referred to assistance to the "military operations" of the RUF,[1738] which operations were properly found to inherently involve the commission of crimes, given the avowed *modus operandi* adopted by the rebel forces.[1739]

577. Following Taylor's reasoning would lead to the untenable position where, regardless of the number of different types of isolated yet related acts of support an Accused provides which would together serve to assist a group to commit crimes, such an Accused could not be found liable for aiding and abetting the crimes.[1740] This contention is clearly not supported by the law. The *actus reus* of aiding and abetting involves the provision of "practical assistance" that has a "substantial effect" on the commission of a crime.[1741] There is nothing in the definition which precludes a Trial Chamber from viewing acts of assistance cumulatively.[1742]

578. Taylor's assertion that the use of the Guesthouse for the transfer of funds between Taylor and the RUF was given particular importance by the Trial Chamber is not borne out by

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[1731] *Contra* Taylor Appeal, para. 664.
[1732] Taylor Appeal, para. 665.
[1733] Judgement, para. 4247.
[1734] Judgement, para. 485.
[1735] Taylor Appeal, para. 664.
[1736] See also the response to Grounds 32 and 33, fn. 1882.
[1737] *AFRC* AJ, para. 243; *Blaškić* AJ, paras. 49-50; *Haradinaj* AJ, para. 58; *Tadić* AJ, para. 229; *Mrkšić* TJ, para. 621.
[1738] *Contra* Taylor Appeal, paras. 665-66.
[1739] Judgement, para. 6790.
[1740] Taylor Appeal, para. 666.
[1741] Judgement, para. 482.
[1742] *Contra* Taylor Appeal, para. 666.

a reading of the Trial Judgement.[1743] The Trial Chamber did not seek to assign particular significance to the transfer of funds *via* the Guesthouse, rather, it was noted alongside the facilitation of the transfer of arms, ammunition and diamonds.[1744] Moreover, the Trial Chamber went on to conclude that the importance of the Guesthouse lay in the fact that it "provided a base for the RUF in Monrovia, which facilitated the regular transfers of arms and ammunition from [Taylor] to the RUF, as well as diamonds from the RUF to [Taylor]". It was these "transactions which played a vital role in the military operations of the RUF/AFRC in Sierra Leone in which crimes were committed."[1745] The Trial Chamber did not, therefore, proceed to "rely on 'financial support' to sustain the conclusion of assistance by virtue of the Guesthouse."[1746]

579. Further, the Trial Chamber did not rely upon witness testimony regarding the unproven allegation that Taylor kept $150,000 from Issa Sesay for safekeeping, as contended by Taylor.[1747] As noted by the Trial Chamber in a separate part of the Trial Judgement, TF1-338 was the only witness to testify to this incident.[1748] In its findings regarding the Guesthouse, however, the Trial Chamber only referred to the testimony of TF1-338 in relation to different evidence which involved Issa Sesay delivering diamonds to Taylor.[1749] Consequently, Taylor's contention that these amounted to "inconsistent findings" in which "irreconcilable and illogical weight (was) attached to the same evidence" is entirely unfounded.

(iii) Conclusion

580. Taylor fails to demonstrate how any of the findings challenged under this Ground served to either invalidate the decision or occasion a miscarriage of justice.[1750] As a consequence, the arguments in this section should be dismissed.

GROUND 29: The Chamber committed no error in finding that Taylor assisted crimes by providing herbalists in conjunction with all other forms of operational support he provided

(i) Overview

[1743] *Contra* Taylor Appeal, para. 667.
[1744] Judgement, paras. 4247, 4248(xl).
[1745] Judgement, para. 4261, *contra* Taylor Appeal, para. 667.
[1746] Judgement, para. 668.
[1747] *Contra* Taylor Appeal, para. 668.
[1748] Judgement, para. 4018.
[1749] Judgement, para. 4243.
[1750] *Contra* Taylor Appeal, para. 669.

581. Taylor's challenge to the Trial Chamber's approach to the evaluation of hearsay evidence lacks merit. His argument that the Trial Chamber predicated its findings solely on hearsay evidence to conclude that he sent herbalists to Bockarie to mark Fitti-Fatta fighters, misconstrues the Chamber's findings. Also without foundation is his challenge to the Chamber's findings that he assisted crimes by providing these herbalists, along with other forms of operational support, to the RUF/AFRC. None of these challenges demonstrate an error of law or fact by the Trial Chamber that warrants intervention by the Appeals Chamber. This Ground should be dismissed.

582. As discussed below, the Chamber did not err in law and fact when it relied on Alice Pyne and Perry Kamara's evidence and the totality of corroborated evidence before it which demonstrate a nexus between Taylor and crimes.

(ii) The Chamber properly relied on the totality of the evidence including that of Pyne and Kamara

583. Contrary to Taylor's suggestion that the Chamber relied on Pyne and Kamara's evidence alone in arriving at its conclusion respecting herbalists,[1751] the Chamber did not approach the evidence as if it existed in a vacuum.[1752] Instead, it provided a reasoned opinion based on the entire body of evidence and applied the "beyond reasonable doubt" standard in a holistic approach.[1753]

584. The Chamber's factual findings[1754] reveal that Taylor sent herbalists to Bockarie to mark Fitti-Fatta fighters to "protect" them against bullets and bolster their confidence.[1755] This finding was based on a careful detailed analysis of the evidence, with the Chamber placing "weight" on the fact that Pyne and Kamara were each told of Taylor's involvement from different sources.[1756] Moreover, merely alleging that the identity of the "elderly Gbandi woman" is in doubt[1757] does not suffice to establish that the Chamber erred in its assessment of Pyne's evidence. That Pyne spoke Gbandi and spent three days with this woman in the zoebush during the marking ceremonies[1758] strengthens her evidence on this issue, which the Chamber reasonably found to be credible.[1759]

[1751] Taylor Appeal, para. 670.
[1752] *Musema* AJ, para. 134.
[1753] *Nchamihigo* AJ, para. 213.
[1754] Judgement, paras. 4084-93.
[1755] Judgement, paras. 4094, 6935.
[1756] Judgement, para. 4085-86.
[1757] Taylor Appeal, para. 671.
[1758] Judgement, para. 4089.
[1759] Judgement, para. 4086.

585. The Chamber also noted that various aspects of both witnesses' testimony were corroborated in material respects by Issa Sesay (herbalists came from Liberia to mark the Fitta-Fatta fighters),[1760] TF1-375 (two Liberian medicine men, one an SSS subordinate of Yeaten who worked for Taylor marked fighters before retaking Kono),[1761] and Kargbo (marked by an herbalist that Bockarie brought from Liberia).[1762]

586. The Chamber, in short, engaged in a careful evaluation of the entirety of the evidence, including any discrepancies or contradictions in the testimony of both Prosecution and Defence witnesses. That, based on its full review of the record, the Chamber declined to credit Taylor's witnesses' testimony, does not demonstrate bias.[1763] The Chamber acted within its discretion in rejecting the uncorroborated testimony of Issa Sesay and Vincent's evidence that Taylor relied on to rebut Prosecution evidence, as both required caution. The Chamber also acted within its discretion to accord no weight to it.[1764]

587. Although, as observed by the Trial Chamber, there was a lack of direct evidence,[1765] this did not preclude it from determining that Taylor sent herbalists to mark Fitti-Fatta fighters. The Chamber reasoned that "while not confirming or denying any association of the Accused with the herbalists," the testimonies of both TF1-375 and Samuel Kargbo corroborated those of Pyne and Kamara in many respects, including time, place, and procedures adopted by the herbalists.[1766] This provided a sufficiently credible basis for the Chamber to rely on Pyne and Kamara's testimonies. Thus, having considered all of the evidence, it was reasonable for the Chamber to be satisfied that Taylor sent herbalists to Bockarie to mark Fitti-Fatta fighters. To the extent this evidence can be considered purely circumstantial, the Trial Chamber reached the only reasonable conclusion available to it based on the totality of the evidence.

588. The Trial Chamber was conscious that the testimonies before it were based on hearsay. Nevertheless, the Trial Chamber weighed the evidence and found it credible. The Trial Chamber considered that it was given under solemn declaration and took into account the circumstantial guarantees of its trustworthiness and the totality of the circumstances under which it was given, and concluded that it was reliable for the purpose of proving the truth of

[1760] Judgement, para. 4084.
[1761] Judgement, paras. 4075, 4086.
[1762] Judgement, para. 4077.
[1763] Taylor Appeal, para. 672.
[1764] Judgement, paras. 4084, 4088.
[1765] Judgement, para. 4085.
[1766] Judgement, para. 4086.

its contents, in the sense of being voluntary, truthful and trustworthy. The Chamber's methodology in assessing all hearsay evidence it heard was clearly set out at paragraphs 168 to 169 of its Judgement. It is evident from these paragraphs that the Trial Chamber exercised the appropriate caution when relying on this hearsay evidence, as set out in the response to Ground 1.[1767]

(iii) The provision of herbalists by Taylor in conjunction with the other forms of operational support assisted the commission of crimes

589. The Trial Chamber never found that this form of assistance alone, and viewed in isolation, would constitute "practical assistance" for the commission of crimes charged in the Indictment.[1768]

590. Rather, the Trial Chamber found that the provision of herbalists, along with other forms of assistance by Taylor, "supported the well functioning and continued existence" of the RUF/AFRC.[1769] These were groups[1770] whose military campaign was inextricably linked to commission of Indictment crimes, whose operational strategy throughout the Indictment period was characterised by a campaign of crimes against the Sierra Leonean civilian population, which crimes were inextricably linked to the strategy and objectives of the military operations themselves, and were the result of a policy and strategy that entailed a campaign of terror against the civilian population.[1771] Additionally, the Chamber found that these forms of operational support constituted "practical assistance" for the commission of crimes in Counts 1-11 of the Indictment[1772] and that "taken cumulatively" with the military support Taylor was also providing, they had a "substantial effect" on the commission of crimes charged in the Indictment.[1773]

591. There is no requirement that, in providing this assistance, Taylor intended that crimes be committed, so long as he knew or was aware of the substantial likelihood that his acts would facilitate the commission of crimes.[1774] The Chamber properly concluded that Taylor knew or had such awareness.[1775]

[1767] See the response to Ground 1.
[1768] Judgement, para. 6936.
[1769] Judgement, para. 6935.
[1770] Judgement, para. 6935.
[1771] Judgement, paras. 6905, 6936.
[1772] Judgement, para. 6936.
[1773] Judgement, para. 6937.
[1774] Judgement, para. 486(i) Applicable Law. See also submissions in the response to Ground 16.
[1775] Judgement, paras. 6947-49.

592. Finally, contrary to Taylor's assertions,[1776] his provision of herbalists should not just be viewed as a one-off effort to build confidence for the Fitti-Fatta Operation, but long-term confidence that would benefit the RUF/AFRC fighters over an extended stretch in their campaign, a campaign characterised by crimes against the civilian population of Sierra Leone. According to Pyne, the herbalists had been sent to Bockarie by Taylor to help protect the RUF fighters, "particularly those who would go to recapture Koidu Town from ECOMOG."[1777] As for Kamara, "it was this herbalist that was going to inspire us so that we will have no fear of attacking Kono, and the various areas I have named," which included, Makeni, Magburaka, Matotoka, Masiaka and Waterloo.[1778]

593. Taylor has failed to show any error on the part of the Trial Chamber that either invalidated its decision or occasioned a miscarriage of justice in connection with its determination that he assisted crimes by the cumulative operational support he provided including sending herbalists to mark Fitti-Fatta fighters. Accordingly, Ground 29 should be dismissed.

GROUND 30: The Trial Chamber committed no error in finding that Taylor assisted crimes by providing medical support to RUF/AFRC members

(i) Overview

594. Taylor's challenge to the Trial Chamber's finding that his provision of medical support to RUF/AFRC members as part of the overall operational support he provided aided and abetted crimes is without merit. The medical support Taylor provided to the RUF/AFRC members, considered within the entirety of the operational support he provided, assisted the RUF/AFRC forces to undertake military operations characterised by a campaign of terror against civilians.

595. The Chamber properly applied the correct law to the factual findings. Taylor fails to demonstrate any error of law or that no reasonable trier of fact could have reached the contested factual findings. Ground 30 should be dismissed.

(ii) No error in finding that Taylor provided medical support and that this support was not on humanitarian grounds

596. Taylor seeks to relitigate an issue decided against him that providing medical assistance to the RUF/AFRC members in Liberia was for criminal rather than humanitarian

[1776] Taylor Appeal, para. 673.
[1777] Taylor Judgement, para. 4072.
[1778] TF1-360, T. 5 February 2008 pp. 3163, 3165.

reasons.[1779] Taylor's claim that he provided medical assistance for humanitarian reasons related only to the period during which he admitted to providing such support, i.e., the period of mediating the Lomé Accord in February/March 1999.[1780] However, the Chamber reasonably concluded from the totality of the evidence that he provided such support throughout the Indictment period.[1781] The evidence established that the transport of RUF/AFRC members to Liberian hospitals for medical care took place both before and after the Lomé Accord.[1782]

597. Moreover, Taylor's assertion that any such support was justified in law as prescribed by international humanitarian law is misplaced.[1783] Taylor has not admitted the Government of Liberia was officially engaged as a party to the conflict in Sierra Leone. Contrary to his assertion,[1784] there was no obligation under international law and/or Common Article 3 of the Geneva Conventions I-IV for Liberia to treat wounded fighters from Sierra Leone. Common Article 3 does not impose any obligation on neighbouring countries which were not belligerents in a conflict to receive wounded fighters from a neighbouring country. In addition, there was no evidence adduced at trial that forces or groups opposing the RUF/AFRC were given medical treatment by Taylor.

598. In a similar vein, the doctrine of necessity[1785] to care for the sick or wounded relates to humane treatment of the enemy in times of armed conflict. As stated above, Taylor never admitted that the Government of Liberia was a party to that conflict, throughout the Indictment period. He is unable now to rely on this assertion to argue that his medical support for the RUF/AFRC was only for humanitarian reasons.[1786]

599. Article 11 of the Fifth Hague Convention of 1907 provides that a neutral Power which receives on its territory troops belonging to the belligerent armies shall "intern them, as far as possible, at a distance from the theatre of war".[1787] Article 14 provides that wounded brought into neutral territory "must be guarded by the neutral Power so as to ensure their not taking

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[1779] Taylor Appeal, para. 678.
[1780] Taylor, T. 16 September 2009 pp. 29013, 29032-33.
[1781] Judgement, paras. 4032, 4033, 4036, 4040, 4054.
[1782] Judgement, para. 4068.
[1783] Taylor Appeal, para. 676.
[1784] Taylor Appeal, fn. 1341.
[1785] Taylor Appeal, fn. 1342.
[1786] Taylor Appeal, para. 676.
[1787] Convention (V) respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land. The Hague, 18 October 1907 (*1907 Hague Convention*), Art. 11. The 1907 Hague Convention is recognised as declaratory of customary international law and binding on Liberia, see pp. 68, 89 of the Documents On The Laws of War.

part again in the military operations."[1788] The evidence in this case does not show that these measures were taken by Taylor. To the contrary, the evidence shows that, following medical treatment in Liberia, wounded RUF/ARC members returned to Sierra Leone where they undertook military operations. RUF commander Superman was one such fighter, among others.[1789]

600. Moreover, under the 1986 Mano River Non-Aggression and Security Cooperation Treaty, Liberia was under an obligation to arrest RUF/AFRC forces found on its territory.[1790] The evidence, including Taylor's own testimony, shows there was no attempt to arrest RUF/AFRC members receiving medical treatment,[1791] and Taylor's own appeal submission makes no such claim. Rather, Taylor's provision of medical care to RUF/AFRC members, who were allowed to return to the RUF/AFRC fighting ranks, supported, sustained and enhanced the functioning of the RUF and its capacity to undertake military operations in the course of which crimes were committed,[1792] bearing in mind that the RUF and RUF/AFRC military campaign was inextricably linked to the commission of the Indictment crimes throughout the Indictment period.[1793] The Chamber reasonably concluded that, having regard to the military support Taylor provided, this medical support along with the other forms of operational support he provided that supported the well-functioning and "continued existence" of the RUF/AFRC[1794] had a substantial effect on the commission of the Indictment crimes.[1795]

601. Contrary to Taylor's assertion,[1796] the totality of the evidence led the Chamber to find that allowing such medical treatment to the RUF/AFRC members in February/March 1999 could not be for humanitarian assistance. Taylor ignores the Chamber's findings that as early as August 1997, he knew of the atrocities being committed against civilians in Sierra Leone by the RUF and RUF/AFRC forces and of their propensity to commit crimes.[1797] The

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[1788] 1907 Hague Convention. Art. 14.
[1789] See Judgement, para. 4033; TF1-375, T. 24 June 2008 p. 12676 (Taylor requested that Superman be taken by helicopter to Liberia for treatment from Makeni in 2000. Superman returned to Sierra Leone and functioned as an RUF Commander until 2001 or early 2002 when he died). See also Judgement, para. 4040; TF1 516, T. 14 April 2008 p. 7422-26 (Colonel Sheriff returned to duty after medical care in Monrovia).
[1790] Exh. D-187; Exh. D-36, para. 3(c).
[1791] Taylor, T. 16 September 2009 pp. 29033-34. In conceding that he permitted RUF injured fighters to get treatment in Liberia during the period of mediating in February/March 1999 the Lomé Accord, Taylor failed to mention any attempts whatsoever to arrest or intern any of those RUF fighters.
[1792] Judgement, para. 6936.
[1793] Judgement, paras. 6905.
[1794] *Contra* Taylor Appeal, para. 682.
[1795] Judgement, paras. 6935, 6937.
[1796] Taylor Appeal, para. 684.
[1797] Judgement, paras. 6947, 6878-79, 6886.

Chamber was properly convinced that Taylor knew of the RUF/AFRC's operational strategy and intent to commit crimes from the clear and consistent information he received after his election;[1798] that he knew his support would provide practical assistance to them in the commission of crimes during their military operations,[1799] operations inextricably linked to the commission of crimes.[1800] The only reasonable conclusion is that Taylor knew that acts of medical assistance to the RUF/AFRC (as part of the overall operational support he provided to these groups) would provide practical assistance during the course of their military operations in Sierra Leone. Further, the *CDF* case that Taylor cites[1801] in support of his claim that medical assistance does not constitute aiding and abetting is misplaced. Unlike Kondewa,[1802] the Trial Chamber determined that Taylor was aware of the RUF/AFRC's intention to commit criminal acts.[1803]

(iii) The Chamber properly evaluated corroborating evidence

602. Contrary to Taylor's assertion,[1804] Kamara and TF1-406 (Sherif) testimony on this issue are corroborative. Kamara recalled that wounded RUF were taken to Monrovia for medical care "any time".[1805] Sherif corroborated Kamara's testimony in relation to similar acts of medical treatment for RUF fighters when the RUF was engaged in combat in Lofa County in 1999[1806] against Mosquito Spray and the LURD forces.[1807] It is also noteworthy that the medical support given to the RUF allowed its members to return to the RUF/AFRC in Sierra Leone where they undertook military operations after fighting for Taylor in Liberia.[1808] The RUF/AFRC at the time remained active in Sierra Leone and continued to commit crimes.[1809] Taylor's medical support ensured the well-functioning and continued existence of the RUF/AFRC,[1810] a group whose military and operational strategy were explicitly based on

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[1798] Judgement, para. 6885.
[1799] Judgement, para. 6949.
[1800] See, e.g., Judgement, para. 6936.
[1801] Taylor Appeal, para. 684.
[1802] *CDF* TJ, para. 800.
[1803] Judgement, para. 6950.
[1804] Taylor Appeal, para. 680.
[1805] Judgement, paras. 4032-33.
[1806] Judgement, para. 4036.
[1807] Judgement, para. 6663.
[1808] See, e.g., TF1-276, T. 23 January 2008 pp. 2045-51 (Witness participated in fighting LURD in August 1999, later returned to Sierra Leone and continued participating in attacks with the RUF); TF1-571, T. 9 May 2008 pp. 9466-69 (Witness found against LURD in Lofa County in 1999, and later went to Monrovia where he got arms from Taylor to take back to the RUF in Buedu); TF1-516, T. 9 April 2008 pp. 7047-7064, 7083; T. 10 April 2008 p.7268 (Witness participated in fighting LURD in 1999 for a few months then retreated with Superman and others to Buedu. He testified that he moved back and forth from Liberia to Sierra Leone).
[1809] Judgement, paras. 5742-44.
[1810] Judgement, para. 6935.

a widespread or systematic campaign of crimes against civilians[1811] and thereby assisted crimes.

(iv) Conclusion

603. Taylor does not demonstrate any legal or factual error that either invalidated the Trial Chamber's decision or occasioned a miscarriage of justice. There is no basis for reversing his conviction for aiding and abetting the commission of crimes by providing medical care to RUF/AFRC members as part of his overall operational support. Ground 30 should be dismissed.

GROUND 31: No error of law or fact in finding Taylor assisted the commission of crimes by providing sums of money

(i) Overview

604. The Trial Chamber reasonably and correctly found the financial support Taylor provided, together with all the other forms of support he provided, constituted practical assistance to, and had a substantial effect on, the commission of the Indictment crimes. The Appeals Chamber should dismiss this Ground of Appeal since Taylor fails to establish any error of law[1812] or fact[1813] warranting appellate intervention.

605. To the extent Taylor includes his arguments in Grounds 16, 21, 32 and 33 to which he cross-refers in Ground 31,[1814] the Prosecution incorporates its responses thereto by reference.

(ii) Taylor's financial support, together with all the other forms of operational support he provided, constituted practical assistance

606. Taylor erroneously alleges that the Chamber erred in finding his financial support constituted practical assistance.[1815] He approaches the Chamber's findings on operational support in a fragmented manner, treating them as unrelated.[1816] However, the Chamber applied the correct *actus reus*[1817] and properly assessed all of the forms of operational support,[1818] finding that, taken together, these constituted practical assistance.[1819] The

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[1811] Judgement, para. 6905.
[1812] *RUF* AJ, para. 31. See also *Munyakazi* AJ, para. 6.
[1813] *RUF* AJ, para. 32; *CDF* AJ, para. 33; *Kupreškić* AJ, para. 29.
[1814] Taylor Appeal, paras. 690, 691, 693, 694, fns. 1353, 1357, 1359.
[1815] Taylor Appeal, paras. 690-691.
[1816] See paras. 273-74 above.
[1817] *Contra* Taylor Appeal, para. 691; see Judgement, paras. 482-485.
[1818] See *Musema* AJ, para. 317 ("a trial judgement must be read holistically rather than as a series of independent watertight compartments"); *Nchamihigo* AJ, para. 213 ("triers of fact should render reasoned opinions on the basis of the entire body of evidence and without applying the 'beyond reasonable doubt' standard in a piecemeal approach").

Chamber's reasoning is neither "legally incoherent" nor "irreconcilable",[1820] and Taylor provides no argument to establish the Chamber's conclusion was unreasonable.

607. Contrary to Taylor's suggestion,[1821] financial support formed only *part* of the *operational support* that he provided, which also included communications support,[1822] the provision of a guesthouse,[1823] facilitation of road and air transportation of materiel,[1824] and other forms of assistance including the provision of safe haven, medical support, the provision of goods, herbalists and the assistance of Liberian forces.[1825]

608. In its "Conclusion" on "Financial Support" within the "Operational Support" section of the Judgement, the Chamber recalled its findings on financial support and noted that except for the provision of funds he provided to Bockarie in order to buy arms and ammunition from ULIMO, the other funds he provided were for unspecified or personal use.[1826] In this light, the Chamber was unable to find that the financial support he provided "*in itself,* had a direct impact on the operations of the AFRC/RUF."[1827] In its "Conclusion" to the "Operational Support" section, the Chamber noted that among all the forms of operational support Taylor provided, communications and logistical support in particular was sustained and significant.[1828] This indicates that the Chamber did not consider Taylor's financial support to be among the most significant forms of operational support.

609. Subsequently, in its section on "Operational Support" within its "Legal Findings on Responsibility", the Chamber recalled its earlier finding that Taylor "provided financial support to the RUF/AFRC"[1829] and once again noted that "[i]n most instances, these funds were given to individual RUF members for unspecified or personal use" and that after February 1998, Taylor gave funds to Bockarie "$10,000 to $20,000 at a time, on multiple occasions for the purchase of arms from ULIMO".[1830] The Chamber concluded this paragraph

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[1819] Judgement, para. 6936.
[1820] *Contra* Taylor Appeal, paras. 691, 696.
[1821] Taylor misrepresents several other findings, often characterising them as allegations, see Taylor Appeal, paras. 688 (*contra* Judgement, paras. 3925-26, 4257), 690, 693 (*contra* Judgement, paras. 3936-37).
[1822] Judgement, paras. 6928-31.
[1823] Judgement, para. 6933.
[1824] Judgement, para. 6934.
[1825] Judgement, para. 6935.
[1826] Judgement, paras. 4023-24, see also paras. 3936-37, 5329-30.
[1827] Judgement, para. 4026 (emphasis added).
[1828] Judgement, para. 4262.
[1829] Judgement, para. 6932.
[1830] Judgement, para. 6932.

by noting that Taylor "also kept diamonds and money in 'safekeeping' for the RUF/AFRC".[1831]

610. Contrary to Taylor's contention,[1832] the funds he gave Bockarie for the purchase of arms and ammunition from ULIMO constituted practical assistance. Taylor presents no argument to establish otherwise. Further, Taylor's contention that the Chamber found that the money he provided the RUF/AFRC enhanced,[1833] or pertained to,[1834] the organisation's *capacity* but did not have a direct impact on,[1835] or pertain to,[1836] its *operations*, has no basis in law and constitutes an artificial distinction. First, the Chamber found that the operational assistance supported, sustained and enhanced the functioning of the RUF as well as its capacity to undertake military operations in the course of which crimes were committed, and constituted practical assistance in the commission of crimes.[1837] In any event, "[t]he Accused may aid and abet at one or more of the 'planning, preparation or execution' stages of the crime or underlying offence."[1838] Therefore, assistance to organisational 'capacity', especially where such organisation carries out an ongoing campaign inextricably linked to the commission of crimes,[1839] may constitute aiding and abetting.[1840]

611. The Chamber's findings clearly establish that Taylor did not provide assistance to an organisation whose members committed crimes "from time to time"[1841] but assisted an organisation who committed crimes throughout the *entire* Indictment period,[1842] implementing its operational strategy to commit crimes against civilians.[1843]

(iii) Taylor's financial support, together with all of the other forms of operational support he provided, had a substantial effect on the commission of the Indictment crimes

612. Taylor fails to establish that the Trial Chamber erred in finding, after very careful and detailed analysis, that his financial support, when taken together with all the other forms of operational support he provided, had a substantial effect on the commission of the Indictment

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[1831] Judgement, para. 6932.
[1832] Taylor Appeal, para. 690-691. The Prosecution notes Taylor rightly does not contend that the Chamber considered that financial assistance given for personal or unspecified use constituted practical assistance. The Defence mischaracterisation on "safekeeping" is addressed in the response to Grounds 32 and 33.
[1833] Taylor Appeal, para. 690.
[1834] Taylor Appeal, para. 691.
[1835] Taylor Appeal, paras. 690, 696.
[1836] Taylor Appeal, para. 691.
[1837] Judgement, para. 6936.
[1838] Judgement, para. 484 citing *AFRC* TJ, para. 775.
[1839] Judgement, para. 6936.
[1840] *Contra* Taylor Appeal, para. 691.
[1841] Taylor Appeal, para. 691.
[1842] See the response to Ground 17.
[1843] Judgement, para. 6905. See also the response to Ground 17.

crimes.[1844] Whether a particular contribution qualifies as "substantial" is a "fact-based inquiry".[1845] Further, the Prosecution need not prove that the crimes would not have been perpetrated *but for* the Accused's contribution.[1846]

613. After having determined that all the various forms of operational support constituted practical assistance,[1847] the Trial Chamber found that "*[t]aken cumulatively*, and having regard to the military support provided by the Accused to the AFRC/RUF", Taylor's operational support had a substantial effect on the commission of the Indictment crimes.[1848]

614. Therefore, contrary to Taylor's contention,[1849] the Chamber did not find that his financial assistance, *i.e.* the $10,000 to $20,000[1850] at a time which Taylor gave to Bockarie after February 1998 on multiple occasions for the purchase of arms from ULIMO, *alone* had a substantial effect on the Indictment crimes. The Chamber found that all the various forms of operational support, of which this formed part, *taken cumulatively* had such effect. The Chamber did not mischaracterise any of Taylor's actions.[1851]

615. The fact the Chamber stated Taylor was one of several sources for the money used to make purchases from ULIMO[1852] is irrelevant for the purposes of establishing substantial contribution since "the applicable law for aiding and abetting does not require that the Accused be the only source of assistance in order for his contribution to be substantial."[1853]

616. The Chamber did establish the purpose for which this money was provided—"to buy arms and ammunition from ULIMO".[1854] This finding together with the Chamber's other findings on, *inter alia*, the AFRC/RUF's operational strategy,[1855] render Taylor's other arguments in this regard moot.[1856] Taylor provides no support, by way of argument, reference to the Judgement or jurisprudence, for his allegation that the Chamber's finding was based on the "continued existence" of the RUF/AFRC.[1857] Indeed, Taylor cannot support this allegation

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[1844] Taylor Appeal, paras. 692-96, 698.
[1845] *Ntawukulilyayo* AJ, para. 214; see also *Mrkšić* TJ, para. 552; *Boskovski & Tarculovski* TJ, para. 402; *Kalimanzira* AJ, para. 86; *Rukundo* AJ, para. 52; *Blagojević & Jokić* AJ, para. 134.
[1846] Judgement, para. 485.
[1847] Judgement, para. 6936.
[1848] Judgement, para. 6937 (emphasis added).
[1849] Taylor Appeal, paras. 692-694.
[1850] The Chamber considered tens of thousands of dollars to be a "conservative estimate", Judgement, para. 3936.
[1851] *Contra* Taylor Appeal, para. 692.
[1852] Judgement, para. 3936; Taylor Appeal, para. 693.
[1853] Judgement, para. 6913.
[1854] Judgement, para. 3937, *contra* Taylor Appeal, para. 693.
[1855] See the response to Ground 17.
[1856] Taylor Appeal, paras. 693-694. The Prosecution addresses the argument on "specific direction" in its response to Ground 16. The Chamber correctly stated that "[t]he *actus reus* of aiding and abetting does not require 'specific direction'" (Judgement, para. 484 citing *Perišić* TJ, para. 126).
[1857] Taylor Appeal, para. 694.

since the Chamber based its findings on, *inter alia*, the numerous forms of operational support provided and the fact he also provided military support.[1858] Taylor fails to establish any error warranting appellate intervention.

(iv) The Trial Chamber correctly evaluated Taylor's testimony

617. Taylor erroneously alleges that the Trial Chamber erred in evaluating his testimony on local customary practices and obligations with regards to the giving of gifts.[1859] Given that the Chamber found that most of the funding Taylor provided was for unspecified or personal use,[1860] Taylor's accusation of cultural insensitivity on the part of the Chamber is devoid of merit, and he fails to establish any error of law or fact or any prejudice.[1861] Further, the Chamber did consider the traditions that allegedly dictated Taylor's actions.[1862]

618. For example, the Chamber accepted Taylor's testimony, corroborated by that of other witnesses, that he gave $5,000-10,000 US to JPK for clothing and personal items.[1863] The fact the Chamber did not specifically mention in its finding that the giving of money for the purchase of clothing and personal items was part of Taylor's tradition is irrelevant and in no way prejudicial to Taylor's rights or in violation of customary international law.[1864] The fact that the Chamber did not consider this transaction as part of the financial assistance Taylor provided the RUF means that the finding could not be prejudicial to Taylor.[1865]

(v) Conclusion

619. In view of the above, the Appeals Chamber should dismiss this Ground of Appeal since Taylor fails to establish any error of law or fact warranting appellate intervention.

[1858] Judgement, para. 6937.
[1859] Taylor Appeal, para. 697.
[1860] Judgement, para. 4026.
[1861] Taylor Appeal, para. 697.
[1862] *Contra* Taylor Appeal, para. 697. See Judgement, paras. 3949, 3974, 3978, 3980. The Chamber also considered evidence of gifts by other African leaders to the RUF and held that there was no evidence that these payments were in any way linked or relevant to Taylor's payments (Judgement, para. 4025).
[1863] Judgement, paras. 3980, 3982.
[1864] *Contra* Taylor Appeal, para. 697.
[1865] Similarly, the Chamber also found that Taylor sent Sankoh $20,000 US in Lomé before the negotiations began yet held there was no conclusive evidence of the intended use for these funds (Judgement, paras. 3963-64). In reaching this finding, the Chamber considered Taylor's testimony about the fact this money would have been "an innocent gesture along the lines of funds provided by other African Heads of State" (Judgement, para. 3959; see also paras. 3956, 3962). The fact this transaction did not form part of the financial assistance Taylor provided the RUF again means that the finding could not be prejudicial to Taylor.

GROUNDS 32 & 33:[1866] No error of law or fact in the Trial Chamber's findings on diamonds

(i) Overview

620. The Appeals Chamber should *summarily* dismiss[1867] Taylor's Ground 33 since it adds nothing to Ground 32.[1868] This violates paragraph 9 of the Practice Direction. The consolidated submissions on Grounds 32 and 33 should also be *summarily* dismissed since, even taken together, they fail to comply with paragraphs 6(d), 6(e) and 9 of the Practice Direction. Specifically, the submissions contain irrelevant comments and self-serving mischaracterisations of the Chamber's findings,[1869] attempt to relitigate facts,[1870] fail to identify the challenged factual finding/s and the prejudice caused,[1871] and disproportionately repeat other Defence submissions.[1872] This has made it difficult for the Prosecution to respond.

621. Should the Chamber opt not to *summarily* dismiss these Grounds, they should still be dismissed after consideration since Taylor fails to establish any error of law[1873] or fact.[1874]

[1866] See Taylor Appeal, para. 699.

[1867] Para. 29 of the Practice Direction empowers the Appeals Chamber to dismiss submissions where a party fails to comply with the requirements set out in the Practice Direction; see also *RUF* AJ, paras. 36-46; *Gatete* AJ, para. 11; *Boškoski & Tarčulovski* AJ, paras. 17-18; *Renzaho* AJ, paras. 11-12; *Muvunyi II* AJ, paras. 11-12.

[1868] Ground 32 alleges that "The Trial Chamber erred in fact in finding that Charles Taylor facilitated the sale, transfer or production of Sierra Leonean diamonds, and erred in fact and in law in finding that any such alleged facilitation aided and abetted the crimes." Ground 33 merely repeats a portion of the title to Ground 32 regarding facilitating the sale of diamonds.

[1869] *RUF* AJ, para. 43. Taylor's commentary regarding the Chamber's finding that he was not guilty through JCE, and that this finding "dealt a final blow to the heart of the Prosecution's case theory" (Taylor Appeal, para. 700) is not only irrelevant but, in relation to the heart of the Prosecution case, it also ignores the Prosecution opening statement which made clear the evidence on the aiding and abetting aspect of the case was "absolutely overwhelming" (Prosecution Opening Statement, T. 4 June 2007 p. 314). Taylor Appeal, paras. 702-705 merely refer to the Chamber's findings and make no argument thereon. Particularly, Taylor's "notes" in para. 705 are irrelevant, contain incorrect citations (*e.g.* Taylor Appeal, fn. 1375 referring to Judgement, para. 5507), lack any argument, and do not allege any error by the Trial Chamber.

[1870] Taylor's assertion that he did not send arms and ammunitions and did not receive 90 carats of diamonds or $90,000 US from Ibrahim Bah (Taylor Appeal, para. 705) should be disregarded as an attempt to relitigate the issue as the Trial Chamber specifically found that "the Accused sent Ibrahim Bah on his behalf to Freetown to meet with Sam Bockarie and Johnny Paul Koroma to make arrangements for the procurement of arms and ammunition. Bah was given 90 carats of diamonds and $90,000 US to pay for the shipment." (see Judgement, paras. 5394, 5406, 5388-89, 5408, 5559). Taylor consistently and inappropriately uses the word "alleged" in relation to issues on which the Trial Chamber entered clear findings, thereby rendering the issue a judicial finding, not a mere allegation (Taylor Appeal, paras. 702-03).

[1871] See *RUF* AJ, paras. 38, 41; see also *Gatete* AJ, para. 12. Taylor Appeal, para. 700 merely states the significance of diamonds to the allegations against Taylor was "varied and confused" without elaboration. Taylor Appeal, para. 709 does not refer to any particular finding he seeks the reversal of.

[1872] In Grounds 32 and 33, Taylor cross-refers to his Grounds 20, 23 and 26-31 (Taylor Appeal, paras. 702-705, fn. 1383). The fact Taylor "consolidates" his submissions on Grounds 32 and 33 (Taylor Appeal, para. 699) also means that he is repeating, in a disproportionate manner, the same arguments in numerous grounds of appeal, falling foul of para. 9 of the Practice Direction.

[1873] *RUF* AJ, para. 31. See also *Munyakazi* AJ, para. 6.

[1874] *RUF* AJ, para. 32; *CDF* AJ, para. 33. See also *Kupreškić* AJ, para. 29.

622. The Prosecution notes the obvious disconnect between the titles of these Grounds of Appeal and the underlying submissions. The titles allege errors relating to the facilitation of the sale, transfer or production of Sierra Leonean diamonds.[1875] However, the underlying substantive submissions do not address these issues,[1876] or merely cross-refer to other Grounds of Appeal which potentially do.[1877] Taylor instead focuses solely on the issue of "safekeeping" of diamonds.[1878] The Prosecution will respond comprehensively only to the brief substantive argument actually made.

623. The Prosecution also incorporates its response to Grounds 20, 23 and 26-31 of Taylor's Appeal, to which Taylor cross-refers in Grounds 32 and 33 without presenting any arguments thereon,[1879] in its response to these Grounds.

(ii) The Chamber committed no error of law or fact in its clear and relevant findings on diamonds

624. Taylor mischaracterises the Trial Chamber's findings in the "Diamonds" section.[1880] The Chamber's findings in this section must be evaluated bearing in mind the Chamber's duty to consider the evidence presented in relation to all crimes and forms of liability before it. Contrary to Taylor's submissions, the Chamber's findings were not "at best...a general contextual understanding of the Sierra Leonean conflict".[1881] Rather, the Chamber made findings establishing, *inter alia*, that there was a continuous supply by the AFRC/RUF of diamonds mined from areas in Sierra Leone to the Accused, often in exchange for arms and ammunition.[1882]

625. In the context of these findings on the exchange of diamonds for arms and ammunition, the Chamber's findings that (i) Taylor provided fuel and mining equipment to the RUF on at least one occasion between 1998 and 2002,[1883] (ii) two men were sent by the Accused to visit and assess the mining site in Kono;[1884] and (iii) Taylor facilitated a relationship between Issa Sesay/the RUF and a diamond dealer known as Alpha Bravo in

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[1875] Taylor Appeal, p. 244.
[1876] Taylor Appeal, paras. 700, 702
[1877] Taylor Appeal, paras. 703-05.
[1878] Taylor Appeal, paras. 706-09.
[1879] Taylor Appeal, paras. 702-05, fn. 1383.
[1880] Taylor Appeal, para. 700. The section on "Diamonds" is at paras. 5843-6149 of the Judgement.
[1881] Taylor Appeal, para. 700.
[1882] Judgement, para. 6140. See also Judgement, paras. 5874, 5936, 5948, 6057, 6139(i-ii, v), 6141-42, 6145. The fact that not *every* delivery of diamonds to the Accused was matched by a delivery of arms and/or of ammunition for the RUF (Judgement, para. 5936) does not mean that Taylor's assistance was not substantial. See Judgement, paras. 5936, 5946-48, 5934.
[1883] Judgement, paras. 6136, 6139(viii).
[1884] Judgement, paras. 6137, 6139(ix). At Judgement, para. 6135, the Chamber notes the men did this "with the intention of making a report to the Accused on improving efficiency".

2001 for the purpose of diamond transactions,[1885] are relevant to both the *actus reus* and *mens rea* of aiding and abetting. They establish that Taylor provided practical assistance and supported the RUF/AFRC's mining operations, which the Chamber found involved and led to the commission of a number of crimes, including murder and unlawful killings, the conscription and use of child soldiers, and enslavement.[1886] The Chamber also found that the materiel Taylor provided in return for diamonds was used in the commission of a number of Indictment crimes.[1887]

626. Taylor's submission regarding the Trial Chamber's section on the "Legal Findings on Responsibility"[1888] is also misleading. The findings to which he refers are not "indirect findings on aiding and abetting and diamonds"[1889] and must be read in connection with the Chamber's earlier findings regarding the exchange of diamonds for arms and ammunition. In the section on "Legal Findings on Responsibility", the Chamber noted that operational support was related to diamond transactions[1890] and that several of Taylor's instructions related to the need to maintain the trade of diamonds for arms and ammunition.[1891] Further, the findings on the provision of arms and ammunition are based on the Chamber's earlier findings that diamonds were often used to finance these purchases.[1892]

627. Taylor's submissions deny that his role with diamonds could contribute to the crimes.[1893] However, the fact Taylor was well aware of how his dealing in diamonds implicated him in the Indictment crimes is evident from his desperate but unsuccessful attempts at trial to disassociate himself from diamonds.[1894] Taylor even denied knowing that Kono was a diamondiferous area, a statement the Trial Chamber rejected as not credible.[1895]

628. Taylor has failed to establish any error of law or fact warranting appellate intervention.

(iii) The Chamber did not convict Taylor based on "safekeeping" diamonds

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[1885] Judgement, para. 6103.
[1886] See Judgement, paras. 551, 557, 635-36, 640-41, 674-75, 1467-68, 1495, 1650-57, 1735-38, 1744-47, 1752.
[1887] Judgement, para. 6911.
[1888] Taylor Appeal, para. 701.
[1889] Taylor Appeal, p. 245, sub-title (ii).
[1890] Judgement, paras. 6929, 6933.
[1891] Judgement, para. 6942.
[1892] See Judgement, paras. 6140, 5874, 5930-31, 6057, 6139(i-ii, v-vi), 6141-42, 6145.
[1893] Taylor Appeal, paras. 700, 706-08.
[1894] For example, Taylor's denial about carrying rough diamonds on a trip to South Africa, Burkina Faso and Libya, was rejected by the Trial Chamber given direct evidence he in fact made a gift of rough diamonds on that trip (Judgement, para. 5407).
[1895] Judgement, para. 3111.

629. Taylor misrepresents the Chamber's findings on "safekeeping" and takes them out of context.[1896] The Trial Chamber did not find that the safekeeping of diamonds was a basis for his guilt through aiding and abetting.

630. In paragraph 6932, contained within the sub-section dealing with "Operational Support" in which the Chamber dealt with the *forms*[1897] of support provided by Taylor, the Chamber stated that it found that he "provided financial support to the RUF/AFRC." It then noted that in most instances, these funds were given "to individual RUF members for unspecified or personal use" and that after February 1998, Taylor gave funds to Bockarie "$10,000 to $20,000 at a time, on multiple occasions for the purchase of arms from ULIMO". The Chamber concluded this paragraph by noting that Taylor "also kept diamonds and money in 'safekeeping' for the RUF/AFRC".

631. This paragraph therefore dealt with just *one* of the ways Taylor provided operational support, *i.e.* through the provision of financial support. The Chamber did not find that Taylor's "safekeeping" was even part of this financial support. It noted this aspect for completeness.

632. Taylor also ignores the Chamber's other findings- financial support formed only *part* of the *operational support* Taylor provided, which also included communications support,[1898] the provision of a guesthouse,[1899] facilitation of road and air transportation of materiel,[1900] and other forms of assistance including the provision of safe haven, medical support, the provision of goods, herbalists and the assistance of Liberian forces.[1901]

633. The Chamber noted that a common feature of *all* these forms of assistance is that they supported, sustained and enhanced the functioning of the RUF and its capacity to undertake military operations in the course of which crimes were committed.[1902] Recalling its finding that the RUF and RUF/AFRC military campaign was inextricably linked to the commission of the crimes charged in the Indictment, the Chamber found that "these *forms* of operational support, *including communications, logistics, and the RUF Guesthouse*...constitute practical

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[1896] Taylor Appeal, para. 706.
[1897] Judgement, para. 6936.
[1898] Judgement, paras. 6928-31.
[1899] Judgement, para. 6933.
[1900] Judgement, para. 6934.
[1901] Judgement, para. 6935. The Chamber also stated that of these various modes of operational support, in particular, the support provided by the Accused to the RUF in the context of communications and logistics was sustained and significant. Judgement, para. 4262.
[1902] Judgement, para. 6936.

assistance".[1903] Therefore, "*[t]aken cumulatively*, and having regard to the military support provided by the Accused to the AFRC/RUF" the operational support provided by the Accused to the AFRC/RUF had a substantial effect on the commission of crimes charged in Count 1 to 11 of the Indictment.[1904]

634. The Chamber also based Taylor's aiding and abetting conviction on his *encouragement and moral support, i.e.* his giving of advice and direction to the RUF and RUF/AFRC.[1905]

635. Despite the reality that the Trial Chamber did not use "safekeeping" as a basis for Taylor's conviction through aiding and abetting, "safekeeping", which implies that the diamonds were kept for use when necessary, could in itself constitute practical assistance. A reasonable trier of fact could correctly conclude that Taylor's promise to safely keep the fruits of the RUF's crimes in Sierra Leone[1906] constitutes practical assistance since it encouraged the RUF to continue committing their crimes by providing a safe place to store the illegal proceeds thereof and provided a means to finance and perpetuate the RUF's criminal campaign.[1907] It would therefore have been within the discretion of a reasonable trier of fact to hold that such assistance, in addition to all the other forms of assistance found by the Trial Chamber, did have a substantial effect on the perpetration of the crimes.[1908]

636. Further, the testimony Taylor cites in support of his claim that neither Sankoh nor any other RUF member received the diamonds Taylor was given for "safekeeping" makes it more plausible that, in reality, Taylor did not consider those diamonds were being deposited with

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[1903] Judgement, para. 6936 (emphasis added).
[1904] Judgement, para. 6937 (emphasis added).
[1905] Judgement, para. 6944.
[1906] The diamonds Taylor held on to were the result of the RUF's mining which the Chamber found involved and led to the commission of a number of crimes, including murder and unlawful killings, child soldiers, and enslavement, see Judgement, paras. 551, 557, 635-36, 640-41, 674-75, 1467-68, 1495, 1650-57, 1735-38, 1744-47, 1752.
[1907] Indeed, this Appeals Chamber has stated that "encouragement" and "moral support" may constitute the *actus reus* and that acts of aiding and abetting can be made at a time and place removed from the actual crime (*CDF* AJ, para. 72; see also Judgement, para. 484). The Prosecution need not prove that the crime or underlying offence would not have been perpetrated but for the Accused's contribution (Judgement, para. 485; *Blagojević & Jokić* TJ, para. 726; *CDF* AJ, para. 72).
[1908] In this regard it should be noted that "[**a**]**iding** and **abetting**, which may appear to be synonymous, are indeed different. Aiding means giving assistance to someone. Abetting, on the other hand, would involve facilitating the commission of an act by being sympathetic thereto…The Chamber is of the opinion that either aiding or abetting alone is sufficient to render the perpetrator criminally liable." (original emphasis) *Akayesu* TJ, para. 484; Judgement, fn. 1136.

him, but rather considered them payment for his provision of materiel and other forms of assistance.[1909]

637. Taylor has failed to establish any error of law or fact warranting appellate intervention.

(iv) Conclusion

638. In view of the above, the Appeals Chamber should dismiss Taylor's consolidated Grounds 32 and 33 as he fails to point to and prove any error of law or to establish any error of fact.

GROUND 34: *Actus reus* for aiding and abetting

639. Taylor claims in paragraph 318 of his brief that "Grounds 21 through 34 identify the Chamber's errors in relation to the assistance allegedly provided by Mr. Taylor." In addition, in a footnote, Taylor states that "[n]o separate arguments are presented in respect of Ground 34, as those arguments are sufficiently expressed in the other Grounds concerning *actus rea*." However, Taylor notes that "[t]he ground of appeal is nevertheless maintained on the basis of those arguments."[1910] Yet he does not set out this supposed Ground of Appeal in his Table of Contents or in his submissions, nor does he make any arguments to support it. Neither the Prosecution nor the Appeals Chamber are under any obligation to resort to the Notice of Appeal in order to determine what Taylor is alleging in this ground, yet this is effectively what is required if any consideration is to be given to it. The Appeals Chamber should dismiss this Ground as it fails to comply with the Practice Direction.[1911] Further, consistent with the holding of the Appeals Chamber at the ICTY, this Ground should be considered abandoned as it was not elaborated on in Taylor's brief.[1912] If the Appeals Chamber is minded to consider

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[1909] TF1-338 testified that in 2002 Issa Sesay told him that he (Issa) told "the man who was appointed to be the presidential candidate of the RUF" that that he had up to 5,000 carats of diamonds and $150,000 that he had given to Charles Taylor for safekeeping and that "Charles Taylor had said any time elections would be coming close he would assist the RUF and that was why he was keeping the diamonds." The witness stated neither Sankoh nor Sesay or anyone in the RUF ever received the diamonds given to Taylor by Sesay and Bockarie for safekeeping. TF1-338, T. 2 September 2008 pp. 15192-93; see also TF1-567, T. 8 July 2008 pp. 13201-02. Further, TF1-532's evidence also refers to the fact that Taylor was given these diamonds in exchange for arms and ammunition, see TF1-532, T. 31 March 2008 pp. 6193-94.

[1910] Taylor Appeal, fn. 642.

[1911] Para. 6 requires that the Appellant's Submission include (d) "the arguments in support of each ground of appeal containing the contentions of the Appellant on the issues presented and the reasons therefore; with precise references to the authorities relied upon;" and (e) "the conclusion and relief sought". Neither of these provisions are complied with in relation to Ground 34. Moreover, para. 9 states "[t]he Appellant shall not repeat in a disproportionate manner, the same arguments in numerous grounds of appeal." Para. 29 empowers the Appeals Chamber to dismiss submissions where a party fails to comply with these requirements.

[1912] *Gotovina & Markač* Abandoned Grounds Decision, p. 2; *Strugar* AJ, para. 265; *Hartmann* Decision on Further Motions to Strike, para. 12.

Taylor's Ground of Appeal 34, the Prosecution's responses to "the other Grounds concerning *actus rea*"[1913] should be considered in response to this Ground.

GROUND 35: This Ground has been withdrawn by the Appellant.[1914]

PART IV: ISSUES RELATING TO ALLEGED IRREGULARITIES IN THE JUDICIAL PROCESS

GROUND 36: Taylor fails to show that the Trial Chamber did not deliberate in this case[1915]

(i) Overview

640. Taylor's suggestion that the Trial Chamber did not deliberate is without merit and should be dismissed. It is for him to establish not only that there was an error of law or procedure, but also to demonstrate how such alleged error has invalidated the verdict or occasioned a miscarriage of justice.[1916] Taylor has failed to discharge his burden. Instead, he has misconstrued the personal Statement of the Alternate Judge, and has failed to show that the deliberative process was compromised in any way.[1917]

641. The Judgement itself attests to the care with which the Trial Chamber considered this case and is in line with the presumption that judges act in accordance with their solemn declarations. Nothing in the Statement of the Alternate Judge undermines this presumption.[1918]

(ii) Arguments

642. The insufficiency of Taylor's submissions under this Ground is clear from the outset. First, Taylor never even attempts to address the glaring question as to how the Judgement of such size and detail was finalised without deliberations. The stark facts are that the Judgement:

[1913] Taylor Appeal, fn. 642.
[1914] See Taylor Appeal, fn. 642.
[1915] At paras. 711 and 712 of the Taylor Appeal, Taylor alleges "two significant errors" identified in the Statement of the Alternate Judge, Judge El-Hadji Malick Sow, made on 26 April 2012 following the official adjournment of the hearing at which the oral summary of the Judgement was delivered (Statement), but indicates he will deal with the alleged failure to deliberate under Ground 36 and with the second alleged error in Ground 37. Therefore, the Prosecution response to Taylor's Ground 36 deals only with the alleged failure to deliberate.
[1916] Taylor submits that the error identified in Ground 36 "should lead to a reversal of all adverse findings in the Judgement, the quashing of all convictions, and vacatur of the Judgement and Sentencing Judgement" (see Taylor Appeal, para. 711). As argued in para. 6 above, such broad submissions can lead to summary dismissal.
[1917] Taylor Appeal, paras. 711, 717.
[1918] See Taylor Appeal, para. 710, for a full text of the "Statement". See also Taylor Appeal, Public Annex C, for a copy of the Statement.

- is over 2,500 pages long,
- took over 13 months to issue,
- contains detailed analyses of the law, evidence and the considerable number of factual and legal issues raised during the course of the lengthy trial, and,
- while convicting Taylor of the 11 counts on the Indictment on the basis of two modes of individual criminal responsibility under Article 6(1) of the Statute, rejects three modes of liability as not proven beyond reasonable doubt.

643. There is a strong presumption that a judge acts in accordance with his or her solemn declaration. Before taking up duties, every Judge of the Special Court solemnly declares that he or she will perform his or her duties and exercise his or her powers honourably, faithfully, impartially and conscientiously.[1919] As ICTY Appeals Chamber held in *Krajišnik*, a party must adduce sufficient evidence to rebut the strong presumption that judges act in accordance with their oath.[1920] This, Taylor has failed to do.

644. Nor is Taylor's reliance on the brief and ambiguous oral Statement of the Alternate Judge sufficient to rebut the presumption. Furthermore, any motion filed by Taylor under Rule 115 seeking to present additional evidence before the Appeals Chamber cannot remedy this deficiency in his argument.[1921] An appeal brief must provide the proper foundation to support a motion for the admission of additional evidence under Rule 115.[1922] Taylor's submissions do not provide such a foundation.

645. At no point in his appeal brief does Taylor identify which of the many findings and conclusions in the Judgement were reached by persons other than the three Judges of Trial Chamber II,[1923] or provide any explanation as to how the Judgement was written in the alleged absence of proper deliberations. General reliance on the Alternate Judge's Statement is not sufficient to fill these evidential gaps. As argued below, the Statement does not establish that no deliberations occurred.[1924] In *Krajišnik*, after a lengthy trial, the Judgement

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[1919] SCSL Rule 14(A).
[1920] *Krajišnik* AJ, para. 133. Note ICTY Rule 14 is in similar terms to that of SCSL Rule 14.
[1921] Taylor's statement of intention in this regard is made at Taylor Appeal, para. 730.
[1922] *RUF* AJ, para. 43 ("the Appeals Chamber will, as a general rule, summarily dismiss undeveloped arguments and alleged errors, as well as submissions where the appellant fails to articulate the precise error committed by the Trial Chamber.")
[1923] The jurisprudence requires such substantiation. See *Krajišnik* AJ, para. 134 ("*Amicus Curiae* claims it was impossible to deliberate properly on such a complex case in only 18 working days, but he brings no evidence to substantiate his claim. In particular, he fails to show that conclusions were reached by other persons than the Judges or that preparatory work overreached into the area of deliberation.")
[1924] Indeed, in a moment of rare circumspection, the limits of the Statement are acknowledged at paragraph 717 of the Taylor Appeal where it is submitted that "Justice Sow's Statement **suggests** that the Chamber failed to properly conduct the process of deliberations under the Rules" (emphasis added).

was issued only 18 working days after the close of final arguments. The Appeals Chamber rejected a challenge based on alleged lack of deliberations, holding that "general comments on the length of the deliberations are insufficient to show improprieties in the deliberative process."[1925] Here, as in *Krajišnik*, there is an "absence of direct evidence of a failure to deliberate" or any clear basis on which to "infer that the deliberation process was corrupted".[1926]

646. Contrary to Taylor's assertions, the Statement does not have "substantial probative value" nor is it "compelling".[1927] The part of the Statement relied upon by Taylor to support his position that the Trial Chamber failed to deliberate states: "The only moment where a Judge can express his opinion is during deliberations or in the courtroom and pursuant to the Rules, **when there is no ^ deliberations**, the only place left for me in *(sic)* the courtroom".[1928]

647. Crucially, the quoted text shows that there is a missing word between 'no' and 'deliberations' which, by its placement, is evidently meant to qualify or describe the nature of the deliberations held, apparently based on the Alternate Judge's personal assessment. It is misleading, therefore, for Taylor to conclude that "the Trial Chamber failed to deliberate pursuant to the Rules",[1929] completely disregarding the elision in the sentence.

648. Further, Taylor's submissions at paragraph 715 of his brief ignore that Rule 87 mandates neither the manner nor means of deliberation following closing arguments. Rather, the Rule simply states that the Trial Chamber shall deliberate. Taylor's argument as to the alleged requirement that the judges "attend all deliberations together" and the required "presence" of the judges of the Trial Chamber[1930] must be viewed in this light. Given that **physical** presence is not specifically mandated by the Rule, arguably deliberations can occur in the modern world *via* teleconference [or email discussion], provided deliberations otherwise conform with the requirements of Rule 87, i.e. are private, include all judges and allow each judge to vote. In any event, the absence of an alternate judge from some or all of the deliberations would be, at most, a technical violation of Rule 16*bis*, with no prejudicial effect unless the Alternate Judge was required to replace one of the three voting judges, a situation which did not arise in this case.

[1925] Taylor Appeal, para. 719.
[1926] *Krajišnik* AJ, para. 134.
[1927] Taylor Appeal, para. 719.
[1928] Taylor Appeal, para. 710 (emphasis added). See also Taylor Appeal, para. 728.
[1929] Taylor Appeal, para. 711.
[1930] Taylor Appeal, para. 717.

649. The submissions at paragraph 717 of the Taylor Appeal as to what is "suggested" by the Statement are equally without merit as they are based on pure speculation. Considering the Statement as a whole, an alternate, contrary, logical and reasonable interpretation is that it "suggests" that the Alternate Judge was noting his concern that the deliberations did not afford him an opportunity to express – or adequately express - his differing opinion. So, he was availing himself of the opportunity to express his opinion in court. In this regard, it is important to bear in mind that Rule 16*bis* requires an alternate judge to be present for deliberations but, by its plain language, does not afford him leave to participate in those deliberations, nor to voice his opinions in court.

650. Taylor's submissions are also contradictory. Taylor argues that no proper deliberations occurred, meaning, if true, that all findings and conclusions in the Judgement should be without effect. However, he requests that only those findings adverse to him be reversed.[1931] Therefore, according to Taylor's logic, it is only in regard to findings adverse to him that there were no proper deliberations, but, in regard to favourable findings, there were proper deliberations. Such self-serving and contradictory arguments further demonstrate the lack of merit of this Ground of Appeal.

651. The remainder of Taylor's submissions under this Ground concerning two situations when limited details of the deliberative process were revealed is irrelevant to the merit of the alleged error.[1932]

(iii) Conclusion

652. Taylor's extensive submissions under this Ground are marked by a failure to properly substantiate the allegation that the three Judges of Trial Chamber II did not act in accordance with their solemn judicial oath and thus failed to deliberate properly. The Statement at the core of this Ground does not establish the claimed failure to deliberate. Further, despite alleging that no proper deliberations occurred, Taylor fails to explain how the Judgement, one of the lengthiest in the history of international criminal law, was produced and specifically who, other than the Judges of Trial Chamber II, made the findings, conclusions and dispositions contained within it. Finally, Taylor's submissions are vague and fail to identify the challenged findings or conclusions. While Taylor has intimated that he intends to file a Rule 115 motion in connection with this Ground, such a motion is the means by which a party seeks to present additional evidence, not to correct defective appeal submissions.

[1931] Taylor Appeal, para. 711.
[1932] Taylor Appeal, paras. 724-26.

653. Taylor's arguments under this Ground are without merit and should be dismissed.

GROUND 37: The Trial Chamber ensured that Taylor's trial was conducted in full accord with Rule 26*bis* and fundamental guarantees of due process

(i) Overview

654. Ground 37 is without merit and should be dismissed. None of the alleged irregularities, even if correctly characterised, resulted in a denial of a fair trial. Rather, his trial was conducted in full accordance with "international standards of justice, fairness, and due process of law".[1933] The situations highlighted in the Taylor Appeal do not, individually or cumulatively, amount to procedural irregularities which would invalidate the Judgement or occasion a miscarriage of justice. Concretely, the absence of a voting member of Trial Chamber II for a session relating to a tangential matter resulted in no prejudice to Taylor, but rather in lead trial Defence counsel avoiding any negative consequence for his inappropriate conduct, the official transcript for 26 April 2012 is reflective of the proper adjournment of a session by the Presiding Judge; the name of the Alternate Judge, who had no vote, was properly omitted from the Trial Chamber's orders and cover pages of the Judgement as a consequence of the direction issued by the Plenary of Judges that he "refrain from further sitting in the proceedings pending a decision by the appointing authority";[1934] and there is no showing that the content of the Alternate Judge's Statement invalidated the Judgement or occasioned a miscarriage of justice.

(ii) There was no irregularity which prejudiced Taylor's right to a fair and public trial, invalidated the Judgement or occasioned a miscarriage of justice in relation to the conduct of the Judges on 25 February 2011

655. Taylor's remarkable claim that events at the hearing of 25 February 2011 breached his right to a fair and public trial is clearly without merit.[1935] Justice Sebutinde's absence resulted in no prejudice to Taylor.

656. First, the subject of the hearing on 25 February 2011 was on a matter tangential to the substantive proceedings in relation to Taylor and had no direct bearing on the guilt or innocence of Taylor. The hearing was scheduled to address the withdrawal of lead trial Defence counsel, Mr. Courtenay Griffiths, from the courtroom on 8 February 2011 despite the Presiding Judge's direction that he remain seated and in contravention of an express warning

[1933] Security Council Resolution 1315, Preamble.
[1934] T. 16 May 2012, p. 49683, lines 12-14.
[1935] Taylor Appeal, paras. 739-42.

of the Presiding Judge. Nonetheless, after the Presiding Judge's direction and warning, lead trial Defence counsel left the courtroom, absented himself from proceedings for the remainder of the day and did not appear for Defence closing arguments on 9 February 2011.[1936] The 25 February session was convened to address this misconduct. On 25 February 2011, Justice Sebutinde absented herself from the hearing. As a consequence of her absence, the two remaining voting judges determined the bench was not properly constituted and the hearing was adjourned early with no substantive decision being rendered.[1937] While it might have been more appropriate for Justice Sebutinde to have attended the scheduled session, her absence merely resulted in lead trial Defence counsel avoiding any potential consequences for his earlier conduct. Set in its proper factual and legal context, it is clear that there is no link between this hearing and the Judgement.

657. Secondly, in the absence of Justice Sebutinde, it was within the Presiding Judge's discretion[1938] to find that the situation was not one to which Rule 16 applied, that the Trial Chamber was not properly constituted, and to adjourn the hearing.[1939] Rule 16(A) allows the remaining judges to continue the proceedings if a judge is *unable* to sit for a period of not more than five working days. This Rule does not deal with the situation where a judge *refuses* to sit.[1940]

658. Taylor leaps to the convenient but erroneous conclusion that the requirements of Article 12(4) and Rule 16(B) had been fulfilled and, thus, that there was a failure to consider Justice Sow as a replacement for Justice Sebutinde.[1941] These references are, however, of no assistance to Taylor. Rule 16(B) makes clear that only if a prolonged absence is likely will an alternate judge replace the absent judge. In this case, the situation before the two remaining

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[1936] Direction to Lead Counsel to Appear Before the Trial Chamber, SCSL-03-01-T-1196, 9 February 2011, ordering lead trial Defence counsel to attend court on 11 February 2011 and warning him that unless he apologised for his behaviour the Trial Chamber might impose sanctions pursuant to Rule 46. On 11 February 2011 the matter was delayed until 25 February 2011 – see T. 11 February 2011, pp. 49304-05.

[1937] T. 25 February 2011, pp. 49316-18.

[1938] The discretionary nature of the decision is clear from the wording of Rule 16(A) which provides that proceedings **may** continue in the absence of a judge for not more than five working days where it is considered it is in the interests of justice to do so. Accordingly, it was within the discretion of the remaining judges to conclude that proceedings could not continue on that day in the absence of Justice Sebutinde.

[1939] T. 25 February 2011, p. 49318, lines 5-12.

[1940] SCSL Rule 16: Absence and Resignation

(A) If a Judge is **unable to continue sitting in a proceeding**, trial or appeal which has partly been heard for a short duration and the remaining Judges are satisfied that it is in the interests of justice to do so, those remaining Judges may order that the proceeding, trial or appeal continue in the absence of that Judge **for a period of not more than five working days**.

(B) If a Judge is, for any reason, **unable to continue sitting in a proceeding**, trial or appeal which has partly been heard **for a period which is or is likely to be longer than five days**, the President may designate an alternate Judge as provided in Article 12(4) of the Statute. (Emphasis added.)

[1941] Taylor Appeal, para. 742.

voting judges was not an absence likely to be for a period longer than five days, so Rule 16(B) did not apply. Taylor's selective reading of the Rules also ignores Rule 16*bis*(D), which gives the Presiding Judge, not the Alternate Judge, the authority to assign other functions to the Alternate Judge as the Presiding Judge, in consultation with the other judges of the Chamber, may deem necessary.

659. Assuming, *arguendo*, Justice Sebutinde's absence on 25 February 2011 could be considered an irregularity, such irregularity occurred during what was effectively a disciplinary hearing at which no substantive decision was taken on any matter prejudicial to Taylor.

660. In light of the above, no procedural irregularity occurred on 25 February 2011 which in any way invalidated the unanimous Judgement of the Trial Chamber or occasioned a miscarriage of justice. Taylor's lack of submissions addressing these consequences makes it clear he is unable to make this crucial link.

(iii) There was no irregularity invalidating the Judgement or occasioning a miscarriage of justice by ending the official Court session when the Presiding Judge adjourned the Court, or by the alleged "removal" of the Alternate Judge's: (i) Statement from the 26 April 2012 transcript; and (ii) name from Court documents from 26 April 2012 onwards

661. The allegation concerning the switching off of the Alternate Judge's microphone[1942] plus the second[1943] and third[1944] alleged procedural irregularities relied on by Taylor are all inextricably linked, as all arise from the judicial response to the Alternate Judge's conduct. Accordingly, the response to these submissions will be dealt with together.

(a) The Presiding Judge properly adjourned the 26 April 2012 proceedings and the Alternate Judge's personal comments are properly not part of the official record

662. The Presiding Judge acted in accordance with his authority in orally delivering the unanimous judgement of the three voting judges of the Trial Chamber and, thereafter, adjourning the official proceedings on that date. The Alternate Judge had no authority to make any statement during the proceedings on 26 April 2012, thus it was proper for the microphones to be turned off after the proceedings were officially adjourned.[1945] Certainly, doing so did not violate any right afforded Taylor.

[1942] Taylor Appeal, para. 731.
[1943] Taylor Appeal, paras. 743-52.
[1944] Taylor Appeal, paras. 753-56.
[1945] Decision on Disqualification, para. 33.

663. Additionally, confining the Alternate Judge to his proper role which is to be *present* at proceedings and deliberations in case he or she must assume duties upon the prolonged absence of a member of the Trial Chamber violates no right Taylor can legitimately claim.[1946] During the trial, deliberations and delivery of the judgement, the key aspect of the alternate judge's role is presence, not participation. For example, the alternate judge does not have a vote on the merits or on sentencing, or an articulated right to participate in deliberations.[1947] An alternate judge does not even have the right to ask questions directly unless allowed to do so by the Presiding Judge. Rather, Rule 16*bis*(B) permits an alternate judge to pose questions *through the Presiding Judge* and, even then, only where the questions are necessary for the alternate judge's understanding of the proceedings.

(b) The absence of the Alternate Judge's name from official Court documents issued after 26 April 2012 is reflective of a proper exercise of authority by a plenary meeting of the Judges of the Special Court, the judges of Trial Chamber II abstaining and does not violate any right of Taylor

664. Taylor's arguments on the above alleged irregularity are unfounded. His assertion that the absence of the Alternate Judge's name from official Court documents after 26 April 2012 is unexplained is mistaken,[1948] because it ignores the detailed explanation provided by the Presiding Judge in court on 16 May 2012. That explanation sets out the conclusions of a plenary of the Judges of the Special Court, the judges of Trial Chamber II abstaining, including a finding that the Alternate Judge's behavior on 26 April amounted to misconduct rendering him unfit to sit as an Alternate Judge of the Special Court, and directing him to refrain from further sitting in the proceedings pending a decision from the appointing authority.[1949] The Presiding Judge's clear and detailed explanation establishes a proper basis for the absence of the Alternate Judge's name on official Court documents after 26 April.

665. Indeed, the overarching fatal deficiency of Taylor's submissions on these three alleged errors concerning the actions taken to deal with the Alternate Judge's conduct is that their tenor is akin to appealing the disciplinary action taken by the plenary of judges in relation to the conduct of the Alternate Judge, rather than appeal submissions against Taylor's conviction and sentence.[1950] As with the other alleged procedural irregularities discussed above, at no

[1946] SCSL Rules 16*bis*(A) and (C).
[1947] SCSL Rule 16*bis*(C).
[1948] Taylor Appeal, para. 753.
[1949] T. 16 May 2012 pp. 49681-83.
[1950] A similar error was made by Taylor in the context of his submissions seeking the disqualification of the Appeals Chamber from hearing grounds 36 and 37. See Decision on Disqualification, para. 31 ("Many of the

point does Taylor link these alleged errors to any identifiable prejudice which he suffered, save broadly in respect of an apparent supposed breach of his fair trial rights.[1951] Such broad, unfocussed submissions are clearly insufficient for appeal purposes, particularly when the impugned actions have no bearing on the findings in the Judgement or the determination of Taylor's guilt or innocence and sentence.

666. Taylor's submissions under this Ground are further weakened by the Appeals Chamber determination that "sanctioning judicial misconduct in a trial does not constitute nor give rise to the appearance of pre-judgement of the guilt or innocence of the respective accused" and that "[t]he parties' rights would be severely violated were the Plenary to allow judicial misconduct only because sanctioning it could be **falsely imagined as benefiting or harming a particular party**."[1952] The Appeals Chamber has also ruled that "the Defence's submissions with respect to the trial record are ill-founded", and that "[t]here is no basis to suggest that the official transcript is anything but accurate and transparent."[1953] Therefore, it is clear that the Appeals Chamber has ruled that the steps taken to sanction the Alternate Judge, including the direction by the Plenary that the Alternate Judge "refrain from further sitting in the proceedings",[1954] were proper and cannot be "falsely imagined as ... harming a particular party."

667. Taylor acknowledges that he is asking for reconsideration of the ruling but then fails to identify and satisfy the test.[1955] This Appeals Chamber has endorsed the approach taken in *Ntagerura,* where the ICTR Appeals Chamber held that a previous decision can be reconsidered if a clear error of reasoning has been demonstrated or if it is necessary to prevent an injustice.[1956] No clear error of reasoning is identified by Taylor, nor has he demonstrated that there is an injustice. On this latter point, as the Appeals Chamber noted, "[t]he Defence is fully aware of the content of Justice Sow's statement".[1957] Thus, it is available to the Defence

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Defence's submissions do not address the impartiality of the Appeals Chamber but the consequences of the Plenary Resolution.").

[1951] Taylor Appeal, paras. 731, 756.

[1952] Decision on Disqualification, para. 30 (emphasis added).

[1953] Decision on Disqualification, para. 33.

[1954] T. 16 May 2012, pp. 49682-83. Therefore, contrary to Taylor's submissions at paras. 755 and 756 of his Appeal Brief, it is clear that the Alternate Judge's name was properly removed from Court documents following his misconduct on 26 April 2012 as a natural consequence of paragraph 3 of the 10 May 2012 Resolution of the Plenary of the Special Court.

[1955] Taylor Appeal, para. 748.

[1956] *AFRC* AJ, para. 63 citing to *Ntagerura* AJ, para. 55.

[1957] Decision on Disqualification, para. 33.

for the purposes of appeal.[1958] Further, no injustice has arisen as a result of the omission of the Alternate Judge's name from Court documents since 26 April 2012.

668. Accordingly, no procedural irregularity is established by Taylor in relation to any of the actions taken to deal with the Alternate Judge's misconduct to which he refers under this Ground.

(iv) There was no irregularity evidenced in Alternate Judge's Statement of 26 April 2012 which would invalidate the Judgement or occasion a miscarriage of justice

669. Taylor's submission that the Alternate Judge's Statement establishes the existence of procedural errors which "should lead to the reversal of all adverse findings ... in the Judgement, the quashing of all convictions, and vacatur of the Judgement and Sentencing Judgement" should be dismissed for reasons of vagueness and lack of particularity.[1959]

670. In short, Taylor fails to state why the "system" is not consistent with the values of international criminal justice, why the "whole system" is under grave danger of losing all credibility, and why this "whole thing" is headed for failure.[1960] Further, as argued above in relation to Ground 36, the purpose of a Rule 115 motion is not to remedy such deficiencies in an appellant's appeal brief. The result is that Taylor fails to establish any procedural irregularity.

671. Taylor also fails to include the sentence immediately before the quoted sentence, the language of which gives an entirely different import to the following quoted sentence. The relevant omitted language of the preceding sentence is italicised: "I won't get – because I think we have been sitting too long but for me I have my dissenting opinion *and I disagree with the findings and conclusions of the other Judges, because for me under any mode of liability, under any accepted standard of proof the guilt of the accused from the evidence provided in this trial is not proved beyond reasonable doubt by the Prosecution.*" Taking this language into consideration, the sentence which followed can be said to logically relate to the Alternate Judge's strong disagreement with the unanimous findings and disposition of the Trial Chamber, not to any impropriety on the part of the Trial Chamber.

(v) Conclusion

672. Taylor fails to establish the occurrence of any procedural irregularity, individually or cumulatively, breaching his right to a fair and public trial and occasioning a miscarriage of

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[1958] Taylor Appeal, para. 751.
[1959] Taylor Appeal, para. 759. See also Taylor Appeal, paras. 757-60.
[1960] See para. 6 regarding the obligation on the Appellant to fully articulate his grounds of appeal or risk summary dismissal.

justice or invalidating the Judgement. His appeal submissions under this Ground should, therefore, be dismissed.

GROUND 38: Taylor has failed to show that Trial Chamber II was irregularly constituted after Justice Sebutinde was elected a Judge of the International Court of Justice

(i) Overview

673. Taylor's argument is without merit and should be dismissed. Taylor has failed to demonstrate any error of law and/or procedure that would render the Trial Chamber irregularly constituted from the time of Justice Sebutinde's appointment as a judge of the International Court of Justice (ICJ) and thus invalidate the Judgement or occasion a miscarriage of justice. Taylor has made no showing to overcome the strong presumption that Justice Sebutinde acted in accord with the sworn declaration she took as a judge of the Special Court to carry out her duties honestly, faithfully, impartially and conscientiously. The single fact of her appointment as a judge of the ICJ does not rebut that presumption. Taylor has failed to establish that her appointment resulted in Justice Sebutinde acting contrary to "the demands of a full-time office,"[1961] the "efficient and timely functioning"[1962] of Trial Chamber II, her commitment "to the work of the [Special Court] and the complete and honourable discharge of [her] obligations,"[1963] her availability to "deal attentively within a reasonable period with the matters put before [...] her" and to consider the case submitted to her with due care and within a reasonable time,[1964] or that the appointment delayed the delivery of judgement in this case.[1965]

(ii) Taylor has made no showing that Justice Sebutinde failed to act honestly, faithfully, impartially and conscientiously

674. Taylor fails to rebut the strong presumption that Justice Sebutinde acted in accordance with the solemn declaration she made to perform her duties as a Special Court judge honestly, faithfully, impartially and conscientiously.[1966] Taylor has made no showing that her

[1961] Taylor Appeal, para. 767.
[1962] Taylor Appeal, para. 768.
[1963] Taylor Appeal, para. 777.
[1964] Taylor Appeal, fn. 1486.
[1965] Taylor Appeal, para. 777.
[1966] *Krajišnik* AJ, para. 133; SCSL Rule 14. Note ICTY Rule 14 is in similar terms to that of SCSL Rule 14. It is compliance with the solemn declaration made in respect of her duties in this Court that is at issue here. Any alleged act outside of the permissible scope of Article 16 of the ICJ Statute is a matter for the ICJ and has no bearing on this case.

appointment in any way prevented her from discharging her duties in his case in accordance with that declaration.

675. As Justice Robertson noted in his Separate Opinion in *Norman*, independence means putting judges in a position to act according to their conscience and the justice of the case, free from pressure.[1967] There has been no showing that Justice Sebutinde's appointment as an ICJ judge prevented her from acting independently. Unlike the situation in *Čelebići*,[1968] Justice Sebutinde's appointment is not political or administrative in nature, but judicial. In addition, no decision, order, or judgement of Trial Chamber II or the Appeals Chamber of the Special Court will be the subject of litigation before the ICJ, nor would any judicial action of the ICJ ever be brought before the Special Court for review. Thus, there is no conflict of interest.[1969]

676. Taylor's reliance on ICTY Statute Article 13*bis*(3)[1970] is misplaced.[1971] The SCSL Statute has no similar provision, nor do the SCSL Rules. Taylor's reliance on Article 16 of the ICJ Statute is similarly misplaced. As noted above, absent a conflict of interest that rendered Justice Sebutinde unable to act in accord with her solemn declaration as a judge of the SCSL, whether her dual role violated the Article is a matter for the ICJ and has no bearing on her performance of duties at this Court. However, Article 16, properly understood, does not prohibit Justice Sebutinde's continued participation as a judge of Trial Chamber II. In its Annual Report to the General Assembly for the period 1 August 1995 to 31 July 1996, the ICJ responded to questions that had been raised about the Court's practice of permitting its members to engage in occasional activities outside of the Court for remuneration. The Court noted that repeated endorsement by the international organs concerned showed an awareness of the contribution that the members of the Court could "make to the development of international law, and of the benefits deriving therefrom for all institutions concerned." Perhaps even more importantly, the Court said, "The practice, which involves a very limited

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[1967] *Norman* Judicial Independence Decision, Separate Opinion of Justice Geoffrey Robertson, para. 2.
[1968] *Čelebići* Bureau Decision, para. 9: note that this issue was decided by a "Bureau" comprised of the ICTY President and Vice-President, as well as all three Trial Chamber Presiding Judges (specifically, President McDonald, Vice-President Shahabuddeen, Judge Cassesse, Judge Jorda, and Judge May) - "whether or not a judge possesses all the necessary requirements for serving as a judge of the Tribunal [...] *is a matter of an administrative nature, internal to the Tribunal. It can only be settled by the relevant bodies of the Tribunal.* If these bodies are satisfied that the judge does not fulfill one of the requisite conditions, for instance because he has engaged in political or administrative functions incompatible with the judicial function, the judge is duty bound to either abandon those incompatible functions or to resign from the position of judge" (emphasis added).
[1969] Taylor Appeal, para. 777.
[1970] ICTY Statute, Art. 13*bis*(3): The terms and conditions of service shall be those of the judges of the International Court of Justice.
[1971] Taylor Appeal, fn. 1479.

number of judges for very limited periods, has no adverse effect on the pace of the work of the Court or the total precedence given to that work by its members."[1972] Indeed, the Statute of the ICJ does not place an absolute prohibition on outside judicial activities.[1973]

677. In short, membership as a judge of the ICJ is not incompatible with membership as a judge of an international tribunal as long as a case before that tribunal is not subject to being submitted to the ICJ, and as long as the judge can still give "the fullest precedence to [her] supervening duties" as a member of the ICJ.[1974] Further, as the ICJ is "the principal judicial organ of the United Nations and, as such, an important part of the peacekeeping machinery established by the Charter, [...] there is nothing unusual in the Court contributing, by various means [...] to the achievement of this vital goal of the United Nations," provided that, in so doing, it does not overstep the bounds of the Statute.[1975] Given that the SCSL was established by an Agreement between the United Nations and the Government of Sierra Leone to prosecute persons who bear the greatest responsibility for serious crimes against civilians, including leaders who threatened the establishment and implementation of the peace process in Sierra Leone,[1976] it would be compatible for the ICJ to endorse the continued participation of Justice Sebutinde as a Judge of the Special Court.[1977]

678. As discussed above, the Statute of the ICJ does not place an absolute prohibition on outside judicial activities.[1978] Indeed, none of the authorities cited by Taylor indicates any differently.[1979] Article 40 of the ICC Statute, for instance, does not prohibit all occupations of all professional nature. Rather, the provision means that the judges who have been required to serve

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[1972] August 1995-July 1996 ICJ Report, para. 199; see also ICJ Statute Commentary, pp. 334-35, para. 31 indicating it is permissible to engage in non-judicial outside activities as well: "the prohibition applicable to political and administrative function in the broad sense [...] concerns only the *exercise* of those functions, which would place the individual in a position of direct or indirect dependency *vis-à-vis* a government."

[1973] August 1995-July 1996 ICJ Report, para. 199: "in permitting its members to engage in occasional activities outside the Court that may remunerate: acting as arbitrators in inter-State and private international arbitration, serving in administrative tribunals or quasi-judicial organs or specialized agencies, lecture, writing, that occasional practice goes back to the origins of the Permanent Court of International Justice."

[1974] Secretary General's Report on Compensation, paras. 31, 32.

[1975] ICJ Statute Commentary, p. 333 citing UN Charter, Art. 1: [t]o maintain international peace and security, and to that end; [...] to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international dispute or situations which might lead to a breach of the peace.

[1976] SCSL Statute, Introduction, Articles 1-3.

[1977] ICJ Statute, Art. 16.

[1978] ICJ Statute Commentary, pp. 334-35, para. 31.

[1979] Taylor Appeal, paras. 764-769.

on a full-time basis remain free to continue to exercise other professional occupations unless the occupation, of itself, would interfere with their judicial functions.[1980]

679. It is clear there was no legal prohibition to Justice Sebutinde serving simultaneously as a judge of the ICJ and the SCSL.[1981] Most importantly, Taylor makes no showing that holding both offices resulted in a failure by her to act conscientiously in this case. Contrary to Taylor's arguments, Justice Sebutinde was not a judge of both the Special Court and the ICJ "for a significant period"[1982] or for a period which "encompassed the time period between the end of trial hearings and the delivery of Judgment."[1983] Rather, she was a judge of both courts for a relatively short period of time, toward the end of the some 13 months of deliberations on Taylor's guilt or innocence.

680. The hearing in this case was closed for deliberation on 11 March 2011.[1984] Justice Sebutinde's term as a judge of the ICJ began as of 6 February 2012,[1985] almost 11 months after the hearing had closed, but she did not make her sworn declaration until 12 March 2012,[1986] one year after the hearing was closed. On 1 March 2012, 11 days before making the solemn declaration, Trial Chamber II, Justice Sebutinde included, issued a scheduling order setting 26 April 2012 as the date on which the Judgement would be delivered.[1987] The Judgement was delivered as scheduled on 26 April 2012, Justice Sebutinde attending, less than two months after her term as an ICJ judge began. Some three weeks later, on 18 May 2012, the written judgement of some 2,500 pages was issued, with Justice Sebutinde's signature.

681. Given this history, it cannot be argued that Justice Sebutinde's continued participation in the trial process during the short period when, arguably, most of the deliberations on

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[1980] Triffterer Commentary on the Rome Statute, p. 964, para. 8: Thus, for instance, for a period following their elections to the Courts, certain judges continued for a period to remain, and to perform the duties of, a judge of the ICTR and ICTY.

[1981] Judge Sebutinde holding both offices for a relatively short period of time is no more inappropriate than Alternate Judge Sow's membership on the Working Group on Arbitrary Detention (OHCHR), throughout the duration of his position as Alternate Judge on this case. Judge Sow was appointed to this body on 1 May 2008, while already a serving Judge of the SCSL, and, not only did he hold a position that required more or less, full time responsibilities (Vice-Chair), he regularly traveled on that office's official business, from records, at least four times during the currency of the Taylor Trial (Ukraine, 22 October – 5 November 2008; Malta, 19-23 January 2009; Armenia, 6-15 September 2010; Malaysia, 7-17 June 2010). See Office of the High Commissioner for Human Rights, Your Human Rights, Detention, Members; Office of the High Commissioner for Human Rights, Your Human Rights, Detention, Visits, Working Group on Arbitrary Detention.

[1982] Taylor Appeal, para. 761.

[1983] Taylor Appeal, para. 762.

[1984] Closing Arguments, T. 11 March 2011 p. 49622.

[1985] SCSL Press Release, 16 December 2011.

[1986] ICJ Press Release, 8 March 2012.

[1987] Scheduling Order for Delivery of Judgement, 1 March 2012.

Taylor's guilt or innocence would have been completed, had the effect of invalidating the Judgement or occasioning a miscarriage of justice.

682. Nor has Taylor shown that Justice Sebutinde's appointment prevented her from acting conscientiously in the conduct of the proceedings relating to sentence. The schedule for submissions and delivery of sentencing judgement was set on 26 April 2012,[1988] and there was no deviation from that schedule. Sentencing proceedings moved apace with the requirements of Rule 100, and oral submissions followed on 16 May 2012, six days after final written submissions were filed by the Defence on 10 May 2012. Justice Sebutinde was present to hear those submissions, and asked questions during oral argument.[1989] Some two weeks after oral submissions, on 30 May 2012, the Trial Chamber delivered its sentencing judgement, which Justice Sebutinde signed.

(iii) Taylor has made no showing that appropriate undertakings and decision making did not occur consequent to Judge Sebutinde's appointment as a judge of the ICJ

683. Taylor appears to put misplaced reliance on a lack of notice to the parties to support his assertions that no appropriate undertakings were given or a decision taken in regard to Judge Sebutinde holding positions as a judge in both the Special Court and the ICJ.[1990] There is no requirement for such notice in the Statute or Rules of the Special Court, nor in the Special Court Agreement. Whether or not a judge meets all the requirements for service as a Judge of the Special Court is a matter for the President and/or Council or Plenary of Judges to decide and does not require party involvement, notification or consent.[1991] Indeed, it flows from the power of assignment given to the Presidency by Article 19 of the SCSL Agreement.[1992]

684. Nor do the ICTY and ICTR cases cited by Taylor impose any such notice requirement.[1993] Of the many sources cited by Taylor, only two refer to a requirement of some

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[1988] T. 26 April 2012 pp. 49677-79.
[1989] T. 16 May 2012 cover page, pp. 49720-21.
[1990] Taylor Appeal, paras. 761, 764, 768, 779.
[1991] There is no reason to indicate that the matter has not been discussed as a matter relating to the internal functioning of the Special Court. SCSL Rules 19, 24, 25.
[1992] SCSL Agreement, Art. 19. This provision can be compared to the article of the 35(3) of the ICC that gives the Presidency the discretion to decide, in the light of the need and workload of the Court, to what extent the judges shall be full-time. Rome Statute, Art. 35(3): Service of judges: The Presidency may on the basis of the workload of the Court and in consultation with its members, decide from time to time to what extents the remaining judges shall be required to serve on a full-time basis. Any such arrangement shall be without prejudice to the provisions of article 40.
[1993] Taylor Appeal, paras. 771-78 regarding the issues relating to Judge Odio Benito in *Delalić et al.* and Judge Byron in *Karemera et al.*

notification to the parties, neither of which is binding on the Special Court nor absolute.[1994] Absence of notice does not establish a failure to give appropriate undertakings or to engage in appropriate decision making.

685. Taylor's complaint that Justice Sebutinde failed to obtain any required authorisation to hold both judgeships simultaneously is without merit. Since these proceedings did not take place at the ICJ, it is irrelevant whether Justice Sebutinde obtained permission from that Court to complete the Taylor trial.[1995] Had she not had permission from the appropriate Special Court authority,[1996] she would simply have been refused admission to the Court premises and to Special Court materials. Clearly this did not happen.

(iv) Taylor's failure to make timely objection and his contradictory request for relief also underscore the lack of merit of this Ground of Appeal

686. In assessing the merit of this Ground of Appeal, regard must be had to Taylor's failure to timely raise the issue before the conclusion of the trial proceedings.[1997] If he had considered the issue to be prejudicial, he could have raised the matter while the Trial Chamber was fully constituted, in particular considering that lead appeal Defence counsel was trial Defence co-counsel from about August 2007 throughout the remainder of the trial proceedings.

687. Further, Taylor's requests for relief undermine his arguments. Taylor's request that only those findings adverse to him should be reversed[1998] suggests that the Chamber was regularly constituted in regard to findings favourable to him, but irregularly constituted in regard to adverse findings. Such self-serving and contradictory arguments underscore the lack of merit of this Ground of Appeal.

(v) Conclusion

688. Taylor has failed to establish that Justice Sebutinde's appointment as a judge of the ICJ constituted any error of law/and or procedure which rendered the constitution of Trial Chamber II irregular. He has failed to show that her duties as a judge of the ICJ were

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[1994] Taylor Appeal, fn. 1486, citing to Burgh House Principles and para. 768 citing Mount Scopus Standards. Both sources provide for notice to the parties, *as appropriate*. (Emphasis added.)

[1995] However, as lead appeal Defence counsel will recall, at a reception for the Judges of Trial Chamber II on 31 May 2012 hosted by the President of the Special Court and attended by lead appeal Defence counsel, Justice Sebutinde thanked the President of the ICJ for allowing her to continue her work as a judge of Trial Chamber II. See also ICJ Statute Commentary, p. 335, para. 33: As evidenced by the practice of the ICJ, it is usually the judge in question who initially expresses any doubts he may have to the President. The president generally informs the Court of any question of incompatibility raised by the judge; the President consults the Court whenever he or she deems necessary; where the President and the judge disagree, the question is submitted to the Court for decision.

[1996] See SCSL Rules 19, 24, 25.

[1997] *Furundžija* AJ, para. 174.

[1998] Taylor Appeal, para. 780.

incompatible with her duties as a judge of the Special Court, or that the appointment prevented her from acting impartially, independently, conscientiously and with judicial integrity. This Ground of Appeal should be dismissed.

GROUND 39: Taylor fails to establish any error of law, procedure or fact in the Chamber's dismissal of his request for disclosure and/or an investigation pursuant to Rule 54 (Wikileaks Motion)

(i) Overview

689. Pursuant to Rule 92*bis*, Taylor sought to reopen his case to admit two leaked United States Government ("USG") cables,[1999] and, pursuant to Rule 54, sought, based on those cables, to obtain an order for disclosure and/or an investigation of information allegedly obtained in breach of the independence and impartiality of all organs of the Court.[2000] The Trial Chamber granted the motion to reopen and admitted the documents in question,[2001] but in its "Wikileaks Decision" dismissed Taylor's request for disclosure or an investigation, holding that he had not shown any *prima facie* evidence that there had been interference with the independence and impartiality of the Court.[2002] Having reasonably assessed the information before it, the Trial Chamber acted within its discretion in applying the correct legal standard to the issue before it and in its dismissal of the motion for disclosure/investigation. Taylor has made no showing of any error of law, procedure or fact that would invalidate the Judgement or occasion a miscarriage of justice.[2003]

(ii) The Trial Chamber acted within its discretion in denying Taylor's request pursuant to Rule 54

690. A Trial Chamber has wide discretion to determine when to exercise its authority under Rule 54.[2004] As correctly recalled in the Wikileaks Decision, the test for whether the Trial Chamber should issue an order under Rule 54 is whether to do so is necessary (not simply useful or convenient) for the purpose of an investigation or the preparation or conduct of the

[1999] Defence Motion to Re-open its Case.
[2000] Wikileaks Motion.
[2001] Decision on the Defence Motion to Re-open its Case, p. 6.
[2002] Wikileaks Decision, p. 7.
[2003] In this regard it is important to note that the Chamber had the two Cables before it in resolving the issues in the case.
[2004] SCSL Rule 54: At the request of either party or of its own motion, a judge or a Trial Chamber *may* issue such an order [...]. See also *Nzirorera* Appeal decision, para. 8.

trial.[2005] For the reasons discussed below, the Chamber applied the correct law and reached reasonable conclusions in determining that this test was not met.

691. As Taylor has failed to demonstrate that the Trial Chamber abused its discretion by refraining to issue an order for the requested disclosure or/and investigation,[2006] no appellate intervention is warranted.

(iii) The Chamber applied the correct legal standard with regard to Taylor's request for disclosure and/or an investigation

692. The Trial Chamber correctly stated the law with regard to a motion for relief based on an alleged breach of independence and/or impartiality of the Court. The Trial Chamber properly considered Articles 13(1) and 15(1) of the SCSL Statute.[2007] There is a high presumption of independence and impartiality of the organs of the Court that cannot be easily rebutted.[2008] With regard to the alleged breach of independence of the Prosecution, the Trial Chamber correctly relied on the *Sesay* decision in stating that in order to grant disclosure, "a party must establish a *prima facie* case that there has been such a breach, and in so +doing must determine, whether there is, at this point in time, any evidentiary basis or factual foundation to warrant a finding of fact that there has been in law such a breach".[2009] The Chamber also correctly recalled the *Sesay* holding that "mere cooperation between the Prosecution and ... the US Government", without proof that the Prosecution received instructions from that government, "including the nature and contents of such instructions, does not, *per se*, fulfill the test to establish a violation of Article 15(1)".[2010] Contrary to Taylor's assertions,[2011] the proper analysis is not whether there were communications—and certainly not whether there were one-way communications, but whether instructions have been sought or given.[2012] With respect to the alleged breach of independence and impartiality

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[2005] Wikileaks Decision, p. 5, citing to Archive Decision, para. 10; AFRC Rule 54 Decision, para. 20.
[2006] *Nzirorera* Appeal Decision, para. 8
[2007] Wikileaks Decision, p. 5.
[2008] Inherent to Article 13(1) of the SCSL Statute is a high presumption of independence and impartiality. The independence of judges of the Tribunal is guaranteed by the standards for their selection, the method of their appointment that shows to have the trust and support of the international community as a whole, their conditions of service and the immunity they enjoy. *Nahimana* AJ, para. 28. Given the oath taken by the Judges, there is a strong presumption that they perform their duties honestly, faithfully, impartially and conscientiously. *Krajišnik* AJ, para. 133. See also *Nzirorera* Appeal Decision, para. 11. Inherent to Article 15(1) of the SCSL Statute is a high presumption of independence. The independence of the Prosecutor is also guaranteed by, *inter alia*, the standards of selection, the method of their appointment, the conditions of service, and the immunity enjoyed. See SCSL Agreement, Arts. 3(1) and 12. See also *Čelibići* Appeals Judgement, para. 611.
[2009] Wikileaks Decision, p. 5 citing to *RUF* Relationship Disclosure Decision, paras. 41, 43.
[2010] Wikileaks Decision, p. 7 citing to *RUF* Relationship Disclosure Decision, para. 52.
[2011] Taylor Appeal, paras. 792-93.
[2012] See Article 15(1), which mandates that the Prosecutor shall not seek or receive *instructions* from a Government.

of the judges, the Trial Chamber correctly stated that a requesting party must make a *prima facie* showing that such information would demonstrate bias or the appearance of bias.[2013]

693. The Trial Chamber then correctly applied the legal standards in deciding the request for disclosure or investigation. The Chamber considered the information in the two documents on which Taylor relied. The Chamber, which is best placed to assess evidence presented at the trial,[2014] reasonably concluded that none of the information in these documents established the requisite *prima facie* showing that there had been interference with the independence and impartiality of the Court and appropriately dismissed the motion.[2015]

694. The Chamber correctly concluded that the first cable did not indicate any influence over any organs of the Court or over the outcome of the trial.[2016] Indeed, the contents of the Cable refute rather than support Taylor's argument. The fact that the author of the Cable expresses concern that Charles Taylor at liberty would be a threat to stability in Liberia and urges the USG to consider possible prosecution for violation of U.S. law demonstrates this lack of influence.[2017]

695. The Chamber also properly concluded that the second cable did not establish the requisite *prima facie* showing.[2018] This Cable clearly relates to a one way flow of information regarding the status of proceedings in a case before the Court, a matter within the purview of the Management Committee, given to a State member of that Committee.[2019] As the Chamber properly considered, as part of their official functions, the Registry and the Prosecution interact on a regular basis with States of the Management Committee, including the United States, about the progress of the trial including "questions of efficiency".[2020] Thus, communications themselves were not indicative of a breach of independence. The Trial Chamber reasonably concluded that statements attributed to the sources within the Court did not demonstrate that such sources were receiving instructions from the USG.[2021]

[2013] Wikileaks Decision, p. 6 citing to *Nzirorera* Appeal Decision, para. 11.
[2014] *Musema* AJ, para. 90.
[2015] Wikileaks Decision, p. 7.
[2016] Wikileaks Decision, p. 6.
[2017] When alleging interference with the independence of the Court, the applicant must show that there was interference which has an impact on the Court. *Nahimana* AJ, para. 32.
[2018] Taylor's assertion that the contents of the second cable were serious enough to impel Justice Sebutinde to voluntarily withdraw from resolution of this issue is unfounded. As she stated in her declaration appended to the Wikileaks Decision, Justice Sebutinde merely considered "that in order for justice to be seen done, [she] should not participate in the deliberation or decision relating to this Motion. See Declaration of Justice Julia Sebutinde, 26 January 2011, appended to Wikileaks Decision.
[2019] See Wikileaks Motion, Annex B.
[2020] Wikileaks Decision, pp. 6-7.
[2021] Wikileaks Decision, p. 7. Taylor's assertion that the contents of the second cable were serious enough to impel Judge Sebutinde to voluntarily withdraw from participating in the deliberations and decision of the

(iv) No error in the Trial Chamber's Decision even applying the standard that there "may have been interference" with the independence and impartiality of the Court

696. Notwithstanding the Chamber's use of the phrase "may have been interference"[2022] in one instance, this one phrase, when placed in the context of the whole Decision, does not imply that the Chamber used an incorrect standard in deciding the issue. The impugned must be put or read in its proper context.[2023] A reading of the whole Decision makes clear the Trial Chamber applied the correct standard of proof in its reasoning.

697. In any event, as discussed in paragraphs 694 and 695 above, the two Cables do not establish even that there "may have been" interference with the independence and impartiality of the Court.[2024] Nothing in the Cables provides a reasonable basis to conclude that instructions were being sought or received, or that the independence of the Court may have been breached in any way. For example, as the Chamber concluded in relation to the second Cable, nothing therein demonstrates whether the "contacts" had any relationship with the USG *capable of* interfering with the independence of the Court. Taylor's argument now, as at in the motion, relies on pure conjecture and speculation, and makes no showing that would have necessitated an order for disclosure/investigation.

(iv) Conclusion

698. As Taylor has failed to demonstrate any error of law, fact or procedure to warrant Appellate intervention, this Ground should be dismissed.

PART V: NO ERRORS UNDERMINING THE FAIRNESS OF THE PROCEEDINGS

Ground 40: The Trial Chamber committed no error in its treatment of payments and incentives received by Prosecution witnesses

(i) Overview

699. Taylor argues without merit that the Trial Chamber erred in law and in fact in failing to find that payments and incentives received by Prosecution witnesses TF1-276, TF1-334, TF1-532, TF1-548 and TF1-274 went beyond that which is reasonably required for the management of a witness, were objectively unreasonable or excessive, and/or amounted to an

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Wikileaks Motion is unfounded. Judge Sebutinde considered that in order for justice to be seen done, she should not participate in the deliberation or decision relating to this Motion.

[2022] Wikileaks Decision, p. 6.

[2023] See, e.g., *Rutaganda* AJ, paras. 173-84, holding that in determining whether or not a Trial Chamber reversed the burden of proof, the impugned language must be put or read in its proper context.

[2024] Taylor Appeal, para. 788.

abuse of the Prosecution's discretion pursuant to Rule 39(ii) and thereby necessitated that their respective testimony be treated with caution.[2025] This Ground should be dismissed.

700. Taylor fails to demonstrate any error warranting appellate intervention. At paragraphs 194-195 of the Judgement, the Trial Chamber clearly sets out its approach to assessing whether payments made to witnesses by the Prosecution's Witness Management Unit (WMU) were reasonable and compliant with Rule 39(ii). The Trial Chamber made various specific findings about the reasonableness of payments made to Prosecution witnesses. Where specific findings were not made, the Trial Chamber nevertheless properly assessed the issue in accordance with the approach it set out in paragraphs 194-195 of the Judgement. It has not been demonstrated that no reasonable trier of fact could have found the payments in question compliant with Rule 39(ii).

701. Taylor's pleading is replete with mischaracterisations. For example, he refers to an earlier Trial Chamber ruling that payments to DCT-097 (a potential witness never called) *appeared* to be beyond that which was reasonably required for the management of the witness.[2026] Putting aside the lack of prejudice regarding payments made to someone who did not testify, Taylor critically omits reference to the Trial Chamber's ultimate conclusion that the payments fell within the Prosecution's discretion pursuant to Rule 39(ii).[2027]

(ii) No error in the Chamber's determination concerning payments and incentives received by certain Prosecution witnesses

702. The issue of "Alleged 'Incentives' for Witnesses" is addressed in the "Evaluation of Evidence" section at the beginning of the Judgement.[2028] The Trial Chamber acknowledged the arguments made by Taylor concerning witness payments, which he now repeats and seeks to relitigate on appeal.[2029]

703. At paragraphs 194-195 of its Judgement, the Trial Chamber explicitly set out the approach that it took in evaluating whether payments made to witnesses called by the

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[2025] In Taylor Appeal, paras. 816-17, Taylor repeats arguments advanced in Ground 5 that payments to witnesses automatically necessitate that their evidence be treated with caution. The Prosecution has responded to these arguments in the response to Ground 5.

[2026] Taylor Appeal, para. 797.

[2027] Contempt Decision, para. 110; see also para. 111, in which the Trial Chamber stated that the Prosecution had provided legitimate reasons for the payments and that Taylor had failed to show how the payments were exorbitant or an abuse of the Prosecution's discretion under Rule 39(ii).

[2028] Judgement, paras. 184-98.

[2029] Taylor Appeal, Grounds 5 and 40. Taylor's allegations that the payments were an abuse of discretion pursuant to Rule 39(ii), and/or exorbitant, and/or objectively unreasonable and/or excessive were raised throughout the course of this trial, including in the Contempt Motion, the Confidential Defence Final Brief (paras. 23-26, 1396-98, 1405-09, 1472-74, 1476-78, 1491), as well as in his closing arguments (T. 9 March 2011 p. 49397; T. 10 March 2011 pp. 49473-93; T. 11 March 2011 p. 49620), and were all considered by the Trial Chamber as reflected in Judgement, paras. 185-188.

Prosecution were in breach of Rule 39(ii), and/ or exorbitant, and/or objectively unreasonable and/or excessive. There is nothing erroneous in this approach. Taylor erroneously avers that the Trial Chamber failed to "draw any conclusions as to whether payments constituted an abuse of the Prosecution's discretion under Rule 39(ii)".[2030] Reading paragraphs 194 and 195 together (rather than in isolation),[2031] it is clear that by asking itself whether payments made were "reasonably required for the management of a witness", the Trial Chamber addressed Taylor's concerns.

704. Taylor's apparent suggestion that each time it discussed the issue of payments, the Trial Chamber ought to have specifically set out whether the payments were an abuse of the Prosecutor's Rule 39(ii) discretion, is without merit.[2032] In light of the methodology articulated in paragraph 195 setting out the Chamber's approach, it was unnecessary for the Trial Chamber to expressly refer to the Rule on each occasion that it assessed the issue. Although the Chamber did not articulate specific findings about whether payments were in breach of Rule 39(ii) for witnesses Abu Keita, Isaac Mongor or Suwandi Camara, the methodology set out in paragraph 195 should be understood to have been applied on a case-by-case basis in assessing the legitimacy of payments and concluding that such payments did not undermine the witnesses' credibility. It was unnecessary for the Trial Chamber to repeat that it had taken this approach when assessing and relying upon their evidence, as a Trial Chamber is not required to articulate every step of its reasoning in assessing and weighing the evidence at trial.[2033] As discussed below, the Chamber did make specific rulings in relation to Rule 39(ii) for witnesses Alimamy Bobson Sesay and Dauda Aruna Fornie. For these reasons, Taylor's claim that the Trial Chamber's credibility assessments "simply noted when payments had been made and then, without exception, concluded that these payments had no impact on credibility, without performing any substantive analysis of the appropriateness of the payments" is simply incorrect.[2034]

705. Taylor's complaints in regard to each witness are considered below.

(a) TF1-334, Alimamy Bobson Sesay

706. In its general credibility assessment of Alimamy Bobson Sesay,[2035] the Trial Chamber expressly and carefully considered the payments he received, including the resurrected

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[2030] Taylor Appeal, para. 801.
[2031] Notably, Taylor refers only to para. 195 but not 194 in para. 800 of his pleading.
[2032] Taylor Appeal, paras. 801-02.
[2033] *RUF* AJ, para. 1058 citing *Kupreškić* AJ, para. 32.
[2034] *Contra* Taylor Appeal, para. 801.
[2035] Judgement, paras. 285-89.

allegation that payments were made when no interviews were conducted with the witness. Having considered the arguments as well as cross-examination of the witness on the matter,[2036] the Trial Chamber, contrary to Taylor's argument,[2037] made an explicit finding that the payments made to Bobson Sesay were not unreasonable.[2038] Given this finding, the Trial Chamber did not need to additionally articulate that the payments were not "objectively excessive" or "did not constitute an abuse of the Prosecution's discretion pursuant to Rule 39(ii)". It is axiomatic from the finding that the payments were not unreasonable that the payments were neither "objectively excessive" nor "an abuse of the Prosecution's discretion".[2039]

707. It is clear Taylor is simply seeking to relitigate this issue on appeal. The Trial Chamber specifically addressed his arguments in its Judgement. Taylor poses the questions "why" and "how" "was [it] necessary" that the payments in question were made to Bobson Sesay,[2040] questions addressed by the Trial Chamber in Judgement paragraph 287. The Trial Chamber noted that payments were made to the witness on occasions where there was no record of an interview conducted because he was assisting the Prosecution to obtain information and locate people. According to the witness's testimony, this often involved traveling to various locations, with or without investigators, to locate such persons or information.[2041] This is consistent with the remit of Rule 39(ii) which permits the Prosecution to "take all measures necessary for the purpose of the investigation". Also of note is that in July 2006, Bobson Sesay testified in the RUF trial and was compensated for expenditures incurred as a consequence of meeting with the Prosecution in advance of his testimony in that case.[2042] The Trial Chamber properly approached the issue of payments made to this witness and the conclusion that the payments were not unreasonable was reasonably available to it.

(b) TF1-276, Abu Keita

708. In its general credibility assessment of Abu Keita,[2043] the Trial Chamber expressly and carefully considered the payments Keita received. This included Taylor's argument that Keita "received payments in excess of what was necessary to cover his expenses, and that his

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[2036] Judgement, para. 287.
[2037] Taylor Appeal, para. 805.
[2038] Judgement, para. 287.
[2039] *Contra* Taylor Appeal, para. 805.
[2040] Taylor Appeal, para. 803.
[2041] Bobson Sesay, T. 29 April 2008 pp. 8890-99, esp. at p. 8899.
[2042] Bobson Sesay, T. 29 April 2008 pp. 8906-07.
[2043] Judgement, paras. 213-19.

testimony was influenced by the indebtedness he felt to the prosecution".[2044] The Trial Chamber explicitly found that most of the $2,502 U.S. and 6,000 Leones (approximately $2 U.S.) received by Keita could be accounted for as reimbursement for plane tickets, hotel expenses, meals and other transport-related expenses.[2045] It then stated, "The Trial Chamber does not find that these payments undermine the witness's credibility".[2046]

709. Taylor's argument that no reasonable trier of fact could have concluded that payments made to Keita were permissible under Rule 39(ii) lacks merit. As set out by the Trial Chamber in its assessment of the issue, most of the $2,502 U.S. and 6,000 Leones (approximately $2 U.S.) received by Keita were reimbursements for plane tickets, hotel expenses, meals and other transport-related expenses.[2047] The payments at issue totaling $2,502 U.S. were made in June 2003 when Taylor was still President of Liberia.[2048] Keita was an insider in Liberia who was willing to meet with the Prosecution to discuss Taylor's relationship with the RUF, necessitating transport outside of Liberia so that his security would not be compromised and he could be interviewed at a safe location.[2049] Understood in this context, the payments were necessary, reasonable, and within the ambit of Rule 39(ii) which permits the OTP to take necessary measures to provide for the safety of potential witnesses. Moreover, during cross-examination, Defence counsel merely asked the witness to confirm that these payments had been made in respect of his expenses but, significantly, did not challenge the reasonableness of any of these payments.[2050] Further, Defence counsel objected to the use of an unredacted version of the witness disbursement form when it was offered by the Prosecution[2051] yet now puts those payments at issue. Taylor fails to establish any impropriety in relation to payments made by the Prosecution in respect of Keita and his argument should be dismissed.

(c) TF1-532, Isaac Mongor

710. In its general credibility assessment of Isaac Mongor,[2052] the Trial Chamber expressly and carefully considered various issues pertaining to credibility, including the letter of

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[2044] Judgement, para. 218.
[2045] Judgement, para. 218.
[2046] Judgement, para. 218.
[2047] Judgement, para. 273.
[2048] See Exh. P-48, the Disbursement record for TF1-276, Abu Keita.
[2049] Keita, T. 24 January 2008 pp. 2154-60. See Exh. P-48, which shows that payments of $445, $885, $793 were made for transportation, flights, as well a payment of $57 for a hotel and $322 marked as a payment to "cover costs associated with Transportation".
[2050] Keita, T. 24 January 2008 pp. 2154-57.
[2051] Keita, T. 24 January 2008 pp. 2158-59.
[2052] Judgement, paras. 269-74.

immunity he had received from the Prosecution,[2053] previous inconsistent statements,[2054] his demeanour while testifying,[2055] and payments received from the Prosecution.[2056] The Trial Chamber give clear consideration to the points put in cross-examination of the witness in relation to payments he received. In particular, the Trial Chamber acknowledged that some headway was made in cross-examination, in as far as the witness was "unable to explain the exact amounts he was given for transportation, food and lost wages".[2057] The clear consideration of the points raised during cross-examination makes it plain that the Trial Chamber was alive to the issue of reasonableness of witness payments, and the risk that this could potentially have on Mongor's credibility.

711. Taylor's argument that no reasonable trier of fact could have concluded that the payments made to Mongor were permissible under Rule 39(ii) lacks merit. Paragraph 809 of Taylor's Appeal exclusively concerns payments made not by the WMU, but by WVS, payments which the Defence has previously stated it did not contest.[2058] Payments made by WVS are, of course, separate and distinct from payments made by the WMU pursuant to Rule 39(ii). Paragraph 808 addresses payments made by the WMU during a period of a year and a half, between mid-2006 and the end of 2007. During this time, as acknowledged by Taylor, the witness was interviewed on numerous occasions.[2059] The vast majority of those interviews were conducted prior to March 2007 when Mongor received no reimbursements from the WVS.[2060] After March 2007, WMU disbursements to Mongor mostly reimbursed him for pre-paid top up cards for the mobile telephone he used to keep in contact with court staff.[2061] These payments, ranging from 15,000 to 120,000 Leones, equating to approximately $5-$40 U.S., were neither extortionate nor unreasonable. As Mongor testified on cross-examination, the disbursements were for transportation, meals, lost wages, and top-up cards for his mobile telephone.[2062] Taylor has not shown that no reasonable fact finder could have concluded that

[2053] Judgement, para. 270.
[2054] Judgement, para. 270 and 272.
[2055] Judgement, para. 273.
[2056] Judgement, para. 271.
[2057] Judgement, para. 271.
[2058] See Corrigendum Contempt Motion, para. 19. Notably, the payments totaling 2,223,400 Leones called into question as "unspecified other expenses" were made by WVS, not the WMU. Mongor was cross-examined about all of these payments at T. 13 February pp. 6711-18.
[2059] Taylor Appeal, para. 808.
[2060] Mongor, T. 7 April 2008 pp. 6703-11.
[2061] Mongor, T. 7 April 2008 pp. 6709-10. The witness was cross-examined and gave evidence about a payment of 30,000 Leones for "communications" on 29 November 2007, and payments of 30,000 and 120,000 Leones for "communications" on 4 and 5 January 2008.
[2062] Mongor, T. 7 April 2008 pp. 6702-11, esp. at pp. 6705 and 6710.

the payments made were for necessary expenses and were permissible under Rule 39(ii). Taylor's argument should be dismissed.

(d) TF1-548, Suwandi Camara

712. In reaching its conclusion that Suwandi Camara was a generally credible witness,[2063] it is evident that the Trial Chamber applied the criteria set out in Judgement paragraph 195 and, contrary to Taylor's submissions, did not ignore the issue of payments.[2064]

713. Taylor's argument that no reasonable trier of fact could have concluded that the payments made to Camara were permissible under Rule 39(ii) is without merit. Between 7 October 2006 and 7 January 2008, payments were made to Camara on 26 occasions, totaling $1,984.79. The witness was cross-examined at length about these payments, and reference was made to Prosecution disbursement records.[2065] Taylor characterises payments of $100 USD made to the witness as "discrete and unexplained".[2066] This is untrue. The reasons for these payments were disclosed in the disbursements records, and the witness was cross-examined about the same. Payments were made for compensation for travel (the witness had to travel to a different town to meet with investigators),[2067] meals, for top-up cards (used by the witness to keep in contact with OTP investigators),[2068] for 'family assistance' (for the education of his children),[2069] and for security reasons.[2070] The payments were reimbursements in respect of: (i) those occasions when he was interviewed by investigators, as well as (ii) other occasions when he acted as a 'source' assisting investigators, for example, by locating persons and providing information.[2071] Such payments are consistent with the remit of Rule 39(ii), which permits the Prosecution to take all necessary measures for the assistance and support of potential witnesses and sources.

(e) TF1-274, Dauda Aruna Fornie

714. In its general credibility assessment of Dauda Aruna Fornie,[2072] the Trial Chamber expressly and carefully considered the payments received by the witness.[2073] Contrary to Taylor's allegation, the Trial Chamber made a specific finding on the reasonableness of

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[2063] See, e.g., Judgement, para. 2222.
[2064] *Contra* Taylor Appeal, para. 812.
[2065] Camara, T. 13 February 2008 pp. 3766-3803; see also pp. 3803-11.
[2066] Taylor Appeal, para. 811.
[2067] See, e.g., Camara, T. 13 February 2008 pp. 3771-72.
[2068] See, e.g., Camara, T. 13 February 2008 pp. 3780-82.
[2069] See, e.g., Camara, T. 13 February 2008 pp. 3776.
[2070] See, e.g., Camara, T. 13 February 2008 pp. 3797-801.
[2071] See, e.g., Camara, T. 13 February 2008 pp. 3784, 3788-89, 3792, 3794.
[2072] Judgement, paras. 346-58.
[2073] Judgement, para. 357.

payments made to the witness. The Trial Chamber noted that Fornie received in total 3.9 million Leones (approximately $1,300 U.S.) from the Prosecution, and that these payments included transportation, medical expenses, rent payments and witness attendance allowances. The Trial Chamber specifically concluded that "these payments do not appear to be unreasonable". The Trial Chamber further concluded that any payments received by the witness did not appear to have influenced his testimony.[2074] Having made this finding, for the reasons already outlined above, it was unnecessary for the Trial Chamber to make a specific reference to Rule 39(ii).

715. Taylor's assertion that no reasonable trier of fact could have concluded that payments made to Fornie were reasonable lacks merit. Rule 39(ii) permits payments to be made by the WMU to potential witnesses or sources for the purpose of investigations, including the taking of any special measures to provide for their safety, support and assistance. Fornie was a witness for the Prosecution who also acted as a "source" by assisting the Prosecution to obtain information, which assisted with the case's investigations.[2075] Payments to compensate for lost wages, food and transportation were permissible in order to support and assist Fornie in these circumstances,[2076] as were payments made to the witness for "communications", namely, top-up cards for his mobile phone, to ensure that the Prosecution could keep in contact with him. The payment of 480,000 Leones made in respect of rent, and the assistance given to the witness for medical expenses are likewise consistent with the terms of the Rule.

(iii) The Trial Chamber's factual findings should not be overturned

716. In paragraph 818 of his Appeal, Taylor seeks the same relief he requested under Ground 5 for Bobson Sesay, Mongor and Fornie. The Prosecution has responded to those arguments in Response Ground 5. In relation to Keita, those findings mentioned in footnote 1578 are corroborated by other evidence in the case.[2077] For Camara, Taylor does not cite any instances in which the Trial Chamber has relied upon the evidence of this witness without

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[2074] Judgement, para. 357.

[2075] Taylor Appeal, para. 813. As for the witness's evidence about the same, see e.g., Fornie, T. 11 December 2008 p. 22244.

[2076] *Contra* Taylor Appeal, para. 813.

[2077] The factual findings at the following paragraphs are corroborated by other witnesses: Judgement, paras. 3909; 3914; 4452-58 (see in conjunction with para. 4459); 4476 (should be read holistically with paras. 4477-79); 4480-81 (should be read with paras. 4452-79); 4488 (see also para. 4487); 4491; 4493-95; 4618(iv, v); 4620 (see in conjunction with paras. 4452-90).

corroboration.[2078] As such, there is no basis for the Appeals Chamber to overturn any findings made in reliance upon any of the witnesses' evidence.

(iv) Conclusion

717. Taylor fails to show that the Trial Chamber committed any error of law or fact. This Ground of Appeal should be dismissed.

GROUND 41: The Trial Chamber properly entered cumulative convictions for rape and sexual slavery

(i) Overview

718. Taylor's arguments regarding impermissible cumulative convictions are without merit. The alleged error of law is unfounded. The Trial Chamber's convictions are in accord with settled Appeals Chamber jurisprudence. There is no bar to entering cumulative convictions for rape *vis-à-vis* sexual slavery, because each of the offences contains a materially distinct element not present in the other.

719. Taylor alleges error of fact which his submissions do not address.[2079] As the Appeals Chamber noted, "[a]n appellant is expected to identify the challenged factual finding and put forward its factual arguments with specificity", otherwise that alleged error of argument will be summarily dismissed.[2080] In any event, as the Appeals Chamber stated, issues of cumulative convictions are errors of law.[2081]

(ii) The Trial Chamber made no error of law

720. It is well established that multiple convictions under different statutory provisions for the same conduct are permissible if each statutory provision has a materially distinct element not contained in the other. This test was laid down by the ICTY Appeals Chamber in *Čelebići*.[2082] Consistent with the provisions of Article 20(3) of the Statute of the SCSL, the Appeals Chamber of this court has endorsed the test as set forth in *Čelebići*.[2083]

[2078] Judgement, para. 2252 does not contain any factual findings. The following findings are all corroborated by other witnesses: Judgement, paras. 2219; 2222-23; 2225; 2251; 2259 (see in conjunction with para. 2251); 2702; 2747-48; 2753 (see in conjunction with paras. 2743-52). At paras. 2227 and 5940-41, the Trial Chamber rejects Camara's testimony. The findings contained in the following paragraphs are not, on a proper reading of the Judgement, based upon Camara's evidence: Judgement, paras. 2230; 2253; 5948; 6769.

[2079] Taylor only identifies the challenged factual findings in fn. 1594 at para. 825 of his submissions.

[2080] *RUF* AJ, para. 38.

[2081] *RUF* AJ, para. 1191.

[2082] *Čelebići* AJ, paras. 412-13. Multiple criminal convictions entered under different statutory provisions but based on the same conduct are permissible only if each statutory provision involved has a materially distinct element not contained in the other. An element is materially distinct from another if it requires proof of a fact not required by the other.

[2083] *RUF* AJ, para. 1190; *CDF* AJ, para. 220.

721. The determination of whether the same conduct can lead to a conviction under two distinct statutory provisions lies at the heart of the *Čelebići* test and is a question of law.[2084] In other words, the *Čelebići* test focuses on the legal elements of each crime that may be the subject of a cumulative conviction rather than on the underlying conduct of the accused. The fact that the same conduct supports a finding of two crimes does not make the legal elements identical as a matter of law.[2085] What matters for the purpose of cumulative convictions test are the legal elements of each crime that may be the subject of cumulative convictions, not the underlying conduct of the accused.[2086]

722. Furthermore, the *Čelebići* test serves twin aims: ensuring that the accused is convicted only for distinct offences, and at the same time, ensuring that the convictions entered fully reflect his criminality.[2087] Strict application of the test is necessary to maintain this balance.[2088]

723. Contrary to Taylor's argument,[2089] the offence of rape is "materially distinct" from the offence of sexual slavery as the Trial Chamber correctly stated – that is each offence has an element that requires proof of a fact not required by the other offence.[2090] The *actus reus* of rape is characterised by "the non-consensual sexual penetration".[2091] The *actus reus* of sexual slavery is characterised by "the exercise of any or all of the powers attaching to the right of ownership over a person, and involve sexual acts" (not limited to rape).[2092] The *mens rea* of rape is the intentional effect of non-consensual sexual penetration.[2093] The *mens rea* of sexual slavery is the intentional exercise of such powers of ownership over a person.[2094]

724. Thus, while sexual slavery contains an ongoing control or ownership requirement, rape does not. Instead rape requires sexual penetration, which sexual slavery does not. Therefore, each of the offences is materially distinct, and the offence of rape is not "entirely" subsumed by the offence of sexual slavery.[2095]

725. In *Kunarac,* women and girls had been held enslaved for extended periods in Foca in 1992. They were repeatedly raped during their captivity and forced to perform sexual and

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[2084] *RUF* AJ, para. 1191.
[2085] *Stakić* AJ, para. 356; *Strugar* AJ, para. 322.
[2086] *Stakić* AJ, para. 356.
[2087] *Čelebići* AJ, para. 412; *Kordić & Čerkez* AJ, para. 1033.
[2088] *Gatete* AJ, para. 261.
[2089] Taylor Appeal, para. 822.
[2090] Judgement, para. 6989.
[2091] Judgement, para. 415(i). See also *Kunarac* AJ, para. 127.
[2092] Judgement, para. 419, 421.
[2093] Judgement, para. 415(ii). See also *Kunarac* AJ, para. 127.
[2094] Judgement, para. 419.
[2095] Taylor Appeal, para. 822.

domestic services by Kunarac and Kovač.[2096] This essentially amounted to sexual slavery according to the Appeals Chamber, which concluded enslavement based on sexual exploitation is a distinct offence from that of rape. That forcing the women and girls to endure rape as an especially odious form of their domestic servitude did not merge the two convictions.[2097] In the case at hand, the women and girls enslaved by the RUF/AFRC suffered similar fate as those in Foca 1992. In keeping with appellate jurisprudence, the Trial Chamber correctly entered cumulative convictions for rape *vis-à-vis* sexual slavery.

(iii) The Trial Chamber committed no error in following settled appellate jurisprudence

726. Contrary to Taylor's claim that the precedent set by the *RUF* Trial Chamber was binding on the *Taylor* Chamber,[2098] the decision of one Trial Chamber is not "binding" on another.[2099] Rather, the Trial Chamber was bound by the *ratio decidendi* of decisions of the Appeals Chamber.[2100] Therefore the *Taylor* Chamber properly relied on appellate jurisprudence. The *RUF* Trial Judgement departs from settled appeals jurisprudence which this Appeals Chamber has endorsed,[2101] and does not directly refer to any authority.[2102] Taylor has not presented any cogent reasons warranting such a departure.[2103]

727. Taylor misreads paragraph 719 of the *AFRC* Trial Judgement.[2104] First, that Trial Chamber did not construe sexual slavery as rape. It only said that sexual slavery may include rape. Furthermore, the Trial Chamber was addressing the elements of sexual slavery as constituting "an outrage upon personal dignity". In any case, a trial chamber can depart from its own position and adopt the correct appeals chamber position.[2105]

(iv) Conclusion

[2096] *Kunarac* TJ, paras. 728-82.
[2097] *Kunarac* AJ, para. 186.
[2098] Taylor Appeal, paras. 821-22 citing to *RUF* TJ, para. 2305 that is "[w]here the commission of sexual slavery, however, entails acts of rape, the Chamber finds that the act of rape is subsumed by the act of sexual slavery".
[2099] The Appeals Chamber stated that while an SCSL Trial Chamber "does not commit an error of law when it opts to follow one line of persuasive line of jurisprudence rather than another or rather than breaking new ground", "it is nevertheless prudent for the Trial Chamber to carefully consider relevant comparative jurisprudence' since their decisions maybe reviewed by the SCSL Appeals Chamber 'which is required to consider ICTR and ICTY "guidance"', see *Norman* Subpoena Appeal Decision, paras. 12, 14. See also AFRC Indictment Defects Decision, paras. 21-22.
[2100] At the ICTY and ICTR, Trial Chambers are bound by the *ratio decidendi* of decisions of the Appeals Chamber (whether interlocutory decisions or final judgements). Decisions of Trial Chambers, which are bodies with coordinate jurisdiction, have no binding force on each other, although a Trial Chamber is free to follow the decision of another Trial Chamber if it finds that decision persuasive as long as there is no contrary Appeals Chamber jurisprudence – see *Aleksovski* AJ, paras. 112-14.
[2101] *RUF* AJ, para. 1190 endorsing *Čelebići* test in determining the permissibility of cumulative convictions.
[2102] See *RUF* TJ, para. 2305.
[2103] *Kordić & Čerkez* AJ, para. 1040.
[2104] Taylor Appeal, paras. 822-23.
[2105] *Bagosora* Decision on Reconsideration, para. 9.

728. The Trial Chamber properly entered cumulative convictions for rape and sexual slavery because each of the offences contains a materially distinct element not present in the other. Ground 41 should be dismissed.

PART VII: ALLEGED SENTENCING ERRORS

729. A Trial Chamber has a wide discretion in sentencing matters, and the Appeals Chamber will not overturn its decisions unless it committed a discernible error in exercising its discretion or failed to follow the applicable law.[2106] Grounds 42 to 45 should be dismissed[2107] as Taylor fails to show that the Trial Chamber committed a discernible error in the exercise of its wide discretion leading to the imposition of a manifestly unreasonable sentence. To the contrary, as argued in the Prosecution's Appeal Submissions, Taylor's sentence should be revised upwards to eighty (80) years in order to properly and accurately reflect the totality of his criminal conduct. Further, Taylor does not establish that the Trial Chamber failed to follow the applicable law.

GROUND 42: Taylor fails to establish that the 50-year sentence imposed by the Trial Chamber was manifestly unreasonable in all the circumstances

(i) Overview

730. None of the alleged errors relied on by Taylor under this Ground establish that the Trial Chamber committed any error warranting appellate review nor that it "transgressed the applicable principles of sentencing" resulting in "a manifestly excessive sentence".[2108] Further, Taylor's Notice of Appeal failed to set out the contents of this Ground,[2109] choosing only to elucidate his arguments in his Appeal Brief.[2110] For these reasons, this Ground of Appeal should be dismissed.[2111]

(a) The Trial Chamber did not commit a discernible error in the exercise of its wide discretion by finding that serving a sentence abroad is not a factor to be taken into account in determining a sentence of imprisonment

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[2106] *RUF* AJ, para. 1202; *AFRC* AJ, para. 309; *CDF* AJ, para. 466.
[2107] Taylor Appeal, paras. 826-873.
[2108] Taylor Appeal, para. 826.
[2109] Taylor Notice of Appeal, para. 122.
[2110] Taylor Appeal, paras. 826-854. The arguments which were not properly notified should be dismissed. See, e.g., *RUF* AJ, para. 466, fn. 1198.
[2111] Taylor Appeal, para. 826. The arguments contained herein are without prejudice to the Prosecution's appeal that the Trial Chamber would have imposed a sentence higher than fifty (50) years had it properly assessed the gravity of Taylor's conduct. See Prosecution Appeal Brief, paras. 224-34.

731. The Trial Chamber properly found that serving a sentence abroad is not a factor to be taken into account in sentencing.[2112] There is no international authority which supports the contention that serving a sentence abroad is a mitigating factor or a factor which *should* be taken into account as part of sentencing.

732. Trial Chamber I's statement in *RUF* that "sentences served abroad [...] would normally amount to a factor in mitigation"[2113] which is relied upon by Taylor is *obiter dictum* since the Trial Chamber did not authoritatively rule on this issue.[2114] Further, the binding authority at this Court on this point is this Chamber's determination in *RUF* that there was "no error in the Trial Chamber's decision not to mitigate sentence" because it would be served abroad.[2115] This Chamber also noted that Sesay had not referred to any jurisprudence where serving a sentence abroad had been considered as mitigating.[2116]

733. The ICTY authority cited by Taylor is equally inapposite.[2117] The Trial Chamber in *Mrđa* expressly held that serving a sentence abroad is not a *mitigating* factor.[2118] Instead, it determined that it was simply *a* factor it would take "into account [...] in determining the length of imprisonment".[2119] While Taylor argues that this factor should be "taken into account" in mitigation[2120] apparently on a basis similar to *Mrđa*, he fails to identify the legal basis that would require the Trial Chamber to take it into account.[2121] Given that it was expressly found not to be a mitigating factor in *Mrđa*, it would appears that the ICTY Trial Chamber in that case was merely considering it as one of a number of factors relevant to sentencing.

734. The correctness of the Trial Chamber's decision in this case is further underlined by the ICTY Appeals Chamber's approach in *Tadić*. In *Tadić*, the Appeals Chamber found there to be no error in the Trial Chamber's dismissal of the personal circumstances raised by Tadić in mitigation, including the fact that he *would* serve his sentence in a foreign country.[2122]

[2112] *Contra* Taylor Appeal, para. 831.
[2113] RUF Sentencing Judgement (SJ), para. 206.
[2114] Ultimately, Trial Chamber I was not required to make any determination on this matter because there was no conclusive information before the Court as to where sentence was to be served. Trial Chamber I also noted it was a discretionary decision to be made by the President of the Court (see *RUF* SJ, paras. 205-06).
[2115] *RUF* AJ, para. 1246.
[2116] *RUF* AJ, para. 1246.
[2117] Taylor Appeal, fn. 1598.
[2118] *Mrđa* SJ, paras. 109-11 (emphasis added). Note the SCSL Appeals Chamber referred to the Mrđa Judgement in finding that there was no error in not mitigating a sentence on the basis of the sentence being served abroad. See *RUF* AJ, para. 1246.
[2119] *Mrđa* SJ, para. 109 (emphasis added).
[2120] Taylor Appeal, para. 831.
[2121] SCSL Statute, Art. 19(2) and SCSL Rule 101(B) set out the sentencing factors that must be considered.
[2122] *Tadić* Sentencing AJ, paras. 18, 22.

Taylor, therefore, fails to cite a single decision which would amount to authority for his contention that serving a sentence abroad should have been considered in mitigation by the Trial Chamber or that the Trial Chamber committed a discernible error in the exercise of its sentencing discretion by failing to take account of this factor.

735. Equally, Taylor's assertion that the Trial Chamber "failed to consider the substantive factual submissions of the Defence on this issue"[2123] is baseless. The Sentencing Judgement effectively addresses and considers all of the substantive points raised by Taylor in relation to his concerns about potentially serving his sentence in the United Kingdom.[2124]

(b) The Trial Chamber did not commit a discernible error in the exercise of its wide discretion by taking into account the extraterritorial nature of Taylor's conduct as an aggravating factor

736. Taylor's references to the application of principles of customary international law and *nullum crimen sine lege* under this argument misconstrue the approach actually taken by the Trial Chamber.[2125] The Trial Chamber did not, nor did it purport to, apply any extraneous "principle" of law in sentencing Taylor. Rather, the Trial Chamber found the extraterritorial aspect of Taylor's conduct to be an aggravating factor. There is no comprehensive or exhaustive list of the aggravating factors of crimes in the Statute, the Rules or the jurisprudence.[2126] The relevant factors to be taken into consideration depend on the facts of the case. Ultimately, a Trial Chamber has considerable discretion in deciding these factors and the weight to attach to them.[2127] Aggravating factors are effectively those circumstances directly related to the commission of the offence,[2128] beyond the elements of the crime, which increase the culpability of the crime. The extraterritorial nature of Taylor's actions unquestionably heightened the responsibility which rests upon Taylor by virtue of his criminal conduct.

737. The principle of territorial integrity provides a wall of protection in international law for a state's boundaries and for the civilians who reside within those boundaries. The people of Sierra Leone were entitled to and expected to benefit from the protection which the national boundaries of Sierra Leone are intended to provide under international law. Taylor's actions shattered that protection. Further, the principle of non-intervention in the domestic

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[2123] Taylor Appeal, para. 832.
[2124] Sentencing Judgement, paras. 68, 93.
[2125] Taylor Appeal, para. 834.
[2126] *CDF* SJ, para. 37; *AFRC* SJ, para. 21; *RUF* SJ, para. 25.
[2127] *AFRC* SJ, para. 21; *RUF* AJ, para. 1278. See also *Hategekimana* TJ, para. 740.
[2128] *Kunarac* TJ, para. 850; *Čelebići* AJ, para. 763.

affairs of a sovereign state is "of the greatest importance for the maintenance of international peace and security",[2129] and the prohibition on the use of force is both a treaty obligation[2130] and an obligation of customary international law[2131] which state officials must abide by in the conduct of their inter-state relations.[2132] Taylor, as an educated statesman, was unquestionably aware of these core tenets of international law by which he, as Head of State, was bound, yet his actions perpetuated a conflict in a country not his own and with which Liberia was not at war.

738. International law must prohibit and deter external intervention in sovereign states which brings exploitation and suffering to millions of people's lives by virtue of the actions of those at a safe distance profiting from cross-border conflict. As the Trial Chamber found, Taylor did not set foot in Sierra Leone,[2133] yet his conduct amounted to an outside intrusion into Sierra Leone of incomparable consequence, facilitating the temporary overthrow of a democratically elected government, the destabilising of a sovereign nation, and the wreaking of destruction on the very fabric of Sierra Leonean society, all with the motive of exploiting its natural resources. Consequently, the extraterritorial nature of Taylor's actions was properly and correctly considered by the Trial Chamber to aggravate his criminal conduct.[2134]

739. Given the discretionary nature of what constitutes an aggravating factor based on the facts of a particular case,[2135] the evocation of case law in which such a factor was not taken into account is irrelevant.[2136] Taylor, therefore, fails to establish any alleged error that would require the intervention of the Appeals Chamber.

(c) The Trial Chamber did not commit a discernible error in the exercise of its wide discretion by giving weight to Taylor's breach of trust as an aggravating factor

740. Taylor asserts that, despite his position as an international actor and Statesman, he did not owe a duty to the people of Sierra Leone.[2137] Contrary to his contention, Taylor was under a duty to the civilians of Sierra Leone not to fuel the conflict which was resulting in the commission of horrific crimes against them. Through seven months of testimony, Taylor stressed that he occupied a position of authority and trust at the international level as a result

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[2129] General Assembly Resolution 36/103, Annex. See also UN Charter, Art. 2(7).
[2130] Exh. D-187; UN Charter, Art. 2(6); ECOWAS Protocol on Non-Aggression, 22 April 1978, Articles 1-2.
[2131] *Nicaragua* Judgment, para. 190.
[2132] The prohibition on the use of force has been considered as a norm of *ius cogens* by the International Court of Justice. See Oil Platforms Case, Judge Simma Sep. Opinion, para. 6.
[2133] Sentencing Judgement, para. 98.
[2134] *Contra* Taylor Appeal, paras. 836-37.
[2135] *AFRC* SJ, para. 21; *RUF* AJ, para. 1278. See also *Hategekimana* TJ, para. 740.
[2136] Taylor Appeal, para. 836.
[2137] Taylor Appeal, para. 838.

of the positions he held as a Head of State, and a member of the ECOMOG Committee of Five and the Committee of Six.[2138] Taylor himself claimed to be the one responsible for contacting and negotiating with rebel leaders to advance the peace process and that ECOMOG had made him the "point president" in the region's efforts to end the Sierra Leone conflict, meaning that he was "the lead person in the crisis".[2139] In these positions, Taylor was tasked with negotiating a peace for what was publicly known to be an abhorrent conflict in a neighbouring country. The facts show, however, that the leading part played by Taylor in the crisis was very different to that which Sierra Leone, regional powers and the international community had hoped and needed. As noted by the Trial Chamber, Taylor's ostensible role in facilitating peace was undermined by the reality that "the message from [Taylor] to the RUF was not in support of the peace process".[2140] By continuing to privately facilitate the commission of a raft of horrific crimes while publicly proclaiming a role in negotiating a peace, Taylor breached the trust that was placed in him to act on behalf of the ECOWAS and the international community to bring the violence to an end.[2141] Further, Taylor fundamentally abused his position as a Head of State to turn the resources of Liberia against the civilian population of Sierra Leone.[2142] The possibility to do so arose as a result of the authority inherent in Taylor's position as Head of State of Liberia. His decision to act to the detriment of the civilian population of Sierra Leone was correctly held by the Trial Chamber to amount to an aggravating factor.[2143]

(d) The Trial Chamber did not commit a discernible error in the exercise of its wide discretion in the assessment and applicability of the sentencing practice of the ad hoc tribunals for aiding and abetting

741. As Taylor rightly points out, the Trial Chamber noted the sentencing practice of this Court, as well as that of the ICTY and ICTR in determining his sentence.[2144] The Trial Chamber correctly noted that the *ad hoc* tribunals *generally* impose a lower sentence for those

[2138] Sentencing Judgement, para. 97; see Taylor, T. 25 November 2009 pp. 32390-92.
[2139] Taylor, T. 27 July 2009 p. 25308; T. 25 November 2009 p. 32390.
[2140] Judgement, para. 4241.
[2141] *Contra* Taylor Appeal, para. 838.
[2142] Sentencing Judgement, para. 97.
[2143] *Contra* Taylor Appeal, para. 838. The ICTR has also found the abuse of the authority and duty to protect civilian populations entrusted in a position of high office to be aggravating. See *Kambanda* TJ, para. 61. At the appellate phase, Kambanda did not appeal the Trial Chamber's taking into consideration his abuse of authority. The Appeals Chamber noted the aggravating and mitigating factors assessed by the Trial Chamber and found that the sentence fell within the discretionary framework allowed to the Trial Chamber. See *Kambanda* AJ, paras. 114-126. The ICTY has also stated that "the consequences are necessarily more serious if individuals who occupy top [...] political positions use those positions to commit crimes." See *Plavšić* SJ, para. 54. See also *Krstić* TJ, paras. 708-709.
[2144] Taylor Appeal, para. 839.

convicted of aiding and abetting crimes.[2145] This practice does not, however, amount to a "principle" that all those convicted of aiding and abetting deserve a lesser sentence in all cases.[2146] Rather, it is based on the fact that those convicted of aiding and abetting before the *ad hoc* tribunals have been found guilty of relatively less serious and less far-reaching conduct in the context of the conflicts in which they occurred.[2147] Each case should be considered on its own facts and other aiding and abetting cases should not be considered as providing "a legally binding tariff of sentences".[2148] Moreover, "different mitigating and aggravating circumstances might dictate different results".[2149] The law is clear, therefore, that factors such as having reference to the sentencing practices of other courts "do not constitute binding limitations on a Trial Chamber's discretion to impose a sentence", and such discretion is ultimately guided by "the facts of each particular case".[2150]

742. In this case, the Trial Chamber correctly held Taylor to be "in a class of his own"[2151] in terms of those bearing criminal responsibility for events in Sierra Leone.[2152] Taylor's conviction for aiding and abetting spans five years, from the start of the Special Court's jurisdiction to the end of the conflict, and encompasses "some of the most heinous and brutal crimes recorded in human history".[2153] The Trial Chamber was correct to find that Taylor's conviction for aiding and abetting was outside the realm of any situation previously adjudicated upon by the *ad hoc* tribunals that might have served as a comparator for sentence.[2154] The findings throw into stark relief Taylor's "critical"[2155] and "indispensable"[2156] role in a conflict, the duration of which was prolonged by his very actions.[2157] Taylor fails to demonstrate that the Trial Chamber committed any error in law or discernible error in the exercise of its discretion that would invalidate the decision.

[2145] Sentencing Judgement, paras. 21, 36, 100.
[2146] Taylor Appeal, para. 839.
[2147] See, e.g., *Vasiljević* AJ, paras. 1, 2, 5, 7, 131-32, 134-35; *Ntakirutimana* TJ, paras. 678, 718, 782, 784-85. See also Prosecution Appeal, paras. 224-34.
[2148] *D. Milošević* AJ, para. 326.
[2149] *D. Milošević* AJ, para. 326.
[2150] *Krstić* AJ, para. 241. See also *CDF* AJ, para. 466; *AFRC* SJ, para. 11; *Kambanda* TJ, paras. 30-31; *Serushago* TJ, paras. 22-23; *Rutaganda* TJ, paras. 457-458; *Kajelijeli* AJ, para. 291; *Kamuhanda* AJ, para. 351; *Jelisić* AJ, para. 101; *Momir Nikolić* Sentencing AJ, para. 106. See also the recent affirmation of this principle in *Perišić* TJ, para. 1793 and *Bizimungu* TJ, para. 1990.
[2151] Sentencing Judgement, para. 101.
[2152] *Contra* Taylor Appeal, paras. 839-40.
[2153] Sentencing Judgement, paras. 70, 78.
[2154] *Contra* Taylor Appeal, paras. 839-40.
[2155] Judgement, paras. 5842, 6914.
[2156] Judgement, paras. 5842, 6914.
[2157] Sentencing Judgement, paras. 97-98.

(e) The Trial Chamber did not commit a discernible error in the exercise of its wide discretion in its assessment of the sentencing practice of the Special Court for aiding and abetting

743. The Sentencing Judgement clearly shows that the Trial Chamber took into consideration the sentences imposed on those previously convicted by the Court but found, based on its assessment of the evidence, that the nature of Taylor's actions set him apart for the purposes of sentencing "compared to the principal perpetrators who have been convicted by this Court".[2158] Any attempt at comparing the roles of principal perpetrators whose conduct was either temporally, criminally or geographically limited by comparison to Taylor, who was convicted of crimes committed throughout Sierra Leone throughout the Indictment period, is an exercise in futility. If anything, such a comparison in this case would have substantiated a term of imprisonment significantly higher than 50 years, as Taylor's role was more pervasive and central to the commission of the crimes across time and territory than that of any other accused convicted in this Court. Moreover, as correctly noted by the Trial Chamber, a sentence should always be "individualised" to reflect the inherent gravity of the totality of a convicted person's criminal conduct.[2159]

744. The Trial Chamber was bound by Article 19 of the Statute and SCSL Rule 101 only to take into account such factors as the gravity of the offence and the individual circumstances of the accused. Other factors such as the general sentencing practice of the ICTR and the national courts of Sierra Leone are to be taken into account *where appropriate*.[2160] While neither the Statute nor the Rules specifically mention the sentencing practice of this Court, the jurisprudence acknowledges that this can be taken into account.[2161]

745. Taylor's extensive comparison between the sentences previously imposed at the Special Court on those convicted of aiding and abetting is an elaborate exercise which entirely fails to establish any error in the discretion exercised by the Trial Chamber.[2162] The single instance that can be isolated for the purposes of comparison is the aiding and abetting conviction of Gbao for attacks on peacekeepers.[2163] The attacks in question occurred over a

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[2158] Sentencing Judgement, para. 101. See also Prosecution Appeal, paras. 224-34.
[2159] Sentencing Judgement, para. 9. See also *CDF* SJ, para. 31.
[2160] Sentencing Judgement, para. 7.
[2161] *RUF* SJ, para. 31.
[2162] Taylor Appeal, paras. 841-47.
[2163] The following problems should be noted in relation to Taylor's attempt to compare the sentencing practice of this Court in other cases. First, Accused Brima, Kanu and Kamara all received global sentences. Therefore, it is unclear what sentence was imposed for their aiding and abetting convictions. Second, Sesay and Kallon were not convicted of aiding and abetting. Finally, while Fofana and Kondewa were convicted of aiding and abetting

period of nine days and amounted to the abduction of a number of peacekeepers, the killing of four, and the assault of another.[2164] Gbao was sentenced to 25 years for his aiding and abetting of these attacks.[2165] By comparison, Taylor was found to have aided and abetted the commission of all the Indictment crimes throughout the entire Indictment period.[2166] Given this comparison, the gravity of Taylor's crimes is much more than double that of Gbao's and the sentence should reflect that difference.

746. As is the case at the *ad hoc* tribunals, aiding and abetting should not be automatically considered a lesser mode of liability for the purposes of sentencing at this Court.[2167] The most important factor is the gravity of the crimes, including the accused's conduct. Further, the comparison of Taylor and Gbao supports rather than undermines the Trial Chamber's reasoning and shows that the sentence imposed on Taylor for aiding and abetting cannot be considered excessive.[2168] Instead, the Prosecution argues that, in fact, the gravity of Taylor's actions required the imposition of a higher sentence.

747. Taylor's reference to modes of liability for which he was not convicted is misplaced.[2169] The Trial Chamber correctly stated that a sentence must reflect the totality of the accused's criminal conduct,[2170] and, therefore, ulterior considerations such as convictions that were *not* entered should not be borne in mind for the purposes of sentencing.[2171] Taylor's assertion that the sentence imposed amounts to a life sentence was an issue the Defence brought before the Trial Chamber in determining his sentence and, therefore, amounts to rehashing a previously decided issue without any attempt to demonstrate an error warranting appellate review.[2172]

(f) The Trial Chamber correctly exercised its discretion and made no error of law when considering and assessing Taylor's position as Head of State

748. Taylor's assertion that his position as Head of State of Liberia was 'double-counted', or in fact, counted five times, misreads the Sentencing Judgement.[2173] First, it is patently clear

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certain crimes, they were also convicted under superior responsibility for the same crimes. Therefore, again, it is unclear what sentence was imposed for their aiding and abetting convictions alone.

[2164] *RUF* TJ, para. 2238.

[2165] *RUF* SJ, p. 98. Note that while the various sentences imposed on Gbao were to run concurrently, the individual sentence imposed for his aiding and abetting these attacks was 25 years.

[2166] Judgement, para. 6994 (a).

[2167] *Contra* Taylor Appeal, para. 848.

[2168] *Contra* Taylor Appeal, para. 850.

[2169] *Contra* Taylor Appeal, para. 849.

[2170] Sentencing Judgement, para. 9.

[2171] *Contra* Taylor Appeal, para. 849. See Prosecution Appeal, para. 234.

[2172] *Contra* Taylor Appeal, para. 849.

[2173] *Contra* Taylor Appeal, para. 852.

from the findings that Taylor's position as President of Liberia, and member of the ECOWAS Committee of Five (later the Committee of Six) was considered by the Trial Chamber once as regards the position of leadership itself.[2174] Second, the Trial Chamber then properly considered Taylor's position separately in relation to his breach of trust.[2175] This approach reflects the jurisprudence of this Court where these factors have been considered separately for the purposes of sentencing.[2176] Third, the extraterritorial nature of Taylor's actions and the effects that were felt across an international boundary was properly considered by the Trial Chamber as a separate and distinct aggravating factor from his position as Head of State.[2177] Fourth, contrary to Taylor's contention, the Trial Chamber merely noted that the context of the aiding and abetting convictions of the principal perpetrators convicted before the Special Court and Taylor's could not rightly be compared.[2178] Fifth, the final example referred to by Taylor is taken from the Trial Chamber's conclusion that all of the factors which had been noted should be reflected in the sentence imposed, and does not represent a separate reference to Taylor's position as Head of State in aggravation. It is clear, therefore, that the Trial Chamber properly considered the factors which were to be considered as aggravating in the imposition of Taylor's sentence, and that no double-counting occurred.

(ii) Conclusion

749. All of the situations highlighted by Taylor under this Ground fail to demonstrate any "discernible error" in the exercise of the Trial Chamber's discretion or that the Chamber failed to follow the applicable law. The sentence was not manifestly unreasonable in the circumstances of the case, and the aggravating factors considered by the Trial Chamber fell within the discretion provided to it by the Statute, the Rules and jurisprudence.[2179] Consequently, Taylor's submissions should be dismissed.

[2174] Sentencing Judgement, paras. 29, 96.
[2175] *Contra* Taylor Appeal, para. 852.
[2176] For position of authority, see *CDF* SJ, para. 38, citing *Miodrag Jokić* Sentencing AJ, paras. 28-29; *Obrenović* TJ, para. 99, *Babić* Sentencing AJ, para. 80. For breach of trust or authority, see *CDF* SJ, para. 39, citing *Kamuhanda* AJ, para. 347; *Niyitegeka* TJ, para. 499; *Ntakirutimana* AJ, para. 563.
[2177] *Contra* Taylor Appeal, para. 852.
[2178] *Contra* Taylor Appeal, para. 852.
[2179] *Contra* Taylor Appeal, para. 854.

GROUND 43: The Trial Chamber did not commit a discernible error by *noting* Sierra Leonean law on sentencing practice

(i) Overview

750. Contrary to Taylor's contention,[2180] the Trial Chamber did not commit a discernible error by *noting* Sierra Leonean law in relation to its consideration of the appropriate relative penalties for accessory modes of liability.[2181] Although the Chamber noted in its "Applicable Law" section that Sierra Leonean law allows an accessory to be sentenced as a principal,[2182] it also noted that at the ICTY and ICTR, aiding and abetting *generally* attracts a lower sentence.[2183] The Chamber did not apply the Sierra Leone approach, but did factor in Taylor's special status.[2184] The Appeals Chamber should dismiss this ground because Taylor fails to establish that the Trial Chamber's mere *noting* of this factor, which differs from the *application* thereof, caused him any prejudice which would invalidate the decision, or that the Chamber either committed an error of law or misdirected itself.[2185]

(ii) It was within the Trial Chamber's discretion to "note" Sierra Leonean law

751. This Appeals Chamber has held that the phrase "as appropriate" in Article 19(1) of the Statute shows that the Trial Chamber has discretion in determining when to have recourse to sentencing practices of the national courts in Sierra Leone.[2186] Taylor overstates the Appeals Chamber's guidance on this issue.[2187]

752. In *CDF*, this Chamber held that "the best interpretation of the word 'appropriate' is that a Trial Chamber ... is to have recourse to the national courts in Sierra Leone for convictions under Sierra Leonean law contained in Article 5 of the Statute".[2188] The fact the Chamber considered this the "best" interpretation implies there may be others which would not constitute an error. This Chamber did not state that it would be *inappropriate* for a Trial Chamber to take account of such practices in any other circumstances. In addition, the approach of Trial Chambers to date has been to decide, in the exercise of their discretion, that it is unnecessary to consider the practice of the Sierra Leonean domestic courts where the

[2180] Taylor Appeal, paras. 857, 861.
[2181] Sentencing Judgement, para. 37.
[2182] Sentencing Judgement, para. 37.
[2183] Sentencing Judgement, para. 36.
[2184] Sentencing Judgement, para. 100.
[2185] Taylor Appeal, paras. 857, 861.
[2186] *AFRC* AJ, para. 311.
[2187] Taylor Appeal, paras. 860-61 considering *CDF* AJ, paras. 475-77.
[2188] *CDF* AJ, para. 476.

accused were neither indicted for nor convicted of *offences* under Article 5 of the Statute.[2189] However, this approach has only been adopted in relation to domestic sentencing practices concerning *offences*[2190] and not in relation to *modes of liability*. The Chamber here *noted* Sierra Leonean law on a *mode of liability* which is a separate and distinct issue to *offences*.

753. Taylor contends that the law and practice of Sierra Leone cannot be considered because he was neither indicted for nor convicted of crimes under Article 5 of the Statute.[2191] However, this overly strict interpretation counters the established practice at the ICTY[2192] and ICTR,[2193] where the sentencing law and practices in the former Yugoslavia and Rwanda are respectively taken into account despite the fact that neither tribunal has any jurisdiction over any violations of domestic law. The Tribunals' respective Statutes would similarly also be in error.[2194] The correct approach, as established in this jurisprudence, is that the sentencing practice in the relative jurisdictions can be considered regardless of whether an Accused is charged with offences under domestic law. However, the Judges are not bound to apply that sentencing practice.

(iii) The Trial Chamber correctly exercised its discretion to note Sierra Leonean sentencing law

754. Given that, as argued above, it was within the Trial Chamber's discretion to "note" Sierra Leonean sentencing practice but that it did not proceed to *apply* it, Taylor's appeal under this Ground should be dismissed as crucially, for the purposes of appeal, Taylor does not establish any prejudice. A brief analysis of two paragraphs of the Sentencing Judgement confirms that the Chamber did not *apply* Sierra Leonean sentencing practice in this case.

755. First, the express wording of paragraph 37 in the "Applicable Law" section of the Sentencing Judgement makes it amply clear that the Trial Chamber was aware that it should have recourse to the sentencing practices of the Sierra Leonean national courts "when appropriate". It is also clear from this paragraph that the Trial Chamber was fully aware that Taylor was neither indicted for nor convicted of Article 5 offences. However, the Chamber "[n]evertheless" felt that, in this case, it was appropriate to "note" the manner in which an

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[2189] See *RUF* SJ, para. 32; *AFRC* SJ, para. 32; *CDF* SJ, para. 43.
[2190] Indeed, in the CDF case, the issue was that "Sierra Leone has not criminalized war crimes and crimes against humanity as such, and consequently there is no specifically relevant sentencing practice for a Trial Chamber to refer to", see *CDF* AJ, para. 475. See also *CDF* SJ, para. 43; *RUF* SJ, para. 32; and *AFRC* SJ, para. 32, all of which refer explicitly to offences and crimes, not the mode of liability.
[2191] Taylor Appeal, para. 857.
[2192] See, e.g., *Nahimana* AJ, paras. 1038, 1063; *Bikindi* AJ, paras. 148, 199; *Nzabonimana* TJ, para. 1806.
[2193] See, e.g., *Boškoski & Tarčulovski* AJ, paras. 210-13; *Perišić* TJ, paras. 1803-1806; *Gotovina* TJ, para. 2611.
[2194] See ICTY Statute, Art. 24(1) and ICTR Statute, Art. 23(1).

accessory may be punished in Sierra Leone. This consideration rested entirely within the Trial Chamber's discretion.

756. Secondly, the Chamber's statement that "*although* the law of Sierra Leone provides for the sentencing of an accessory to a crime on the same basis as a principal" [2195] clearly shows that the Trial Chamber ultimately decided not to follow Sierra Leonean law. Therefore, even if, *arguendo*, the Trial Chamber had committed a discernible error in noting Sierra Leonean law, that noting clearly had no effect on the sentence which ultimately was imposed.[2196]

757. The Prosecution reiterates its position that the Chamber should not only have *noted* Sierra Leonean practice on the issue, but applied it, as it is the most reasonable approach to sentencing.[2197] This would also have been within the Chamber's discretion.

(iv) Conclusion

758. Nothing in the Statute, Rules or jurisprudence of this Court precludes a Trial Chamber from taking note of the sentencing practice in Sierra Leone, especially in relation to modes of liability. Indeed, the Statute explicitly states that in determining the term of imprisonment, "the Trial Chamber shall, as appropriate, have recourse to the practice regarding prison sentences in the ... national courts of Sierra Leone". This consideration, therefore, fell squarely within the Chamber's discretion and does not constitute a discernible error warranting appellate intervention.

759. The Trial Chamber merely noted this factor and, ultimately, decided not to adopt the approach of the Sierra Leonean courts when imposing sentence. The Appeals Chamber should dismiss this Ground because Taylor fails to establish any error or identify any prejudice.

GROUND 44: The Trial Chamber did not commit a discernible error in the exercise of its wide discretion in deciding the factors to be taken into account in aggravation

(i) Overview

760. Taylor suggests in this Ground that the Trial Chamber erred in law and fact by considering three factors, namely, extraterritoriality, his special status, and exploitation of the conflict for financial gain, as aggravating factors and without according the Defence the right to make submissions on each of them.[2198] However, this argument should be rejected since it

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[2195] Sentencing Judgement, para. 100 (emphasis added).
[2196] Sentencing Judgement, para. 100.
[2197] See Prosecution Appeal, para. 230.
[2198] See Taylor Appeal, paras. 863-69 which set out all the arguments in support of this ground of appeal.

is built on a combination of two errors. First, Taylor was provided with broad notice of all of the issues which the Chamber treated as aggravating factors and, thus, he had the opportunity to address them. Second, a Trial Chamber has broad discretionary powers to identify aggravating factors based on the totality of the evidentiary record, the only limit on this discretion being that such factors must not be counted twice and must be proven beyond reasonable doubt.

(ii) The Trial Chamber properly exercised its discretion in deciding on the factors to be taken into account in aggravation

761. Taylor's submissions under this Ground[2199] fail to acknowledge that the Prosecution did advance arguments in the Prosecution Sentencing Brief, albeit not as separate aggravating factors, regarding: (i) extraterritoriality;[2200] (ii) Taylor's special status, and his responsibility at the highest level;[2201] and (iii) his exploitation of the conflict for financial gain.[2202] Taylor, therefore, did have an opportunity to address these issues and, thus, suffered no prejudice warranting appellate intervention.

762. Taylor's argument under this Ground of Appeal is also fatally flawed because it is based on an overly narrow interpretation of the Trial Chamber's powers.[2203] As discussed in the response to Ground 42 above, the breadth of a Trial Chamber's discretion in determining the individual circumstances it will consider in aggravation is "considerable".[2204] This is not to say that the Trial Chamber's discretionary power "to identify the relevant factors"[2205] is

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[2199] Taylor Appeal, paras. 863, 865, 868.

[2200] See Prosecution Sentencing Brief, para. 86 ("Mr. Taylor was also a President who demonstrated a disregard for the international community's efforts to protect international peace and security. He deliberately flouted ECOWAS and UN arms embargoes practically from the first moment of their imposition").

[2201] See Prosecution Sentencing Brief, para. 7 ("Mr. Taylor's positions both as President of Liberia and within the West African regional bodies distinguish him from any other individual that has appeared before this Court."), para. 75 ("Mr. Taylor was one of the conflict's primary protagonists ..."); para. 79 ("[g]iven Mr. Taylor's positions as leader of the NPFL and then President of Liberia ..."); and paras. 83-89 (dealing with both Taylor's leadership position and his responsibility at the highest level).

[2202] See Prosecution Sentencing Brief, para. 52 ("Diamonds were a particular focus of Mr. Taylor ... Mr. Taylor sent critical advice, instructions, materials, personnel and supplies to the AFRC/RUF forces so that they could gain control over Kono, the most diamondiferous area of the country"); and para. 88 ("At the same time as making such laudable statements, Mr. Taylor was coldly calculating how to ensure he continued to benefit from Sierra Leone's diamonds."); See also T. 16 May 2012 (Sentencing Submissions) p. 49696 ("Mr Taylor used Liberian security forces as conduits in his links with the RUF and AFRC forces, using them to take arms back and forth and to bring diamonds to him ... Mr Taylor provided the RUF with a guesthouse, providing communications equipment, security, and domestic staff in Monrovia, a guesthouse from which he sent arms and ammunition to Sierra Leone and that he used to obtain diamonds from Sierra Leone.")

[2203] Taylor Appeal, paras. 863-64.

[2204] *Čelebići* AJ, para. 780 ("It has already been stated that the Statute and the Rules do not define exhaustively the factors which may be taken into account by a Trial Chamber in mitigation or aggravation of sentence, and *Trial Chambers are therefore endowed with a considerable degree of discretion in deciding on the factors which may be taken into account.*") (emphasis added). See also *AFRC* SJ, para. 21; *Blaškić* AJ, para. 685.

[2205] *AFRC* SJ, para. 21. See also *CDF* SJ, para. 37; *RUF* SJ, para. 25.

unchecked. For example, aggravating factors must be proven beyond reasonable doubt[2206] and must not overlap with those used to assess gravity.[2207] However, contrary to Taylor's submissions, a Trial Chamber may itself identify aggravating factors as a legitimate exercise of a Chamber's discretion.[2208]

(iii) Taylor was afforded sufficient opportunity to be heard on sentencing

763. In making the erroneous argument that a Trial Chamber does not have a broad discretion to identify aggravating factors, Taylor wrongly conflates his argument with the right to be heard.[2209] As outlined below, Taylor was afforded and exercised the considerable opportunities extended to him to be heard on the matter of sentencing. Further, for sound pragmatic reasons, the right to be heard is not as extensive as Taylor argues.

764. Taylor's erroneous conflation is apparent from his reliance on the ICTY case of *Jelisić*.[2210] In that case, the ICTY Appeals Chamber was faced with a situation where the Trial Chamber had "decided against the right of the prosecution to be heard on the substantive question of whether its evidence was insufficient to sustain a conviction".[2211] In contrast to Taylor's situation during the sentencing phase of proceedings when he submitted written and oral arguments, it is clear that the Prosecution in *Jelisić* was not given any opportunity "at all" to address the Court on whether its evidence was sufficient to sustain a conviction.[2212] The *Jelisić* situation is, therefore, not comparable.

765. Taylor's reliance on *Lubanga* is equally misplaced.[2213] Much of the procedure followed in *Lubanga* was necessitated because Mr. Lubanga was the first convicted person to be sentenced by the ICC. There were no binding precedents[2214] and the procedure was untested. Even the standard of proof for aggravating factors at the ICC was considered an issue to be determined for the first time.[2215] Therefore, the process in *Lubanga* can be distinguished as it must be viewed as a case which was setting the basic foundations for future ICC sentencing cases. This is to be contrasted with the present case which is the last to be

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[2206] *CDF* SJ, para. 36; *AFRC* SJ, para. 9; *RUF* SJ, para. 24. See also *Blaškić* AJ, para. 686.
[2207] *AFRC* SJ, para.23; *RUF* SJ, para. 23.
[2208] See, e.g., *AFRC* SJ, para. 23. This was recently affirmed by the ICTY Appeals Chamber in *Rašić* where the Appeals Chamber held that "Rašić's argument effectively turns on semantics and she has failed to show that the Trial Chamber abused its discretion when it relied on aggravating circumstance that was not mentioned by the parties" (See *Rašić* AJ, para. 65).
[2209] Taylor Appeal, paras. 863-65, 868.
[2210] Taylor Appeal, para. 866.
[2211] *Jelisić* AJ, para. 26.
[2212] *Jelisić* AJ, para. 26.
[2213] Taylor Appeal, paras. 866-67.
[2214] *Lubanga* Sentencing Decision, para. 12.
[2215] *Lubanga* Sentencing Decision, paras. 32-33.

tried by this Court and benefits from being able to draw upon an established body of sentencing jurisprudence. In addition and as Taylor correctly points out, ICC Trial Chambers can take into account for the purposes of sentencing any evidence admitted during the special sentencing hearing and, thus subsequent to conviction.[2216] Obviously, the Defence will require notice of such *additional evidence* in such instances and must be given the opportunity to address it.

766. Finally, the case of *Kvočka,* referred to in paragraph 868 of Taylor's brief, does not support his argument. In that case, the Trial Chamber did not find it was precluded from considering an aggravating factor not raised by the Prosecution, it simply declined to do so.[2217] Further, any doubt about the competency of a Trial Chamber relying on an aggravating factor not raised by a party has been removed by the recent ICTY Appeals Chamber decision in *Rašić*.[2218] In any event, and as argued above, the Prosecution did make submissions on the three factors contested by Taylor. Trial Chamber II, therefore, committed no discernible error nor failed to apply the applicable law.

767. In sum, the Trial Chamber was entitled to identify which factors it would consider in aggravation, subject to the normal restrictions provided in the jurisprudence. Thus, this action did not breach Taylor's right to be heard.

768. In addition to the foregoing, Taylor's approach to the extent of the right to be heard can be criticised for sound pragmatic reasons. Taylor's overly broad approach would imbue the parties with the right to be heard on each and every point considered by a Trial Chamber in reaching a determination. This is obviously incorrect and should be rejected for reasons of judicial economy and efficiency.

769. In any event, the bare fact is that Taylor exercised the considerable opportunities extended to him to address the Court on the issue of sentencing. Taylor submitted an 85-page sentencing brief with 35 annexes attached.[2219] In addition, at the 16 May 2012 sentencing

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[2216] Taylor Appeal, paras. 866-67 referring to Rome Statute, Art. 76(2).

[2217] The aggravating factor identified by the *Kvočka* Trial Chamber concerned the intoxication of the convicted person at the time that he committed many of the crimes for which he was convicted (*Kvočka* TJ, para. 748). However, as noted by the ICTY Trial Chamber earlier in its judgement, the Defence did not specify the incidents during which the convicted person was intoxicated (*Kvočka* TJ, para. 616). Given that aggravating factors need to be proven beyond reasonable doubt, it is questionable whether this factor could have been proven to the requisite standard since the Defence failed to identify during which incidents the convicted person was intoxicated and, thus whether it could have been taken into account by the Trial Chamber even if the Prosecution had raised the issue.

[2218] *Rašić* AJ, para. 65.

[2219] Taylor Sentencing Brief.

hearing, he made oral submissions *via* his Defence counsel[2220] before addressing the Court himself for 30 minutes.[2221] Taylor's right to be heard was, therefore, clearly not breached.

(iv) Conclusion

770. Taylor's appeal under this Ground should be dismissed. Contrary to his arguments, the Trial Chamber did not commit a discernible error in the exercise of its wide discretion when it identified the factors to be taken into account in aggravation and Taylor was afforded ample opportunity to be heard on sentencing.

GROUND 45: The Trial Chamber properly weighed and rejected the evidence regarding sympathy and compassion as a mitigating factor

(i) Overview

771. As a necessary preliminary, the Prosecution observes the obvious disconnect between the title of this Ground of Appeal and the underlying submissions. The title alleges an error based on the Chamber's failure to consider expressions of sympathy in mitigation,[2222] whereas the underlying substantive submissions focus on the weight allegedly given by the Trial Chamber to the pain and suffering caused to witnesses by having to testify.[2223] The Prosecution will respond only to the brief substantive argument actually made.

772. Contrary to Taylor's contention,[2224] in rejecting remorse as a mitigating factor, the Trial Chamber gave no weight to the fact the Defence required the Prosecution to prove the crime-base. The Chamber made this statement in direct response to false assertions made by the Defence in its sentencing submissions,[2225] and separately considered and rejected Taylor's statement and comments of remorse because they did not constitute "remorse that would merit recognition for sentencing purposes".[2226] This Ground of Appeal should be dismissed since it fails to establish that the Trial Chamber committed a discernible error.

(ii) The Trial Chamber commited no discernible error in the exercise of its wide discretion in addressing the Defence's representation of facts

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[2220] T. 16 May 2012 pp. 49705-22.
[2221] T. 16 May 2012 pp. 49722-34. This statement was subsequently filed in the official record of proceedings together with an Annex thereto in order to provide the "complete context" to certain comments made by Taylor. See Statement of DahKpannah *(sic)*, p. 2.
[2222] Taylor Appeal, p. 306.
[2223] Taylor Appeal, para. 872.
[2224] Taylor Appeal, para. 872.
[2225] See Sentencing Judgement, fn. 158, which cites to the portion of the Defence Sentencing Brief containing these wrong assertions.
[2226] Sentencing Judgement, para. 91.

773. Taylor argues that the Trial Chamber gave weight to an impermissible consideration when deliberating the mitigating factors submitted by the Defence.[2227] However, a plain reading of the Sentencing Judgement and the Defence's underlying submissions establish that the impugned statement at paragraph 91 of the Sentencing Judgement simply sought to clarify the record and did not play a role in the Trial Chamber's disposition.[2228] This is evident from the following brief analysis.

774. In the Sentencing Judgement, the Trial Chamber noted[2229] Defence submissions which asserted that the Defence had agreed to the crime-base evidence in this case and that the Prosecution had unnecessarily taken it upon itself to call crime-base witnesses.[2230] The Trial Chamber's statement was clearly meant to counter these assertions. Taylor's rights were in no way infringed.

775. The Prosecution does not contest the fact that the right to cross-examine witnesses is a fundamental one.[2231] The Trial Chamber also respected this right and did not punish Taylor for exercising it. The Chamber's response to the Defence's assertions was separate from its subsequent examination of Taylor's statement and comments which it found did not constitute "remorse that would merit recognition for sentencing purposes".[2232] It was clearly within the Trial Chamber's discretion to reject this Defence argument for mitigation. Taylor's fundamental rights were in no way violated and the Chamber committed no error.

(iii) Conclusion

776. Taylor's submissions under this Ground of Appeal are clearly without merit. The Appeals Chamber should, therefore, dimiss this Ground of Appeal.

[2227] Taylor Appeal, para. 872.

[2228] *Contra* Taylor Appeal, para. 871 (see sentence in bold) citing Sentencing Judgement, para. 91.

[2229] Sentencing Judgement, para. 91, fn. 158 citing to Defence Sentencing Brief, paras. 176-83.

[2230] See, e.g., Defence Sentencing Brief, para. 179, where the Defence recalled its opening statement that "...We still cannot therefore understand why more than half of the witnesses called were so-called crime base witnesses to prove a fact not in dispute." The Defence then recalled Defence Counsel's statement to a crime-base witness that "...we can certainly inform you now that it's not because of us that you have been brought here" (see Defence Sentencing Brief, para. 180, fn. 266 citing T. 8 January 2008 p. 742).

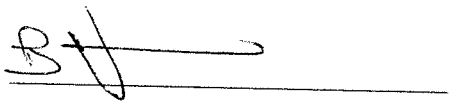
[2231] Taylor Appeal, para. 872.

[2232] "In his statement to this Court, Mr. Taylor stated that 'Terrible things happened in Sierra Leone and there can be no justification for the terrible crimes.' Mr. Taylor has not accepted responsibility for the crimes of which he stands convicted, and the Trial Chamber does not consider this statement, and the other comments made by Mr. Taylor, to constitute remorse that would merit recognition for sentencing purposes." Sentencing Judgement, para. 91.

III. RELIEF SOUGHT

777. On the basis of the foregoing, Taylor's Grounds of Appeal should be dismissed in heir entirety.

Filed in The Hague, The Netherlands
23 November 2012



Brenda J. Hollis
The Prosecutor

Annex B

Glossary of Terms and Abbreviations

ANNEX B: GLOSSARY OF TERMS AND ABBREVIATIONS

Term/Abbreviation	Full Citation
AFL	Armed Forces of Liberia
AFRC	Armed Forces Revolutionary Council (Decision on Judicial Notice, Fact M)
AJ	Appeals Judgement
ATU	Anti-Terrorist Unit
Art.	Article
CDF	The Civil Defence Forces (Decision on Judicial Notice, Fact M)
Count	A count specified in the Indictment
(CS)	Closed Session Testimony
DCT-[number]	Defence witness with pseudonym
District	One of the districts of Sierra Leone referred to in Judicially Noticed Fact A including the city of Freetown and the Western Area
ECCC	Extraordinary Chambers in the Courts of Cambodia
ECOMOG	ECOWAS Cease-fire Monitoring Group (see Judicially Noticed Fact AA)
esp.	Especially
ECOWAS	Economic Community of West Africa (see Judicially Noticed Fact I)
Exh. D-[number]	Defence Exhibit
Exh. P-[number]	Prosecution Exhibit
fn.	Footnote
fns.	Footnotes
ICC	International Criminal Court
ICTR	International Criminal Tribunal for Rwanda

ICTY	International Criminal Tribunal for the Former Yugoslavia
ILC Draft Code	1996 Draft Code of Crimes Against the Peace and Security of Mankind adopted by the International Law Commission
Indictment Period	Between about 30 November 1996 and about 18 January 2002
Intervention	The operation whereby ECOMOG ousted the AFRC/RUF junta from power on or about 14 February 1998 (see Judicially Noticed Fact AD).
JPK	Johnny Paul Koroma
Junta	The regime formed in May 1997 by the AFRC and the RUF to govern Sierra Leone, which regime governed Sierra Leone until the Intervention (see Agreed Facts, paras. 17-19, 30 & Judicially Noticed Fact AD)
NMT	Nuremburg Military Tribunal
NPFL	National Patriotic Front of Liberia
para.	Paragraph
paras.	Paragraphs
p.	Page
pp.	Pages
(PS)	Private Session Testimony
RUF	Revolutionary United Front (Decision on Judicial Notice, Fact M)
SBU	Small Boys Unit
SJ	Sentencing Judgement
SLA	Sierra Leone Army
SS	Schutzstaffel [Protection Squadron] / [Defence Corps]
SSS	Special Security Services

STL	Special Tribunal for Lebanon
TF1-[number]	Prosecution witness with pseudonym
T.	Trial Transcript
TJ	Trial Judgement
ULIMO	United Liberation Movement of Liberia for Democracy
UN	United Nations
WMU	Witness Management Unit of the Office of the Prosecutor
WVS	Witness and Victims Section

Annex C

Book of Authorities (Public Sources)

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A. Statutory and Regulatory Provisions

AGREEMENT BETWEEN THE UNITED NATIONS AND THE GOVERNMENT OF SIERRA LEONE ON THE ESTABLISHMENT OF A SPECIAL COURT FOR SIERRA LEONE

WHEREAS the Security Council, in its resolution 1315 (2000) of 14 August 2000, expressed deep concern at the very serious crimes committed within the territory of Sierra Leone against the people of Sierra Leone and United Nations and associated personnel and at the prevailing situation of impunity;

WHEREAS by the said resolution, the Security Council requested the Secretary-General to negotiate an agreement with the Government of Sierra Leone to create an independent special court to prosecute persons who bear the greatest responsibility for the commission of serious violations of international humanitarian law and crimes committed under Sierra Leonean law;

WHEREAS the Secretary-General of the United Nations (hereinafter "the Secretary-General") and the Government of Sierra Leone (hereinafter "the Government") have held such negotiations for the establishment of a Special Court for Sierra Leone (hereinafter "the Special Court");

NOW THEREFORE the United Nations and the Government of Sierra Leone have agreed as follows:

Article 1
Establishment of the Special Court

1. There is hereby established a Special Court for Sierra Leone to prosecute persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996.

2. The Special Court shall function in accordance with the Statute of the Special Court for Sierra Leone. The Statute is annexed to this Agreement and forms an integral part thereof.

Article 2
Composition of the Special Court and appointment of judges

1. The Special Court shall be composed of a Trial Chamber and an Appeals Chamber with a second Trial Chamber to be created if, after the passage of at least six months from the commencement of the functioning of the Special Court, the Secretary-General, or the President of the Special Court so request. Up to two alternate judges shall similarly be appointed after six months if the President of the Special Court so determines.

2. The Chambers shall be composed of no fewer than eight independent judges and no more than eleven such judges who shall serve as follows:

(a) Three judges shall serve in the Trial Chamber where one shall be appointed by the

Government of Sierra Leone and two judges appointed by the Secretary-General, upon nominations forwarded by States, and in particular the member States of the Economic Community of West African States and the Commonwealth, at the invitation of the Secretary-General;

(b) In the event of the creation of a second Trial Chamber, that Chamber shall be likewise composed in the manner contained in subparagraph (a) above;

(c) Five judges shall serve in the Appeals Chamber, of whom two shall be appointed by the Government of Sierra Leone and three judges shall be appointed by the Secretary-General upon nominations forwarded by States, and in particular the member States of the Economic Community of West African States and the Commonwealth, at the invitation of the Secretary-General.

3. The Government of Sierra Leone and the Secretary-General shall consult on the appointment of judges.

4. Judges shall be appointed for a three-year term and shall be eligible for re-appointment.

5. If, at the request of the President of the Special Court, an alternate judge or judges have been appointed by the Government of Sierra Leone or the Secretary-General, the presiding judge of a Trial Chamber or the Appeals Chamber shall designate such an alternate judge to be present at each stage of the trial and to replace a judge if that judge is unable to continue sitting.

Article 3
Appointment of a Prosecutor and a Deputy Prosecutor

1. The Secretary-General, after consultation with the Government of Sierra Leone, shall appoint a Prosecutor for a three-year term. The Prosecutor shall be eligible for reappointment.

2. The Government of Sierra Leone, in consultation with the Secretary-General and the Prosecutor, shall appoint a Sierra Leonean Deputy Prosecutor to assist the Prosecutor in the conduct of the investigations and prosecutions.

3. The Prosecutor and the Deputy Prosecutor shall be of high moral character and possess the highest level of professional competence and extensive experience in the conduct of investigations and prosecutions of criminal cases. The Prosecutor and the Deputy Prosecutor shall be independent in the performance of their functions and shall not accept or seek instructions from any Government or any other source.

4. The Prosecutor shall be assisted by such Sierra Leonean and international staff as may be required to perform the functions assigned to him or her effectively and efficiently.

Article 4
Appointment of a Registrar

1. The Secretary-General, in consultation with the President of the Special Court, shall appoint a Registrar who shall be responsible for the servicing of the Chambers and the Office of the

belonging to or used by it, wherever located and by whomsoever held, shall be inviolable.

Article 9
Funds, assets and other property

1. The Special Court, its funds, assets and other property, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process,

except insofar as in any particular case the Court has expressly waived its immunity. It is understood, however, that no waiver of immunity shall extend to any measure of execution.

2. Without being restricted by financial controls, regulations or moratoriums of any kind, the Special Court:

(a) May hold and use funds, gold or negotiable instruments of any kind and maintain and operate accounts in any currency and convert any currency held by it into any other currency;

(b) Shall be free to transfer its funds, gold or currency from one country to another, or within Sierra Leone, to the United Nations or any other agency.

Article 10
Seat of the Special Court

The Special Court shall have its seat in Sierra Leone. The Court may meet away from its seat if it considers it necessary for the efficient exercise of its functions, and may be relocated outside Sierra Leone, if circumstances so require, and subject to the conclusion of a Headquarters Agreement between the Secretary-General of the United Nations and the Government of Sierra Leone, on the one hand, and the Government of the alternative seat, on the other.

Article 11
Juridical capacity

The Special Court shall possess the juridical capacity necessary to:

(a) Contract;

(b) Acquire and dispose of movable and immovable property;

(c) Institute legal proceedings;

(d) Enter into agreements with States as may be necessary for the exercise of its functions and for the operation of the Court.

Article 12
Privileges and immunities of the judges, the Prosecutor and the Registrar

1. The judges, the Prosecutor and the Registrar, together with their families forming part of their

household, shall enjoy the privileges and immunities, exemptions and facilities accorded to diplomatic agents in accordance with the 1961 Vienna Convention on Diplomatic Relations. They shall, in particular, enjoy:

(a) Personal inviolability, including immunity from arrest or detention;

(b) Immunity from criminal, civil and administrative jurisdiction in conformity with the Vienna Convention;

(c) Inviolability for all papers and documents;

(d) Exemption, as appropriate, from immigration restrictions and other alien registrations;

(e) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic agents by the Vienna Convention;

(f) Exemption from taxation in Sierra Leone on their salaries, emoluments and allowances.

2. Privileges and immunities are accorded to the judges, the Prosecutor and the Registrar in the interest of the Special Court and not for the personal benefit of the individuals themselves. The right and the duty to waive the immunity, in any case where it can be waived without prejudice to the purpose for which it is accorded, shall lie with the Secretary-General, in consultation with the President.

Article 13
Privileges and immunities of international and Sierra Leonean personnel

1. Sierra Leonean and international personnel of the Special Court shall be accorded:

(a) Immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity. Such immunity shall continue to be accorded after termination of employment with the Special Court;

(b) Immunity from taxation on salaries, allowances and emoluments paid to them.

2. International personnel shall, in addition thereto, be accorded:

(a) Immunity from immigration restriction;

(b) The right to import free of duties and taxes, except for payment for services, their furniture and effects at the time of first taking up their official duties in Sierra Leone.

3. The privileges and immunities are granted to the officials of the Special Court in the interest of the Court and not for their personal benefit. The right and the duty to waive the immunity in any particular case where it can be waived without prejudice to the purpose for which it is accorded

proceedings. It shall, in particular, facilitate access to the Prosecutor to sites, persons and relevant documents required for the investigation.

2. The Government shall comply without undue delay with any request for assistance by the Special Court or an order issued by the Chambers, including, but not limited to:

(a) Identification and location of persons;

(b) Service of documents;

(c) Arrest or detention of persons;

(d) Transfer of an indictee to the Court.

Article 18
Working language

The official working language of the Special Court shall be English.

Article 19
Practical arrangements

1. With a view to achieving efficiency and cost-effectiveness in the operation of the Special Court, a phased-in approach shall be adopted for its establishment in accordance with the chronological order of the legal process.

2. In the first phase of the operation of the Special Court, judges, the Prosecutor and the Registrar will be appointed along with investigative and prosecutorial staff. The process of investigations and prosecutions of those already in custody shall be initiated.

3. In the initial phase, judges of the Trial Chamber and the Appeals Chamber shall be convened on an ad hoc basis for dealing with organizational matters, and serving when required to perform their duties.

4. Judges of the Trial Chamber shall take permanent office shortly before the investigation process has been completed. Judges of the Appeals Chamber shall take permanent office when the first trial process has been completed.

Article 20
Settlement of Disputes

Any dispute between the Parties concerning the interpretation or application of this Agreement shall be settled by negotiation, or by any other mutually agreed-upon mode of settlement.

Article 21
Entry into force

STATUTE OF THE SPECIAL COURT FOR SIERRA LEONE

Having been established by an Agreement between the United Nations and the Government of Sierra Leone pursuant to Security Council resolution 1315 (2000) of 14 August 2000, the Special Court for Sierra Leone (hereinafter "the Special Court") shall function in accordance with the provisions of the present Statute.

Article 1
Competence of the Special Court

1. The Special Court shall, except as provided in subparagraph (2), have the power to prosecute persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996, including those leaders who, in committing such crimes, have threatened the establishment of and implementation of the peace process in Sierra Leone.

2. Any transgressions by peacekeepers and related personnel present in Sierra Leone pursuant to the Status of Mission Agreement in force between the United Nations and the Government of Sierra Leone or agreements between Sierra Leone and other Governments or regional organizations, or, in the absence of such agreement, provided that the peacekeeping operations were undertaken with the consent of the Government of Sierra Leone, shall be within the primary jurisdiction of the sending State.

3. In the event the sending State is unwilling or unable genuinely to carry out an investigation or prosecution, the Court may, if authorized by the Security Council on the proposal of any State, exercise jurisdiction over such persons.

Article 2
Crimes against humanity

The Special Court shall have the power to prosecute persons who committed the following crimes as part of a widespread or systematic attack against any civilian population:

a. Murder;
b. Extermination;
c. Enslavement;
d. Deportation;
e. Imprisonment;
f. Torture;
g. Rape, sexual slavery, enforced prostitution, forced pregnancy and any other form of sexual violence;
h. Persecution on political, racial, ethnic or religious grounds;
i. Other inhumane acts.

Article 3
Violations of Article 3 common to the Geneva Conventions and of Additional Protocol II

i. Setting fire to dwelling - houses, any person being therein, contrary to section 2;

ii. Setting fire to public buildings, contrary to sections 5 and 6;

iii. Setting fire to other buildings, contrary to section 6.

Article 6
Individual criminal responsibility

1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 4 of the present Statute shall be individually responsible for the crime.

2. The official position of any accused persons, whether as Head of State or Government or as a responsible government official, shall not relieve such person of criminal responsibility nor mitigate punishment.

3. The fact that any of the acts referred to in articles 2 to 4 of the present Statute was committed by a subordinate does not relieve his or her superior of criminal responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior had failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

4. The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him or her of criminal responsibility, but may be considered in mitigation of punishment if the Special Court determines that justice so requires.

5. Individual criminal responsibility for the crimes referred to in article 5 shall be determined in accordance with the respective laws of Sierra Leone.

Article 7
Jurisdiction over persons of 15 years of age

1. The Special Court shall have no jurisdiction over any person who was under the age of 15 at the time of the alleged commission of the crime. Should any person who was at the time of the alleged commission of the crime between 15 and 18 years of age come before the Court, he or she shall be treated with dignity and a sense of worth, taking into account his or her young age and the desirability of promoting his or her rehabilitation, reintegration into and assumption of a constructive role in society, and in accordance with international human rights standards, in particular the rights of the child.

2. In the disposition of a case against a juvenile offender, the Special Court shall order any of the following: care guidance and supervision orders, community service orders, counselling, foster care, correctional, educational and vocational training programmes, approved schools and, as appropriate, any programmes of disarmament, demobilization and reintegration or programmes of child protection agencies.

Article 8
Concurrent jurisdiction

Government of Sierra Leone, and three judges appointed by the Secretary-General.

2. Each judge shall serve only in the Chamber to which he or she has been appointed.

3. The judges of the Appeals Chamber and the judges of the Trial Chamber, respectively, shall elect a presiding judge who shall conduct the proceedings in the Chamber to which he or she was elected. The presiding judge of the Appeals Chamber shall be the President of the Special Court.

4. If, at the request of the President of the Special Court, an alternate judge or judges have been appointed by the Government of Sierra Leone or the Secretary-General, the presiding judge of a Trial Chamber or the Appeals Chamber shall designate such an alternate judge to be present at each stage of the trial and to replace a judge if that judge is unable to continue sitting.

Article 13
Qualification and appointment of judges

1. The judges shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to the highest judicial offices. They shall be independent in the performance of their functions, and shall not accept or seek instructions from any Government or any other source.

2. In the overall composition of the Chambers, due account shall be taken of the experience of the judges in international law, including international humanitarian law and human rights law, criminal law and juvenile justice.

3. The judges shall be appointed for a three-year period and shall be eligible for reappointment.

Article 14
Rules of Procedure and Evidence

1. The Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda obtaining at the time of the establishment of the Special Court shall be applicable *mutatis mutandis* to the conduct of the legal proceedings before the Special Court.

2. The judges of the Special Court as a whole may amend the Rules of Procedure and Evidence or adopt additional rules where the applicable Rules do not, or do not adequately, provide for a specific situation. In so doing, they may be guided, as appropriate, by the Criminal Procedure Act, 1965, of Sierra Leone.

Article 15
The Prosecutor

1. The Prosecutor shall be responsible for the investigation and prosecution of persons who bear the greatest responsibility for serious violations of international humanitarian law and crimes under Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996. The Prosecutor shall act independently as a separate organ of the Special Court. He or she shall not seek or receive instructions from any Government or from any other source.

2. The Office of the Prosecutor shall have the power to question suspects, victims and witnesses, to collect evidence and to conduct on-site investigations. In carrying out these tasks, the Prosecutor shall, as appropriate, be assisted by the Sierra Leonean authorities concerned.

3. The Prosecutor shall be appointed by the Secretary-General for a three-year term and shall be eligible for re-appointment. He or she shall be of high moral character and possess the highest level of professional competence, and have extensive experience in the conduct of investigations and prosecutions of criminal cases.

4. The Prosecutor shall be assisted by a Sierra Leonean Deputy Prosecutor, and by such other Sierra Leonean and international staff as may be required to perform the functions assigned to him or her effectively and efficiently. Given the nature of the crimes committed and the particular sensitivities of girls, young women and children victims of rape, sexual assault, abduction and slavery of all kinds, due consideration should be given in the appointment of staff to the employment of prosecutors and investigators experienced in gender-related crimes and juvenile justice.

5. In the prosecution of juvenile offenders, the Prosecutor shall ensure that the child-rehabilitation programme is not placed at risk and that, where appropriate, resort should be had to alternative truth and reconciliation mechanisms, to the extent of their availability.

Article 16
The Registry

1. The Registry shall be responsible for the administration and servicing of the Special Court.

2. The Registry shall consist of a Registrar and such other staff as may be required.

3. The Registrar shall be appointed by the Secretary-General after consultation with the President of the Special Court and shall be a staff member of the United Nations. He or she shall serve for a three-year term and be eligible for re-appointment.

4. The Registrar shall set up a Victims and Witnesses Unit within the Registry. This Unit shall provide, in consultation with the Office of the Prosecutor, protective measures and security arrangements, counselling and other appropriate assistance for witnesses, victims who appear before the Court and others who are at risk on account of testimony given by such witnesses. The Unit personnel shall include experts in trauma, including trauma related to crimes of sexual violence and violence against children.

Article 17
Rights of the accused

1. All accused shall be equal before the Special Court.

2. The accused shall be entitled to a fair and public hearing, subject to measures ordered by the Special Court for the protection of victims and witnesses.

3. The accused shall be presumed innocent until proved guilty according to the provisions of the present Statute.

4. In the determination of any charge against the accused pursuant to the present Statute, he or she shall be entitled to the following minimum guarantees, in full equality:

a. To be informed promptly and in detail in a language which he or she understands of the nature and cause of the charge against him or her;
b. To have adequate time and facilities for the preparation of his or her defence and to communicate with counsel of his or her own choosing;
c. To be tried without undue delay;
d. To be tried in his or her presence, and to defend himself or herself in person or through legal assistance of his or her own choosing; to be informed, if he or she does not have legal assistance, of this right; and to have legal assistance assigned to him or her, in any case where the interests of justice so require, and without payment by him or her in any such case if he or she does not have sufficient means to pay for it;
e. To examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her;
f. To have the free assistance of an interpreter if he or she cannot understand or speak the language used in the Special Court;
g. Not to be compelled to testify against himself or herself or to confess guilt.

Article 18
Judgement

The judgement shall be rendered by a majority of the judges of the Trial Chamber or of the Appeals Chamber, and shall be delivered in public. It shall be accompanied by a reasoned opinion in writing, to which separate or dissenting opinions may be appended.

Article 19
Penalties

1. The Trial Chamber shall impose upon a convicted person, other than a juvenile offender, imprisonment for a specified number of years. In determining the terms of imprisonment, the Trial Chamber shall, as appropriate, have recourse to the practice regarding prison sentences in the International Criminal Tribunal for Rwanda and the national courts of Sierra Leone.

2. In imposing the sentences, the Trial Chamber should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.

3. In addition to imprisonment, the Trial Chamber may order the forfeiture of the property, proceeds and any assets acquired unlawfully or by criminal conduct, and their return to their rightful owner or to the State of Sierra Leone.

Article 20
Appellate proceedings

1. The Appeals Chamber shall hear appeals from persons convicted by the Trial Chamber or from the Prosecutor on the following grounds:

a. A procedural error;
b. An error on a question of law invalidating the decision;
c. An error of fact which has occasioned a miscarriage of justice.

2. The Appeals Chamber may affirm, reverse or revise the decisions taken by the Trial Chamber.

3. The judges of the Appeals Chamber of the Special Court shall be guided by the decisions of the Appeals Chamber of the International Tribunals for the former Yugoslavia and for Rwanda. In the interpretation and application of the laws of Sierra Leone, they shall be guided by the decisions of the Supreme Court of Sierra Leone.

Article 21
Review proceedings

1. Where a new fact has been discovered which was not known at the time of the proceedings before the Trial Chamber or the Appeals Chamber and which could have been a decisive factor in reaching the decision, the convicted person or the Prosecutor may submit an application for review of the judgement.

2. An application for review shall be submitted to the Appeals Chamber. The Appeals Chamber may reject the application if it considers it to be unfounded. If it determines that the application is meritorious, it may, as appropriate:

a. Reconvene the Trial Chamber;
b. Retain jurisdiction over the matter.

Article 22
Enforcement of sentences

1. Imprisonment shall be served in Sierra Leone. If circumstances so require, imprisonment may also be served in any of the States which have concluded with the International Criminal Tribunal for Rwanda or the International Criminal Tribunal for the former Yugoslavia an agreement for the enforcement of sentences, and which have indicated to the Registrar of the Special Court their willingness to accept convicted persons. The Special Court may conclude similar agreements for the enforcement of sentences with other States.

2. Conditions of imprisonment, whether in Sierra Leone or in a third State, shall be governed by the law of the State of enforcement subject to the supervision of the Special Court. The State of enforcement shall be bound by the duration of the sentence, subject to article 23 of the present Statute.

Article 23
Pardon or commutation of sentences

If, pursuant to the applicable law of the State in which the convicted person is imprisoned, he or she is eligible for pardon or commutation of sentence, the State concerned shall notify the Special Court accordingly. There shall only be pardon or commutation of sentence if the President of the Special Court, in consultation with the judges, so decides on the basis of the interests of justice and the general principles of law.



SPECIAL COURT FOR SIERRA LEONE
JOMO KENYATTA ROAD • NEW ENGLAND • FREETOWN, SIERRA LEONE

RULES OF PROCEDURE AND EVIDENCE

Amended on 7 March 2003
Amended on 1 August 2003
Amended on 30 October 2003
Amended on 14 March 2004
Amended on 29 May 2004
Amended on 14 May 2005
Amended on 13 May 2006
Amended on 24 November 2006
Amended on 14 May 2007
Amended on 19 November 2007
Amended on 28 May 2010
Amended on 16 November 2011
Amended on 31 May 2012

Part III - ORGANIZATION OF THE SPECIAL COURT

Section 1: The Judges

Rule 14: Solemn Declaration *(amended 14 March 2004)*

(A) Before taking up his duties each Judge shall make the following solemn declaration:

> "I solemnly declare that I will without fear or favour, affection or ill-will, serve as a Judge of the Special Court, honestly, faithfully, impartially and conscientiously."

(B) The text of the declaration, signed by the Judge and witnessed by the Secretary-General of the United Nations or his representative, and the President of Sierra Leone or his representative, shall be kept in the records of the Special Court.

Rule 15: Disqualification of Judges *(amended 29 May 2004 and 24 November 2006)*

(A) A Judge may not sit at a trial or appeal in any case in which his impartiality might reasonably be doubted on any substantial ground.

(B) Any party may apply to the Chamber of which the Judge is a member for the disqualification of the said Judge on the above ground.

C) Where the Judge voluntarily withdraws from the Trial Chamber, the President may assign the alternate judge, in accordance with Article 12(4) of the Statute, or another Trial Chamber Judge to sit in his place. Where a judge voluntarily withdraws from the Appeals Chamber, the Alternate Judge may sit in his place.

(D) The Judge who approves an indictment or who is involved with any pre-trial or interlocutory matter against a suspect or accused, shall not for that reason be disqualified from sitting as a member of a Chamber for the trial or appeal of that accused.

Rule 15 *bis*: Unfitness to Sit *(adopted 24 November 2006)*

(A) Where it is alleged that a Judge is not fit to sit as a member of the Special Court, the President may refer the matter to the Council of Judges.

(B) Should the Council of Judges determine that:

(i) the allegation is of a serious nature, and

(ii) there appears to be a substantial basis for such allegation,

it shall refer the matter to the Plenary Meeting which will consider it and, if necessary, make a recommendation to the body which appointed the Judge.

(C) At each stage, the challenged Judge shall be entitled to present his comments on the matter.

Rule 16: Absence and Resignation *(amended 29 May 2004)*

(A) If a Judge is unable to continue sitting in a proceeding, trial or appeal which has partly been heard for a short duration and the remaining Judges are satisfied that it is in the interests of justice to do so, those remaining Judges may order that the proceeding, trial or appeal continue in the absence of that Judge for a period of not more than five working days.

(B) If a Judge is, for any reason, unable to continue sitting in a proceeding, trial or appeal which has partly been heard for a period which is or is likely to be longer than five days, the President may designate an alternate Judge as provided in Article 12(4) of the Statute.

(i) If an alternate Judge is not available as provided in Article 12(4) of the Statute, and the remaining Judges are satisfied that it would not affect the decision either way, the remaining Judges may continue in the absence of that Judge.

(ii) Where a trial or appeal chamber proceeds in the absence of one Judge, in the event that the decision is split evenly a new proceeding, trial or appeal shall be ordered.

(C) If a Judge is, for any reason, unable to sit in a proceeding, trial or appeal which has not yet been heard but has been scheduled, the President may designate an alternate Judge as provided in Article 12 (4) of the Statute.

(D) A Judge who decides to resign shall give notice of his resignation in writing to the President, who shall transmit it to the Secretary-General of the United Nations and the Government of Sierra Leone.

Rule 16*bis*: Alternate Judges *(adopted 14 May 2007)*

(A) An alternate Judge designated in accordance with Article 12(4) of the Statute shall be present at each stage of the trial or appeal to which he or she has been designated.

(B) During the proceedings, the alternate Judge may, through the Presiding Judge of the Trial Chamber or Appeals Chamber, pose questions which are necessary for the alternate Judge's understanding of the trial or appeal proceedings.

(C) An alternate Judge shall be present during the deliberations of the Trial Chamber or the Appeals Chamber to which he or she has been designated but shall not be entitled to vote thereat.

(D) The alternate Judge may perform such other functions within the Trial Chamber or Appeals Chamber as the Presiding Judge in consultation with the other judges of the Chamber may deem necessary.

Rule 17: Precedence *(amended 7 March 2003)*

(A) All Judges are equal in the exercise of their judicial functions, regardless of dates of election, appointment, age or period of service.

(B) Judges elected or appointed on different dates shall take precedence according to the dates of their election or appointment; Judges elected or appointed on the same date shall take precedence according to age.

(C) In case of re-election, the total period of service as a Judge of the Special Court shall be taken into account.

Section 2: ***The Presidency***

Rule 18: **Election of the President** *(amended 14 March 2004 and 24 November 2006)*

(A) The Presiding Judge of the Appeals Chamber shall be the President of the Special Court.

(B) The Presiding Judge of the Appeals Chamber shall be elected for a term of one year or such shorter term as shall coincide with the duration of his term of office as a Judge. He or she may be re-elected. The President shall reside in Freetown, the seat of the Special Court, and shall work on a full-time basis, and be remunerated accordingly.

(C) If the President ceases to be a member of the Special Court or resigns his office before the expiration of his term, the Judges of the Appeals Chamber shall elect from among their number a successor for the remainder of the term.

(D) The Presiding Judge of the Appeals Chamber shall be elected by a majority of the votes of the Judges appointed to the Appeals Chamber.

Rule 19: **Functions of the President** *(amended 7 March 2003 and 24 November 2006)*

(A) The President shall preside at all plenary meetings of the Special Court, co-ordinate the work of the Chambers and supervise the activities of the Registry as well as exercise all the other functions conferred on him by the Agreement, the Statute and the Rules.

(B) The President may after appropriate consultation issue Practice Directions, consistent with the Agreement, the Statute and the Rules, addressing detailed aspects of the conduct of proceedings before the Special Court.

(C) The President shall, in addition to the discharge of his or her judicial functions, be responsible for the proper administration of justice. In particular, in coordination with the Registrar, the Prosecutor, and the Principal Defender, the President shall take all appropriate measures aimed at furthering the conduct of fair, impartial and expeditious trials and appeals.

Rule 20: **The Vice-Presidency** *(amended 7 March 2003 and 24 November 2006)*

The Vice-President shall be elected from amongst the Appeals Chamber Judges for a term of one year, or such shorter term as shall coincide with the duration of his term of office as a Judge. The Vice-President may be re-elected.

Rule 21: **Functions of the Vice-President** *(amended 29 May 2004 and 24 November 2006)*

The Vice-President shall exercise the functions of the President in case the latter is absent from Sierra Leone or is unable to act.

Rule 22: Replacements *(amended 7 March 2003)*

If neither the President nor the Vice-President can carry out the functions of the Presidency, this shall be assumed by a senior Judge, determined in accordance with Rule 17.

Section 3: Internal Functioning of the Special Court

Rule 23: The Council of Judges *(amended 29 May 2004 and 13 May 2006)*

(A) There shall be a Council of Judges which shall be composed of the President and the Presiding Judges of the Trial Chambers.

(B) The President shall consult the Council of Judges on all major questions or matters relating to the functioning of the Special Court.

(C) In order to ensure the coordination of the activities of all organs of the Special Court, the Council of Judges, or its representative, shall meet with the Registrar, the Prosecutor and the Principal Defender, or their representatives.

(D) The President shall consult the Council of Judges with respect to the functions set forth in Rule 19 and 33, and particularly all the Registry activities relating to the administrative support provided to the Chambers.

Rule 24: Plenary Meetings of the Special Court *(amended 7 March 2003)*

The Judges shall meet in plenary to:

(i) Adopt and amend the Rules;

(ii) Adopt the Annual Report provided for in Article 25 of the Statute;

(iii) Decide upon matters relating to the internal functioning of the Chambers and the Special Court;

(iv) Exercise any other functions provided for in the Agreement, the Statute or in the Rules.

Rule 25: Dates of Plenary Meetings *(amended 7 March 2003)*

Plenary Meetings shall be convened by the President if so requested by at least five Judges, and may be convened whenever the exercise of his functions under the Agreement, the Statute or the Rules so requires.

Rule 26: Quorum and Vote *(amended 16 November 2011)*

(A) The quorum for each Plenary Meeting of the Special Court shall be seven Judges, including at least one judge from each Trial Chamber. On expiration of the terms of both Trial Chambers, the quorum shall be four judges.

(B) Subject to Rule 6(A) and (B) and Rule 18(C), the decisions of the Plenary Meeting of the Special Court shall be taken by the majority of the Judges present. In the event of an equality of votes, the President or the Judge who acts in his place shall have a casting vote.

Section 4: The Chambers

Rule 26*bis*: The Chambers *(adopted 29 May 2004)*

The Trial Chamber and the Appeals Chamber shall ensure that a trial is fair and expeditious and that proceedings before the Special Court are conducted in accordance with the Agreement, the Statute and the Rules, with full respect for the rights of the accused and due regard for the protection of victims and witnesses.

Rule 27: The Trial Chambers *(amended 14 May 2005)*

(A) The Presiding Judge of each Trial Chamber shall be elected for a renewable term of one year.

(B) The Presiding Judge shall coordinate the work of the Chamber and liaise with the Registrar on matters affecting the Trial Chamber and will exercise such other functions as may be conferred on him by the Agreement, the Statute, and the Rules.

(C) The Presiding Judge may issue, after appropriate consultations, Practice Directions in relation to the Trial Chamber.

(D) The provisions of Rule 17 will apply in the event of the Presiding Judge being unable to carry out his functions.

Rule 27*bis*: The Appeals Chamber *(amended 29 May 2004)*

(A) The Presiding Judge of the Appeals Chamber shall coordinate the work of the Chamber and liaise with the Registrar on matters affecting the Appeals Chamber and will exercise such other functions as may be conferred on him by the Agreement, the Statute, and the Rules.

(B) The Presiding Judge may issue, after appropriate consultations, Practice Directions in relation to the Appeals Chamber.

(C) The provisions of Rule 17 will apply in the event of the Presiding Judge being unable to carry out his functions.

(D) Unless otherwise provided in these Rules, the Appeals Chamber shall, for each appeal, be composed of all its five members.

Rule 28: Designated Judges *(amended 1 August 2003 and 13 May 2006)*

After consultation with the Judges concerned, the President shall designate for a given period such Judges as necessary to whom indictments, warrants, and all other pre-trial matters not pertaining to a case already assigned to a Chamber, shall be transmitted for review. The Registrar shall publish the information by appropriate means and as soon as possible.

Rule 29: Deliberations

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(C) Once the trial of an accused has commenced, the Prosecutor may withdraw an indictment only by leave granted by the Trial Chamber.

(D) The withdrawal of the indictment shall be promptly notified to the accused and to counsel for the accused.

Rule 52: Service of Indictment *(amended 29 May 2004)*

(A) Service of the indictment shall be effected personally on the accused at the time the accused is taken into the custody of the Special Court or as soon as possible thereafter.

(B) Personal service of an indictment on the accused is effected by giving the accused a copy of the indictment approved in accordance with Rule 47.

(C) An indictment that has been permitted to proceed by the Designated Judge shall be retained by the Registrar, who shall prepare certified copies bearing the seal of the Special Court. If the accused does not understand English and if the language understood is a written language known to the Registrar, a translation of the indictment in that language shall also be prepared. In the case that the accused is illiterate or his language is an oral language, the Registrar will ensure that the indictment is read to the accused by an interpreter, and that he is served with a recording of the interpretation.

(D) Subject to Rule 53, upon approval by the Designated Judge the indictment shall be made public.

Rule 53: Non-disclosure *(amended 1 August 2003)*

(A) In exceptional circumstances, the Designated Judge may, in the interests of justice, order the non-disclosure to the public of any documents or information until further order.

(B) When approving an indictment the Designated Judge may, on the application of the Prosecutor, order that there be no public disclosure of the indictment until it is served on the accused, or, in the case of joint accused, on all the accused.

(C) The Designated Judge or the Trial Chamber may, on the application of the Prosecutor, also order that there be no disclosure of an indictment, or part thereof, or of all or any part of any particular document or information, if satisfied that the making of such an order is required to give effect to a provision of the Rules, to protect confidential information obtained by the Prosecutor, or is otherwise in the interests of justice.

Section 2: Orders and Warrants

Rule 54: General Provision

At the request of either party or of its own motion, a Judge or a Trial Chamber may issue such orders, summonses, subpoenas, warrants and transfer orders as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial.

plea. The defendant shall thereafter, but no more that 7 days after the Prosecutor's filing submit any relevant information that may assist the Trial Chamber in determining an appropriate sentence.

(B) Where the accused has entered a guilty plea, the Trial Chamber shall hear submissions of the parties at a sentencing hearing. Where the accused has been convicted by a Trial Chamber, the Trial Chamber may hear submissions of the parties at a sentencing hearing.

(C) The sentence shall be pronounced in a judgement in public and in the presence of the convicted person, subject to Rule 102(B).

Rule 101: Penalties *(amended 29 May 2004)*

(A) A person convicted by the Special Court, other than a juvenile offender, may be sentenced to imprisonment for a specific number of years.

(B) In determining the sentence, the Trial Chamber shall take into account the factors mentioned in Article 19 (2) of the Statute, as well as such factors as:

(i) Any aggravating circumstances;

(ii) Any mitigating circumstances including the substantial cooperation with the Prosecutor by the convicted person before or after conviction;

(iii) The extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served, as referred to in Article 9 (3) of the Statute.

(C) The Trial Chamber shall indicate whether multiple sentences shall be served consecutively or concurrently.

(D) Any period during which the convicted person was detained in custody pending his transfer to the Special Court or pending trial or appeal, shall be taken into consideration on sentencing.

Rule 102: Status of the Convicted Person *(amended 29 May 2004 and 24 November 2006)*

(A) Subject to the Trial Chamber's directions in terms of Rule 101, the sentence shall begin to run from the day it is pronounced. However, as soon as notice of appeal is given, the enforcement of the judgement shall thereupon be stayed until the decision on the appeal has been delivered, the convicted person meanwhile remaining in detention, as provided in Rule 64.

(B) If, by a previous decision of the Trial Chamber, the convicted person has been provisionally released, or is for any other reason at liberty, and he is not present when the judgement is pronounced, the Trial Chamber shall issue a warrant for his arrest. On arrest, he shall be notified of the conviction and sentence, and the procedure provided in Rule 103 shall be followed.



SPECIAL COURT FOR SIERRA LEONE
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PRACTICE DIRECTION ON THE STRUCTURE OF GROUNDS OF APPEAL BEFORE THE SPECIAL COURT

PREAMBLE

The President of the Special Court for Sierra Leone ("Special Court");

CONSIDERING the Statute of the Special Court ("Statute") as annexed to the Agreement between the United Nations and the Government of Sierra Leone on the Establishment of the Special Court for Sierra Leone, signed on 16 January 2002; and in particular Article 20 of the Statute which provides that the Appeals Chamber shall hear appeals from persons convicted by the Trial Chamber or from the Prosecutor on a procedural error, an error on a question of law invalidating the decision, or an error of fact which has occasioned a miscarriage of justice;

CONSIDERING the Rules of Procedure and Evidence of the Special Court ("Rules"); in particular Rules 111, 112 and 113 which deal with the procedure for filing of written submissions by the Parties in appeals from final judgement;

PURSUANT to Rule 107 of the Rules and after consultation with the Vice-President;

HEREBY issues this Practice Direction in order to establish a procedure for the structuring of grounds of appeal and written submissions in appellate proceedings before the Special Court, and

STATES that this Practice Direction shall apply exclusively to appeals from final judgments of a Trial Chamber

I. FORMAL REQUIREMENTS

The Appellant's Notice of Appeal

1. A party seeking to appeal from a judgement or sentence of a Trial Chamber ("Appellant") shall file and serve upon the other parties, in accordance with the Statute and the Rules, a written Notice of Appeal containing in the following order:
(a) the date of the final judgment or sentencing judgment as well as the case number
(b) the specific provision of the Rules pursuant to which the Notice of Appeal is filed;
(c) the grounds of appeal, stating clearly in respect of each ground of appeal the substance of the alleged error;
(d) an identification of the finding, decision or ruling challenged in the judgment with specific reference to the page and paragraph numbers;
(e) an identification of any other order, decision or ruling challenged with specific reference to the date of its filing, and/or transcript page;
(f) the precise relief sought

2 Where a procedural error is alleged, such as would affect the fairness of the trial, the Appellant shall state in what manner the error has occasioned a miscarriage of justice.

3 Where an error of law is alleged in a ground of appeal, the Appellant shall state what error has been made in point of law and in what manner the error invalidates the decision.

4 Where an error of fact is alleged, the Appellant shall state in what manner the error of fact has occasioned a miscarriage of justice.

5 Where a misdirection either of law or of fact or of mixed law and fact is alleged in a ground of appeal, the Appellant shall state in what manner the Trial Chamber misdirected itself and where the misdirection occurred in the judgment;

The Appellant's Submissions

6. After having filed a Notice of Appeal, the Appellant shall file, in accordance with the Statute and the Rules, an Appellant's Submission, containing the following, with the appropriate titles and in the order herein indicated:
(a) a table of contents with page references;
(b) an introduction containing a statement of the subject matter, the specific provision of the Rules pursuant to which the Appellant Submissions is filed, the date of the impugned Judgment as well as the case number; and the date of any interlocutory filing or decision relevant to the appeal;
(c) a statement of the issues presented;
(d) the arguments in support of each ground of appeal containing the contentions of the Appellant on the issues presented and the reasons therefore; with precise references to the authorities relied upon;
(e) the conclusion and relief sought.

7. The Appellant shall not group disparate arguments, each pertaining to a substantial issue under a single ground of appeal

8. The Appellant shall not group allegations of error or misdirection relating to disparate issues under a single ground of appeal.

9. The Appellant shall not repeat in a disproportionate manner, the same arguments in numerous grounds of appeal.

10. The Appellant shall present a holistic and comprehensive ground of appeal. Division of a ground of appeal into "subs-grounds" is impermissible.

11. The Appellant shall maintain a respectful and decorous tone in his/her submissions

The Respondent's Submissions

12. The opposite party ("Respondent") shall file in accordance with the Statute and the Rules a Respondent's Submission, containing the following, with the appropriate titles and in the order herein indicated:
(a) a table of contents with page references;
(b) an introduction containing a statement of the subject matter, the specific provision of the Rules pursuant to which the Respondent's Submissions is filed and the date of any interlocutory filing or decision relevant to the appeal;
(c) a statement on whether or not the ground of appeal is opposed and arguments in support thereof;

13. The statements and arguments must be set out and numbered in the same order as in the Appellant's Submissions and shall be limited to arguments made in response thereto.

The Respondent shall maintain a respectful and decorous tone in his/her submissions

Submissions in Reply

14. An Appellant may file, in accordance with the Statute and the Rules, Submissions in Reply, limited to arguments in reply to the Respondent's Submissions, set out and numbered in the same order as in previous Submissions.

The Book of Authorities

15. The parties' Submissions shall be accompanied by a "Book of Authorities" setting out clearly all authorities relied upon.

16. The Book of Authorities shall be numbered consecutively and shall include a table of content describing each document, including the date and reference.

17. The Book of Authorities shall include a legible copy of the pages of or excerpts from every referenced material including case law, statutory and regulatory provisions from the Special Court, international tribunals and national sources to which the parties actually refer in the parties' submissions or intends to refer in the parties' oral arguments.

18. Authorities not in the official language of the Special Court shall be translated accordingly.

19. A party may object to a translation by filing no later than XXX days from the filing of the Book of Authorities the translation which he/she contends is the correct translation instead of the translation challenged.

20. In the filing of the Book of Authorities, the parties shall be guided by Article 7 of the Practice Direction on Filing Documents before the Special Court, adopted on 27 February 2003, as amended on 16 January 2008.

21. Failure to file the Book of Authorities prescribed above shall not bar the Appeals Chamber from rendering a judgment, a decision or an order as it sees fit in the appeal.

Additional Evidence

22. A party applying to present additional evidence must do so by way of motion, in accordance with the Rules, stating:

(a) the specific Rule by which the application is made;
(b)a precise list of the evidence sought to be presented;
(c) an indication of the specific finding of fact made by the Trial Chamber to which the additional evidence is directed;
(d) the reasons and supporting evidence relied on to establish that the proposed additional evidence was not available at trial as required by that Rule
(e) the arguments in support of the requirement that the admission of the requested additional evidence should be in the interest of justice

23. The relevant documents and exhibits, where applicable, shall be translated into the working language of the Special Court.

24. Where a party is authorised by the Appeals Chamber to present additional evidence, then the requirements of this Practice Direction apply *mutatis mutandis.*

II. GENERAL REQUIREMENTS

25. The parties shall refer to and comply with the Practice Direction on Filing Documents before the Special Court for Sierra Leone, adopted on 27 February 2003, as amended on 16 January 2008, for the general requirements for filing of written submissions, including the filing of authorities.

26. In accordance with the Rules, the time limits prescribed under this Practice Direction shall run from but shall not include, the day upon which the relevant document is filed. Should the last day of a time prescribed fall upon a non-working day of the Special Court it shall be considered as falling on the first working day thereafter.

27. The provisions of this Practice Direction are without prejudice to any orders or decisions that may be made by a designated Pre-Hearing Judge or the Appeals Chamber in particular with regard to the variation of time limits.

III NON-COMPLIANCE WITH THE REQUIREMENTS

28. Where a party fails to comply with the requirements laid down in this Practice Direction, or where the wording of a filing is unclear or ambiguous, a designated Pre-Hearing Judge or the Appeals Chamber may in its discretion decide upon an appropriate sanction, which can include an order for clarification or re-filing. The Appeals Chamber may also reject a filing or dismiss submissions therein.

This Practice Direction shall enter into force on 1 July 2011.



Justice Jon M. Kamanda
President, Special Court for Sierra Leone

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

Wednesday, 16 May 2012
09.30 a.m
SENTENCING HEARING

TRIAL CHAMBER II

Before the Judges:	Justice Richard Lussick, Presiding Justice Teresa Doherty Justice Julia Sebutinde
For Chambers:	Ms Doreen Kiggundu Ms Diana Goff Ms Helen Worsnop Ms Yael Rothschild Ms Elizabeth Budnitz Ms Rebecca Browning
For the Registry:	Ms Fidelma Donlon Ms Rachel Irura Ms Zainab Fofanah
For the Prosecution:	Ms Brenda J Hollis Mr James C Johnson Mr Nicholas Koumjian Mr Mohamed A Bangura Ms Nina Tavakoli Ms Ruth Mary Hackler Ms Leigh Lawrie Mr Christopher Santora Ms Kathryn Howarth Ms Ula Nathai-Lutchman Mr James Pace Mr Cóman Kenny Ms Danielle Fritz
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths, QC Mr Terry Munyard Mr Morris Anyah Ms Logan Hambrick Ms Alexandra Popov Mr Michael Herz Ms Szilvia Csevar Ms Habibatou Gani Ms Carly Lenhoff Mr James Kamara
Office of the Principal Defender:	Ms Claire Carlton-Hanciles

first matter is the delivery of the full judgement, which is a huge judgement. The Trial Chamber had aimed at having it published last Monday. However, the technicians who were formatting the judgement for publication have had challenges due
09:34:31 to the voluminous size of the judgement, and they was not able to meet the Monday dead-line.

However, they have guaranteed that the judgement will be ready for publication before close of business this Friday.

Now, the second matter is as follows: Before proceeding
09:34:58 today, it gives us no pleasure to have to place on record some explanation for the extraordinary situation which occurred at the end of the previous sitting of the Trial Chamber on 26th of April, 2012, on which date the Trial Chamber delivered its summary judgement.

09:35:25 On that date, at the conclusion of the proceedings, the Alternate Judge, without any notice to the Trial Chamber, proceeded to deliver his own opinions from the bench on the judgement that had just been delivered on these proceedings and on the Special Court itself. What the Alternate Judge did was in
09:35:56 contravention of the agreement, the Statute, and the Rules which govern this Court and amounted to misconduct.

The purpose of attaching an Alternate Judge to a Trial Chamber is that he can be designated to replace a sitting Judge if that Judge is unable to continue sitting. See Article 12 of
09:36:23 the Statute. No such designation has been made in the present case. Further, during the proceedings, the Alternate Judge may pose questions through the Presiding Judge, but there is no other entitlement for an Alternate Judge to speak during court proceedings. See Rule 16 bis (B). Moreover, an Alternate Judge

does not have any say in decisions of the Trial Chamber. He is obliged to be present during deliberations off the Trial Chamber, but he is not entitled a vote thereat. See Rule 16 bis (C). It follows that it was wrong for the Alternate Judge, who has not been designated to replace a sitting Judge, to offer an opinion, whether dissenting or concurring, on a judgement of Trial Chamber.

The behaviour of Judge Sow was referred by the Council of Judges to a plenary meeting of the Judges of the Special Court. We three Trial Chamber Judges abstained from voting at that plenary.

I will now read onto the record the resolution of the plenary.

Resolution on complaint by Trial Chamber II against Justice Malick Sow. The Judges of the Special Court for Sierra Leone sitting on the 7th and 10th of May, 2012, in the 17th plenary of Judges, pursuant to Rule 15 bis (B) of the Rules of Procedure of Evidence of the Special Court which mandates the Council of Judges who refer an allegation of unfitness of a Judge to sit to the plenary if it determines that, one, the allegation is of a serious nature, and two, that there appears to be a substantial basis for same.

Pursuant also to Rule 24(iii) of the Rules, which provides that the Judges shall meet in plenary to decide upon matters relating to the internal functioning of the Chambers and the Special Court, seized of the complaint by the Judges of Trial Chamber II, dated 26th of April, 2012, against Justice Malick Sow, Alternate Judge, considering the response of Justice Malick Sow, dated the 1st of May, 2012, to the complaint, having also

considered the views and recommendations of the Judges on the matter and the response of Justice Malick Sow to those views pursuant to Rule 15 bis (C) have reached the following conclusions:

09:39:39 1. The plenary declares that Justice Malick Sow's behaviour in court on the 26th of April, 2012, amounts to misconduct rendering him unfit to sit as an Alternate Judge of the Special Court.

2. The plenary recommends to the appointing authority 09:40:03 pursuant to Rule 15 bis (B) to decide upon the further status of Justice Malick Sow.

3. Pursuant to Rule 24(iii), the plenary directs Justice Malick Sow to refrain from further sitting in the proceedings pending a decision from the appointing authority.

09:40:28 Done in Freetown, Sierra Leone, this 10th day of May, 2012, for and on behalf of the plenary, signed by the President Justice Jon Kamanda.

Now, Ms Hollis, you have one hour to address the Court and that will start from now which will bring you up to 20 to 11.00 09:41:05 you must complete your address.

MS HOLLIS: Thank you, Mr President. May it please the Court. In arriving at a sentence --

PRESIDING JUDGE: I'm sorry. I didn't see you standing there.

09:41:13 MR GRIFFITHS: I apologise to my learned friend. Your Honour, can I ask -- raise two matters, preliminary matters, regarding the timing of the proceedings today. I don't know whether Your Honours were considering have a mid-morning break at some stage, but it would perhaps assist us if that were to be

please accept my congratulations in advance.

Thank you.

PRESIDING JUDGE: Thank you, Mr Taylor.

THE ACCUSED: May I leave now?

12:00:52 PRESIDING JUDGE: Before we adjourn, we would like to thank both the Prosecution and the Defence for their very comprehensive written briefs and also for the additional oral arguments presented today. We have much to consider.

The delivery of judgement -- a Sentencing judgement date

12:01:22 has already been fixed for the 30th of May, Wednesday, the 30th of May, at 11.00 a.m. So Mr Taylor is remanded until that date for a sentence, and I will now adjourn the court.

[Whereupon the Hearing adjourned at 12.03 p.m.]

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BASIC DOCUMENTS
TEXTES FONDAMENTAUX





Statute **Statut**

International Criminal Tribunal for Rwanda (ICTR)
Tribunal pénal international pour le Rwanda (TPIR)
31 January 2010 – 31 janvier 2010

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Article 5: Personal Jurisdiction

The International Tribunal for Rwanda shall have jurisdiction over natural persons pursuant to the provisions of the present Statute.

Article 6: Individual Criminal Responsibility

1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in Articles 2 to 4 of the present Statute, shall be individually responsible for the crime.

2. The official position of any accused person, whether as Head of state or government or as a responsible government official, shall not relieve such person of criminal responsibility nor mitigate punishment.

3. The fact that any of the acts referred to in Articles 2 to 4 of the present Statute was committed by a subordinate does not relieve his or her superior of criminal responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

4. The fact that an accused person acted pursuant to an order of a government or of a superior shall not relieve him or her of criminal responsibility, but may be considered in mitigation of punishment if the International Tribunal for Rwanda determines that justice so requires.

Article 7: Territorial and Temporal Jurisdiction

The territorial jurisdiction of the International Tribunal for Rwanda shall extend to the territory of Rwanda including its land surface and airspace as well as to the territory of neighbouring States in respect of serious violations of international humanitarian law committed by Rwandan citizens. The temporal jurisdiction of the International Tribunal for Rwanda shall extend to a period beginning on 1 January 1994 and ending on 31 December 1994.

Article 8: Concurrent Jurisdiction

1. The International Tribunal for Rwanda and national courts shall have concurrent jurisdiction to prosecute persons for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens for such violations committed in the territory of the neighbouring States, between 1 January 1994 and 31 December 1994.

2. The International Tribunal for Rwanda shall have the primacy over the national courts of all States. At any stage of the procedure, the International Tribunal for Rwanda may formally request national courts to defer to its competence in accordance with the present Statute and the Rules of Procedure and Evidence of the International Tribunal for Rwanda.

4. In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he or she understands of the nature and cause of the charge against him or her;

(b) To have adequate time and facilities for the preparation of his or her defence and to communicate with counsel of his or her own choosing;

(c) To be tried without undue delay;

(d) To be tried in his or her presence, and to defend himself or herself in person or through legal assistance of his or her own choosing; to be informed, if he or she does not have legal assistance, of this right; and to have legal assistance assigned to him or her, in any case where the interest of justice so require, and without payment by him or her in any such case if he or she does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her;

(f) To have the free assistance of an interpreter if he or she cannot understand or speak the language used in the International Tribunal for Rwanda;

(g) Not to be compelled to testify against himself or herself or to confess guilt.

Article 21: Protection of Victims and Witnesses

The International Tribunal for Rwanda shall provide in its Rules of Procedure and Evidence for the protection of victims and witnesses. Such protection measures shall include, but shall not be limited to, the conduct of in camera proceedings and the protection of the victim's identity.

Article 22: Judgement

1. The Trial Chambers shall pronounce judgements and impose sentences and penalties on persons convicted of serious violations of international humanitarian law.

2. The judgement shall be rendered by a majority of the judges of the Trial Chamber, and shall be delivered by the Trial Chamber in public. It shall be accompanied by a reasoned opinion in writing, to which separate or dissenting opinions may be appended.

Article 23: Penalties

1. The penalty imposed by the Trial Chamber shall be limited to imprisonment. In determining the terms of imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of Rwanda.

2. In imposing the sentences, the Trial Chambers should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.

3. In addition to imprisonment, the Trial Chambers may order the return of any property and proceeds acquired by criminal conduct, including by means of duress, to their rightful owners.

UNITED
NATIONS

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Date: September 2009

Original: English & French

UPDATED STATUTE OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA

(ADOPTED 25 MAY 1993 BY RESOLUTION 827)
(AS AMENDED 13 MAY 1998 BY RESOLUTION 1166)
(AS AMENDED 30 NOVEMBER 2000 BY RESOLUTION 1329)
(AS AMENDED 17 MAY 2002 BY RESOLUTION 1411)
(AS AMENDED 14 AUGUST 2002 BY RESOLUTION 1431)
(AS AMENDED 19 MAY 2003 BY RESOLUTION 1481)
(AS AMENDED 20 APRIL 2005 BY RESOLUTION 1597)
(AS AMENDED 28 FEBRUARY 2006 BY RESOLUTION 1660)
(AS AMENDED 29 SEPTEMBER 2008 BY RESOLUTION 1837)
(AS AMENDED 7 JULY 2009 BY RESOLUTION 1877)

ICTY RELATED RESOLUTIONS:
Resolution 1503 of 28 August 2003
Resolution 1504 of 4 September 2003
Resolution 1534 of 26 March 2004
Resolution 1581 of 18 January 2005
Resolution 1613 of 26 July 2005
Resolution 1629 of 30 September 2005
Resolution 1668 of 10 April 2006
Resolution 1775 of 14 September 2007
Resolution 1786 of 28 November 2007
Resolution 1800 of 20 February 2008

(Not an official document. This compilation is based on original United Nations resolutions.)

permanent judge in a section of a Trial Chamber to be replaced resulting in a section solely comprised of *ad litem* judges, that section may continue to hear the case, notwithstanding that its composition no longer includes a permanent judge.

Article 13
Qualifications of judges

The permanent and *ad litem* judges shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to the highest judicial offices. In the overall composition of the Chambers and sections of the Trial Chambers, due account shall be taken of the experience of the judges in criminal law, international law, including international humanitarian law and human rights law.

Article 13 *bis*
Election of permanent judges

1. Fourteen of the permanent judges of the International Tribunal shall be elected by the General Assembly from a list submitted by the Security Council, in the following manner:

(a) The Secretary-General shall invite nominations for judges of the International Tribunal from States Members of the United Nations and non-member States maintaining permanent observer missions at United Nations Headquarters;

(b) Within sixty days of the date of the invitation of the Secretary-General, each State may nominate up to two candidates meeting the qualifications set out in article 13 of the Statute, no two of whom shall be of the same nationality and neither of whom shall be of the same nationality as any judge who is a member of the Appeals Chamber and who was elected or appointed a permanent judge of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994 (hereinafter referred to as "The International Tribunal for Rwanda") in accordance with article 12 *bis* of the Statute of that Tribunal;

(c) The Secretary-General shall forward the nominations received to the Security Council. From the nominations received the Security Council shall establish a list of not less than twenty-eight and not more than forty-two candidates, taking due account of the adequate representation of the principal legal systems of the world;

(d) The President of the Security Council shall transmit the list of candidates to the President of the General Assembly. From that list the General Assembly shall elect fourteen permanent judges of the International Tribunal. The candidates who receive an absolute majority of the votes of the States Members of the United Nations and of the non-member States maintaining permanent observer missions at United Nations Headquarters, shall be declared elected. Should two candidates of the same nationality obtain the required majority vote, the one who received the higher number of votes shall be considered elected.

2. In the event of a vacancy in the Chambers amongst the permanent judges elected or appointed in accordance with this article, after consultation with the Presidents of the Security Council and of the General Assembly, the Secretary-General shall appoint a person meeting the qualifications of article 13 of the Statute, for the remainder of the term of office concerned.

3. The permanent judges elected in accordance with this article shall be elected for a term of four years. The terms and conditions of service shall be those of the judges of the International Court of Justice. They shall be eligible for re-election.

Article 13 *ter*
Election and appointment of *ad litem* judges

1. The *ad litem* judges of the International Tribunal shall be elected by the General Assembly from a list submitted by the Security Council, in the following manner:

(a) The Secretary-General shall invite nominations for *ad litem* judges of the International Tribunal from States Members of the United Nations and non-member States maintaining permanent observer missions at United Nations Headquarters.

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2. In the determination of charges against him, the accused shall be entitled to a fair and public hearing, subject to article 22 of the Statute.

3. The accused shall be presumed innocent until proved guilty according to the provisions of the present Statute.

4. In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality:

(a) to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
(b) to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
(c) to be tried without undue delay;
(d) to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
(e) to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
(f) to have the free assistance of an interpreter if he cannot understand or speak the language used in the International Tribunal;
(g) not to be compelled to testify against himself or to confess guilt.

Article 22
Protection of victims and witnesses

The International Tribunal shall provide in its rules of procedure and evidence for the protection of victims and witnesses. Such protection measures shall include, but shall not be limited to, the conduct of in camera proceedings and the protection of the victim's identity.

Article 23
Judgement

1. The Trial Chambers shall pronounce judgements and impose sentences and penalties on persons convicted of serious violations of international humanitarian law.

2. The judgement shall be rendered by a majority of the judges of the Trial Chamber, and shall be delivered by the Trial Chamber in public. It shall be accompanied by a reasoned opinion in writing, to which separate or dissenting opinions may be appended.

Article 24
Penalties

1. The penalty imposed by the Trial Chamber shall be limited to imprisonment. In determining the terms of imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of the former Yugoslavia.

2. In imposing the sentences, the Trial Chambers should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.

3. In addition to imprisonment, the Trial Chambers may order the return of any property and proceeds acquired by criminal conduct, including by means of duress, to their rightful owners.

Article 25
Appellate proceedings

1. The Appeals Chamber shall hear appeals from persons convicted by the Trial Chambers or from the Prosecutor on the following grounds:

(a) an error on a question of law invalidating the decision; or
(b) an error of fact which has occasioned a miscarriage of justice.

2. The Appeals Chamber may affirm, reverse or revise the decisions taken by the Trial Chambers.

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UNITED
NATIONS

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991

IT/32/Rev. 47
28 August 2012

Original:
English & French

The Hague
The Netherlands
28 August 2012

RULES OF PROCEDURE AND EVIDENCE

PART THREE
ORGANIZATION OF THE TRIBUNAL

Section 1: The Judges

Rule 14
Solemn Declaration
(Adopted 11 Feb 1994)

(A) Before taking up duties each Judge shall make the following solemn declaration:

"I solemnly declare that I will perform my duties and exercise my powers as a Judge of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 honourably, faithfully, impartially and conscientiously". (Amended 12 Nov 1997)

(B) The declaration shall be signed by the Judge and witnessed by, or by a representative of, the Secretary-General of the United Nations. The declaration shall be kept in the records of the Tribunal. (Amended 12 Nov 1997)

(C) A Judge whose service continues without interruption after expiry of a previous period of service shall not make a new declaration. (Amended 12 Nov 1997)

Rule 15
Disqualification of Judges
(Adopted 11 Feb 1994, amended 15 June 1995, amended 25 June 1996, amended 5 July 1996, amended 25 July 1997, amended 17 Nov 1999)

(A) A Judge may not sit on a trial or appeal in any case in which the Judge has a personal interest or concerning which the Judge has or has had any association which might affect his or her impartiality. The Judge shall in any such circumstance withdraw, and the President shall assign another Judge to the case.

(B) (i) Any party may apply to the Presiding Judge of a Chamber for the disqualification and withdrawal of a Judge of that Chamber from a trial or appeal upon the above grounds. The Presiding Judge shall confer with the Judge in question and report to the President. (Amended 30 Jan 1995)

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CHARTER OF THE UNITED NATIONS

AND

STATUTE OF THE INTERNATIONAL COURT OF JUSTICE



SAN FRANCISCO · 1945

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CHAPTER I

PURPOSES AND PRINCIPLES

Article 1

The Purposes of the United Nations are:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;

2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;

3. To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and

4. To be a center for harmonizing the actions of nations in the attainment of these common ends.

Article 2

The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.

1. The Organization is based on the principle of the sovereign equality of all its Members.

2. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter.

3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

5. All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.

6. The Organization shall ensure that states which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security.

7. Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

CHAPTER II

MEMBERSHIP

Article 3

The original Members of the United Nations shall be the states which, having participated in the United Nations Conference on International Organization at San Francisco, or having previously signed the Declaration by United Nations of January 1, 1942, sign the present Charter and ratify it in accordance with Article 110.

ECONOMIC COMMUNITY OF WEST AFRICAN STATES

PROTOCOL ON NON-AGGRESSION

THE HIGH CONTRACTING PARTIES

CONSIDERING that the Economic Community of West African States, (hereinafter referred to as the "Community"), set up by virtue of the Treaty of May 28, 1975, cannot attain its objectives save in an atmosphere of peace and harmonious understanding among the Member States of the Community;

RECALLING Article 2(4) of the United Nations Charter which provides that all Member States shall refrain, in their international relations, from the threat or use of force against the territorial integrity or independence of any State, or any other manner inconsistent with the purposes of the United Nations;

RECALLING Article 3(3) of the Charter of the Organization of African Unity which provides for the respect of the sovereignty and territorial integrity of each State and its inalienable right to independent existence;

RECALLING the Resolution of the Summit Meeting of Heads of State and Government of the Community held in Lome on 5 November 1976 regarding the signing of an Annexed Protocol on non-recourse to force by Member States of the Community;

AGREE AS FOLLOWS:

ARTICLE 1

Member States shall, in their relations with one another, refrain from the threat or use of force or aggression or from employing any other means inconsistent with the Charters of the United Nations and the Organization of African Unity against the territorial integrity of political independence of other Member States.

ARTICLE 2

Each Member State shall refrain, from committing, encouraging or condoning acts of subversion, hostility or aggression against the territorial integrity or political independence of the other Member States.

ARTICLE 3

Each Member State shall undertake to prevent Foreigners resident on its territory from committing the acts referred to in Article 2 above against the sovereignty and territorial integrity of other Member States.

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4. In the case of the resignation of a member of the Court, the resignation shall be addressed to the President of the Court for transmission to the Secretary-General. This last notification makes the place vacant.

Article 14

Vacancies shall be filled by the same method as that laid down for the first election, subject to the following provision: the Secretary-General shall, within one month of the occurrence of the vacancy, proceed to issue the invitations provided for in Article 5, and the date of the election shall be fixed by the Security Council.

Article 15

A member of the Court elected to replace a member whose term of office has not expired shall hold office for the remainder of his predecessor's term.

Article 16

1. No member of the Court may exercise any political or administrative function, or engage in any other occupation of a professional nature.

2. Any doubt on this point shall be settled by the decision of the Court.

Article 17

1. No member of the Court may act as agent, counsel, or advocate in any case.

2. No member may participate in the decision of any case in which he has previously taken part as agent, counsel, or advocate for one of the parties, or as a member of a national or international court, or of a commission of enquiry, or in any other capacity.

3. Any doubt on this point shall be settled by the decision of the Court.

Article 18

1. No member of the Court can be dismissed unless, in the unanimous opinion of the other members, he has ceased to fulfill the required conditions.

2. Formal notification thereof shall be made to the Secretary-General by the Registrar.

3. This notification makes the place vacant.

Article 19

The members of the Court, when engaged on the business of the Court, shall enjoy diplomatic privileges and immunities.

Article 20

Every member of the Court shall, before taking up his duties, make a solemn declaration in open court that he will exercise his powers impartially and conscientiously.

Article 21

1. The Court shall elect its President and Vice-President for three years; they may be re-elected.

2. The Court shall appoint its Registrar and may provide for the appointment of such other officers as may be necessary.

Article 22

1. The seat of the Court shall be established at The Hague. This, however, shall not prevent the Court from sitting and exercising its functions elsewhere whenever the Court considers it desirable.

2. The President and the Registrar shall reside at the seat of the Court.

Article 23

1. The Court shall remain permanently in session, except during the judicial vacations, the dates and duration of which shall be fixed by the Court.

2. Members of the Court are entitled to periodic leave, the dates and duration of which shall be fixed by the Court, having in mind the distance between The Hague and the home of each judge.

Cour
Pénale
Internationale

International
Criminal
Court



Rome Statute of the International Criminal Court

PART 2. JURISDICTION, ADMISSIBILITY AND APPLICABLE LAW

Article 5[1]
Crimes within the jurisdiction of the Court

The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

(a) The crime of genocide;

(b) Crimes against humanity;

(c) War crimes;

(d) The crime of aggression.

Article 6
Genocide

For the purpose of this Statute, "genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(a) Killing members of the group;

(b) Causing serious bodily or mental harm to members of the group;

(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(d) Imposing measures intended to prevent births within the group;

(e) Forcibly transferring children of the group to another group.

Article 7
Crimes against humanity

1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

(a) Murder;

(b) Extermination;

(c) Enslavement;

(d) Deportation or forcible transfer of population;

(e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;

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1 Paragraph 2 of article 5 ("The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of the United Nations.") was deleted in accordance with RC/Res.6, annex I, of 11 June 2010.

PART 3. GENERAL PRINCIPLES OF CRIMINAL LAW

Article 22
Nullum crimen sine lege

1. A person shall not be criminally responsible under this Statute unless the conduct in question constitutes, at the time it takes place, a crime within the jurisdiction of the Court.

2. The definition of a crime shall be strictly construed and shall not be extended by analogy. In case of ambiguity, the definition shall be interpreted in favour of the person being investigated, prosecuted or convicted.

3. This article shall not affect the characterization of any conduct as criminal under international law independently of this Statute.

Article 23
Nulla poena sine lege

A person convicted by the Court may be punished only in accordance with this Statute.

Article 24
Non-retroactivity *ratione personae*

1. No person shall be criminally responsible under this Statute for conduct prior to the entry into force of the Statute.

2. In the event of a change in the law applicable to a given case prior to a final judgement, the law more favourable to the person being investigated, prosecuted or convicted shall apply.

Article 25[8]
Individual criminal responsibility

1. The Court shall have jurisdiction over natural persons pursuant to this Statute.

2. A person who commits a crime within the jurisdiction of the Court shall be individually responsible and liable for punishment in accordance with this Statute.

3. In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:

   (a) Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible;

   (b) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted;

   (c) For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission;

   (d) In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:

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8 As amended by resolution RC/Res.6 of 11 June 2010 (adding paragraph 3 *bis*).

(i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or

(ii) Be made in the knowledge of the intention of the group to commit the crime;

(e) In respect of the crime of genocide, directly and publicly incites others to commit genocide;

(f) Attempts to commit such a crime by taking action that commences its execution by means of a substantial step, but the crime does not occur because of circumstances independent of the person's intentions. However, a person who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment under this Statute for the attempt to commit that crime if that person completely and voluntarily gave up the criminal purpose.

3 *bis*. In respect of the crime of aggression, the provisions of this article shall apply only to persons in a position effectively to exercise control over or to direct the political or military action of a State.

4. No provision in this Statute relating to individual criminal responsibility shall affect the responsibility of States under international law.

Article 26
Exclusion of jurisdiction over persons under eighteen

The Court shall have no jurisdiction over any person who was under the age of 18 at the time of the alleged commission of a crime.

Article 27
Irrelevance of official capacity

1. This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence.

2. Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person.

Article 28
Responsibility of commanders and other superiors

In addition to other grounds of criminal responsibility under this Statute for crimes within the jurisdiction of the Court:

(a) A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, where:

(i) That military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and

(ii) That military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

(b) With respect to superior and subordinate relationships not described in paragraph (a), a superior shall be criminally responsible for crimes within the jurisdiction of the Court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where:

(i) The superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes;

(ii) The crimes concerned activities that were within the effective responsibility and control of the superior; and

(iii) The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

Article 29
Non-applicability of statute of limitations

The crimes within the jurisdiction of the Court shall not be subject to any statute of limitations.

Article 30
Mental element

1. Unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge.

2. For the purposes of this article, a person has intent where:

(a) In relation to conduct, that person means to engage in the conduct;

(b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events.

3. For the purposes of this article, "knowledge" means awareness that a circumstance exists or a consequence will occur in the ordinary course of events. "Know" and "knowingly" shall be construed accordingly.

Article 31
Grounds for excluding criminal responsibility

1. In addition to other grounds for excluding criminal responsibility provided for in this Statute, a person shall not be criminally responsible if, at the time of that person's conduct:

Article 33

Superior orders and prescription of law

1. The fact that a crime within the jurisdiction of the Court has been committed by a person pursuant to an order of a Government or of a superior, whether military or civilian, shall not relieve that person of criminal responsibility unless:

(a) The person was under a legal obligation to obey orders of the Government or the superior in question;

(b) The person did not know that the order was unlawful; and

(c) The order was not manifestly unlawful.

2. For the purposes of this article, orders to commit genocide or crimes against humanity are manifestly unlawful.

PART 4. COMPOSITION AND ADMINISTRATION OF THE COURT

Article 34

Organs of the Court

The Court shall be composed of the following organs:

(a) The Presidency;

(b) An Appeals Division, a Trial Division and a Pre-Trial Division;

(c) The Office of the Prosecutor;

(d) The Registry.

Article 35

Service of judges

1. All judges shall be elected as full-time members of the Court and shall be available to serve on that basis from the commencement of their terms of office.

2. The judges composing the Presidency shall serve on a full-time basis as soon as they are elected.

3. The Presidency may, on the basis of the workload of the Court and in consultation with its members, decide from time to time to what extent the remaining judges shall be required to serve on a full-time basis. Any such arrangement shall be without prejudice to the provisions of article 40.

4. The financial arrangements for judges not required to serve on a full-time basis shall be made in accordance with article 49.

Article 36

Qualifications, nomination and election of judges

1. Subject to the provisions of paragraph 2, there shall be 18 judges of the Court.

2. (a) The Presidency, acting on behalf of the Court, may propose an increase in the number of judges specified in paragraph 1, indicating the reasons why this is considered necessary and appropriate. The Registrar shall promptly circulate any such proposal to all States Parties.

(b) Any such proposal shall then be considered at a meeting of the Assembly of States Parties to be convened in accordance with article 112. The proposal shall be considered adopted if

2. The First Vice-President shall act in place of the President in the event that the President is unavailable or disqualified. The Second Vice-President shall act in place of the President in the event that both the President and the First Vice-President are unavailable or disqualified.

3. The President, together with the First and Second Vice-Presidents, shall constitute the Presidency, which shall be responsible for:

(a) The proper administration of the Court, with the exception of the Office of the Prosecutor; and

(b) The other functions conferred upon it in accordance with this Statute.

4. In discharging its responsibility under paragraph 3 (a), the Presidency shall coordinate with and seek the concurrence of the Prosecutor on all matters of mutual concern.

Article 39

Chambers

1. As soon as possible after the election of the judges, the Court shall organize itself into the divisions specified in article 34, paragraph (b). The Appeals Division shall be composed of the President and four other judges, the Trial Division of not less than six judges and the Pre-Trial Division of not less than six judges. The assignment of judges to divisions shall be based on the nature of the functions to be performed by each division and the qualifications and experience of the judges elected to the Court, in such a way that each division shall contain an appropriate combination of expertise in criminal law and procedure and in international law. The Trial and Pre-Trial Divisions shall be composed predominantly of judges with criminal trial experience.

2. (a) The judicial functions of the Court shall be carried out in each division by Chambers.

(b) (i) The Appeals Chamber shall be composed of all the judges of the Appeals Division;

(ii) The functions of the Trial Chamber shall be carried out by three judges of the Trial Division;

(iii) The functions of the Pre-Trial Chamber shall be carried out either by three judges of the Pre-Trial Division or by a single judge of that division in accordance with this Statute and the Rules of Procedure and Evidence;

(c) Nothing in this paragraph shall preclude the simultaneous constitution of more than one Trial Chamber or Pre-Trial Chamber when the efficient management of the Court's workload so requires.

3. (a) Judges assigned to the Trial and Pre-Trial Divisions shall serve in those divisions for a period of three years, and thereafter until the completion of any case the hearing of which has already commenced in the division concerned.

(b) Judges assigned to the Appeals Division shall serve in that division for their entire term of office.

4. Judges assigned to the Appeals Division shall serve only in that division. Nothing in this article shall, however, preclude the temporary attachment of judges from the Trial Division to the Pre-Trial Division or vice versa, if the Presidency considers that the efficient management of the Court's workload so requires, provided that under no circumstances shall a judge who has participated in the pre-trial phase of a case be eligible to sit on the Trial Chamber hearing that case.

Article 40

Independence of the judges

1. The judges shall be independent in the performance of their functions.

2. Judges shall not engage in any activity which is likely to interfere with their judicial functions or to affect confidence in their independence.

3. Judges required to serve on a full-time basis at the seat of the Court shall not engage in any other occupation of a professional nature.

4. Any question regarding the application of paragraphs 2 and 3 shall be decided by an absolute majority of the judges. Where any such question concerns an individual judge, that judge shall not take part in the decision.

Article 41

Excusing and disqualification of judges

1. The Presidency may, at the request of a judge, excuse that judge from the exercise of a function under this Statute, in accordance with the Rules of Procedure and Evidence.

2. (a) A judge shall not participate in any case in which his or her impartiality might reasonably be doubted on any ground. A judge shall be disqualified from a case in accordance with this paragraph if, inter alia, that judge has previously been involved in any capacity in that case before the Court or in a related criminal case at the national level involving the person being investigated or prosecuted. A judge shall also be disqualified on such other grounds as may be provided for in the Rules of Procedure and Evidence.

(b) The Prosecutor or the person being investigated or prosecuted may request the disqualification of a judge under this paragraph.

(c) Any question as to the disqualification of a judge shall be decided by an absolute majority of the judges. The challenged judge shall be entitled to present his or her comments on the matter, but shall not take part in the decision.

Article 42

The Office of the Prosecutor

1. The Office of the Prosecutor shall act independently as a separate organ of the Court. It shall be responsible for receiving referrals and any substantiated information on crimes within the jurisdiction of the Court, for examining them and for conducting investigations and prosecutions before the Court. A member of the Office shall not seek or act on instructions from any external source.

2. The Office shall be headed by the Prosecutor. The Prosecutor shall have full authority over the management and administration of the Office, including the staff, facilities and other resources thereof. The Prosecutor shall be assisted by one or more Deputy Prosecutors, who shall be entitled to carry out any of the acts required of the Prosecutor under this Statute. The Prosecutor and the Deputy Prosecutors shall be of different nationalities. They shall serve on a full-time basis.

3. The Prosecutor and the Deputy Prosecutors shall be persons of high moral character, be highly competent in and have extensive practical experience in the prosecution or trial of criminal cases. They shall have an excellent knowledge of and be fluent in at least one of the working languages of the Court.

4. The Prosecutor shall be elected by secret ballot by an absolute majority of the members of the Assembly of States Parties. The Deputy Prosecutors shall be elected in the same way from a list of candidates provided by the Prosecutor. The Prosecutor shall nominate three candidates for each position of Deputy Prosecutor to be filled. Unless a shorter term is decided upon at the time of their election, the Prosecutor and the Deputy Prosecutors shall hold office for a term of nine years and shall not be eligible for re-election.

4. The deliberations of the Trial Chamber shall remain secret.

5. The decision shall be in writing and shall contain a full and reasoned statement of the Trial Chamber's findings on the evidence and conclusions. The Trial Chamber shall issue one decision. When there is no unanimity, the Trial Chamber's decision shall contain the views of the majority and the minority. The decision or a summary thereof shall be delivered in open court.

Article 75

Reparations to victims

1. The Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. On this basis, in its decision the Court may, either upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss and injury to, or in respect of, victims and will state the principles on which it is acting.

2. The Court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation.

Where appropriate, the Court may order that the award for reparations be made through the Trust Fund provided for in article 79.

3. Before making an order under this article, the Court may invite and shall take account of representations from or on behalf of the convicted person, victims, other interested persons or interested States.

4. In exercising its power under this article, the Court may, after a person is convicted of a crime within the jurisdiction of the Court, determine whether, in order to give effect to an order which it may make under this article, it is necessary to seek measures under article 93, paragraph 1.

5. A State Party shall give effect to a decision under this article as if the provisions of article 109 were applicable to this article.

6. Nothing in this article shall be interpreted as prejudicing the rights of victims under national or international law.

Article 76

Sentencing

1. In the event of a conviction, the Trial Chamber shall consider the appropriate sentence to be imposed and shall take into account the evidence presented and submissions made during the trial that are relevant to the sentence.

2. Except where article 65 applies and before the completion of the trial, the Trial Chamber may on its own motion and shall, at the request of the Prosecutor or the accused, hold a further hearing to hear any additional evidence or submissions relevant to the sentence, in accordance with the Rules of Procedure and Evidence.

3. Where paragraph 2 applies, any representations under article 75 shall be heard during the further hearing referred to in paragraph 2 and, if necessary, during any additional hearing.

4. The sentence shall be pronounced in public and, wherever possible, in the presence of the accused.

United Nations S/RES/1315 (2000)

Security Council

Distr.: General
14 August 2000

Resolution 1315 (2000)

Adopted by the Security Council at its 4186th meeting, on 14 August 2000

The Security Council:

Deeply concerned at the very serious crimes committed within the territory of Sierra Leone against the people of Sierra Leone and United Nations and associated personnel and at the prevailing situation of impunity,

Commending the efforts of the Government of Sierra Leone and the Economic Community of West African States (ECOWAS) to bring lasting peace to Sierra Leone,

Noting that the Heads of State and Government of ECOWAS agreed at the 23rd Summit of the Organization in Abuja on 28 and 29 May 2000 to dispatch a regional investigation of the resumption of hostilities,

Noting also the steps taken by the Government of Sierra Leone in creating a national truth and reconciliation process, as required by Article XXVI of the Lomé Peace Agreement (S/1999/777) to contribute to the promotion of the rule of law,

Recalling that the Special Representative of the Secretary-General appended to his signature of the Lomé Agreement a statement that the United Nations holds the understanding that the amnesty provisions of the Agreement shall not apply to international crimes of genocide, crimes against humanity, war crimes and other serious violations of international humanitarian law,

Reaffirming the importance of compliance with international humanitarian law, and *reaffirming further* that persons who commit or authorize serious violations of international humanitarian law are individually responsible and accountable for those violations and that the international community will exert every effort to bring those responsible to justice in accordance with international standards of justice, fairness and due process of law,

Recognizing that, in the particular circumstances of Sierra Leone, a credible system of justice and accountability for the very serious crimes committed there would end impunity and would contribute to the process of national reconciliation and to the restoration and maintenance of peace,

00-60532 (E)

Taking note in this regard of the letter dated 12 June 2000 from the President of Sierra Leone to the Secretary-General and the Suggested Framework attached to it (S/2000/786, annex),

Recognizing further the desire of the Government of Sierra Leone for assistance from the United Nations in establishing a strong and credible court that will meet the objectives of bringing justice and ensuring lasting peace,

Noting the report of the Secretary-General of 31 July 2000 (S/2000/751) and, in particular, *taking note* with appreciation of the steps already taken by the Secretary-General in response to the request of the Government of Sierra Leone to assist it in establishing a special court,

Noting further the negative impact of the security situation on the administration of justice in Sierra Leone and the pressing need for international cooperation to assist in strengthening the judicial system of Sierra Leone,

Acknowledging the important contribution that can be made to this effort by qualified persons from West African States, the Commonwealth, other Member States of the United Nations and international organizations, to expedite the process of bringing justice and reconciliation to Sierra Leone and the region,

Reiterating that the situation in Sierra Leone continues to constitute a threat to international peace and security in the region,

1. *Requests* the Secretary-General to negotiate an agreement with the Government of Sierra Leone to create an independent special court consistent with this resolution, and *expresses* its readiness to take further steps expeditiously upon receiving and reviewing the report of the Secretary-General referred to in paragraph 6 below;

2. *Recommends* that the subject matter jurisdiction of the special court should include notably crimes against humanity, war crimes and other serious violations of international humanitarian law, as well as crimes under relevant Sierra Leonean law committed within the territory of Sierra Leone;

3. *Recommends further* that the special court should have personal jurisdiction over persons who bear the greatest responsibility for the commission of the crimes referred to in paragraph 2, including those leaders who, in committing such crimes, have threatened the establishment of and implementation of the peace process in Sierra Leone;

4. *Emphasizes* the importance of ensuring the impartiality, independence and credibility of the process, in particular with regard to the status of the judges and the prosecutors;

5. *Requests*, in this connection, that the Secretary-General, if necessary, send a team of experts to Sierra Leone as may be required to prepare the report referred to in paragraph 6 below;

6. *Requests* the Secretary-General to submit a report to the Security Council on the implementation of this resolution, in particular on his consultations and negotiations with the Government of Sierra Leone concerning the establishment of the special court, including recommendations, no later than 30 days from the date of this resolution;

7. *Requests* the Secretary-General to address in his report the questions of the temporal jurisdiction of the special court, an appeals process including the advisability, feasibility, and appropriateness of an appeals chamber in the special court or of sharing the Appeals Chamber of the International Criminal Tribunals for the Former Yugoslavia and Rwanda or other effective options, and a possible alternative host State, should it be necessary to convene the special court outside the seat of the court in Sierra Leone, if circumstances so require;

8. *Requests* the Secretary-General to include recommendations on the following:

(a) any additional agreements that may be required for the provision of the international assistance which will be necessary for the establishment and functioning of the special court;

(b) the level of participation, support and technical assistance of qualified persons from Member States of the United Nations, including in particular, member States of ECOWAS and the Commonwealth, and from the United Nations Mission in Sierra Leone that will be necessary for the efficient, independent and impartial functioning of the special court;

(c) the amount of voluntary contributions, as appropriate, of funds, equipment and services to the special court, including through the offer of expert personnel that may be needed from States, intergovernmental organizations and non-governmental organizations;

(d) whether the special court could receive, as necessary and feasible, expertise and advice from the International Criminal Tribunals for the Former Yugoslavia and Rwanda;

9. *Decides* to remain actively seized of the matter.

B. Jurisprudence of the International Tribunals

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B.

1. SCSL Jurisprudence

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SCSL-04-16-A
(1883-1999)

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SCSL

SPECIAL COURT FOR SIERRA LEONE

IN THE APPEALS CHAMBER

Before: Justice George Gelaga King, Presiding Judge
Justice Emmanuel Ayoola
Justice Renate Winter
Justice Raja Fernando
Justice Jon M. Kamanda

Registrar: Herman von Hebel

Date: 22 February 2008

SPECIAL COURT FOR SIERRA LEONE
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PROSECUTOR **Against** **ALEX TAMBA BRIMA**
BRIMA BAZZY KAMARA
SANTIGIE BORBOR KANU
(Case No. SCSL-2004-16-A)

JUDGMENT

Office of the Prosecutor:
Dr. Christopher Staker
Mr. Karim Agha
Mr. Chile Eboe-Osuji
Ms. Anne Althaus

Defence Counsel for Alex Tamba Brima:
Kojo Graham

Defence Counsel for Brima Bazzy Kamara:
Andrew Daniels

Defence Counsel for Santigie Borbor Kanu:
Ajibola E. Manly-Spain
Silas Chekera

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the Trial Chamber's "Decision on Defence Motions for Judgement of Acquittal Pursuant to Rule 98" was unambiguous in its meaning and effect.[109]

59. The Appellant Kanu submits that the Indictment failed to specify adequately locations in which certain crimes were committed and was therefore defective.[110] According to Kanu, where an Indictment is found to be defective, consideration must also be given to whether the Appellant was accorded a fair trial. In this instance, Kanu insists that he was entitled to assume that the list of alleged locations in the Indictment was exhaustive. He contends that "the word 'including' in the Indictment, in so far as it left the list of places open, did not make it clear that the crimes in question were also committed in locations . . . other than those expressly mentioned."[111] According to Kanu, this defect materially affected his ability to prepare his defence and is contrary to the general principle of law requiring that "the location of crimes alleged to have been committed be specified in the Indictment with as much clarity as possible so that the Accused is not materially prejudiced in the preparation of his defence."[112]

60. All the Appellants therefore submit that the Trial Chamber correctly arrived at its conclusion and in so doing protected the fair trial rights of the Appellant.

3. Discussion: Reversal of a Previous Interlocutory Decision

61. We find that Trial Chamber II reconsidered the decision reached by Trial Chamber I and came to a different conclusion with respect to the pleading of locations in the Indictment.

62. It seems to us that the following questions arise for determination:

(i) Whether Trial Chamber II properly reconsidered issues relating to the alleged defects in the Indictment;

(ii) If Trial Chamber II had such power, whether it ought not to have given the parties an opportunity to be heard on the matter.

63. In the *Ntagerura et al.* case, the ICTR Appeals Chamber held that it falls within the discretion of a Trial Chamber to reconsider a previous decision if a clear error of reasoning has been

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[109] Brima Response Brief, para. 26; Kamara Response Brief, para. 34.
[110] *Prosecutor v. Brima, Kamara and Kanu*, SCSL-2004-16-A, Respondent's Submissions-Kanu Defence, 4 October 2007, para. 2.9 [Kanu Response Brief].
[111] *Ibid* at para. 2.9.

demonstrated or if it is necessary to prevent an injustice.[113] We endorse that opinion. Consequently, whether or not an issue relating to the form of an indictment should be reconsidered should be determined on a case-by-case basis having regard to the stage of proceedings, the issues raised by the earlier decision and the effect of reconsideration or reversal on the rights of the Parties.

64. With regard to question (ii) the Parties ought to have been given an opportunity to be heard on the matter as natural justice demands. However, even if they failed to accord the Parties that opportunity, this Chamber has the power to review the situation and come to its own conclusion in the interest of justice. In all the circumstances of the case, we opine that the Trial Chamber's error in not expressly giving notice to the Parties of its intention to reconsider the pre-trial decision, and its failure to re-open the hearings did not invalidate the decision. The Trial Chamber's limited treatment of the evidence of crimes committed in such locations was a proper exercise of its discretion in the interest of justice, taking into account that it is the Prosecution's obligation to plead clearly material facts it intends to prove, so as to afford the Appellants a fair trial.

65. The Prosecution's Second Ground of Appeal therefore fails.

C. Prosecution's Fourth Ground of Appeal and Kanu's Tenth Ground of Appeal: Joint Criminal Enterprise

1. Trial Chamber's Findings

66. Prior to the establishment of Trial Chamber II, Trial Chamber I, ruling on a preliminary motion brought by the Appellant, dealt with several pre-trial issues in this case, including the form of the Indictment and the pleading of joint criminal enterprise ("JCE") as a form of liability. In this regard the Trial Chamber held that:

> "the Indictment in its entirety, is predicated upon the notion of joint criminal enterprise . . [and that] the nature of the alleged joint criminal enterprise, the nature of the Accused's participation in it, the identity of those involved in the same, and the time frame of the alleged joint criminal enterprise are all pleaded with the degree of particularity as the factual parameters of the case admits."[114]

67. On 17 January 2005, the case was transferred to Trial Chamber II. In the AFRC Trial Judgment, Trial Chamber II revisited the question whether joint criminal enterprise was properly

[112] *Ibid* at para. 2.14.
[113] *Ntagerura* Appeal Judgment, para 55.
[114] *Kamara* Form of the Indictment Decision, para. 52.

(b) Discussion

119. The thrust of this Ground of Appeal is that it challenges the Trial Chamber's evaluation of the evidence and its findings of fact. Brima has not advanced any arguments in support of his contention that the Trial Chamber erred in law and fact by resolving any reasonable doubt in favour of the Prosecution. His general allegation that witnesses had a motive to lie and that their evidence was inconsistent or contradictory, does not refer to any particular instance of error in the Trial Chamber's analysis of the evidence. On the contrary, the judgment shows that the Trial Chamber carefully considered all the evidence before it, assessed the credibility of the prosecution witnesses including the fact that their evidence was not discredited during cross-examination, and concluded that the witnesses were credible and their evidence reliable.[205] Brima has not demonstrated any error in the Trial Chamber's assessment of the evidence of these witnesses.

120. With respect to the alleged inconsistency between the prior statement and trial testimony of witness TF1-184, the Appeals Chamber reiterates that this is clearly a matter for the Trial Chamber's evaluation. The mere existence of inconsistencies in the testimony of a witness does not undermine the witness's credibility. The Trial Chamber has broad discretion to determine the weight to be given to discrepancies between a witness's testimony and his prior statements. The Appeals Chamber will normally uphold a Trial Chamber's findings on issues of credibility, including its resolution of inconsistent evidence and will only find that an error of fact occurred when it determines that no reasonable tribunal could have made the impugned finding.

121. The same reasoning applies to Brima's submission that there were discrepancies between the testimonies of witnesses TF1-334 and TF1-167 relating to events in Karina.[206] The Appeals Chamber reiterates that it is for the Trial Chamber to determine whether discrepancies discredit a witness's testimony. When faced with competing versions of events, it is the prerogative of the Trial Chamber to determine which one is more credible.[207] In its consideration of witness TF1-184's evidence the Trial Chamber stated that:

> "although the evidence of the witness was unclear at times, in its cross-examination of the witness the Defence raised no *significant* inconsistencies between his evidence in chief and his prior statement to the Prosecution. In addition, the Trial Chamber finds that the

[205] AFRC Trial Judgment, paras 356-371.
[206] Brima Appeal Brief, para. 177.
[207] *Rutaganda* Appeal Judgment, para. 29.

witness was not shaken on cross-examination and was generally corroborated by other witnesses."[208]

Brima has not demonstrated that the Trial Chamber either committed an error or acted unreasonably in making the above finding.

122. For the foregoing reasons, the Appeals Chamber dismisses Brima's Ninth Ground of Appeal.

2. Brima's Tenth and Eleventh Grounds of Appeal: Failure to Consider the Rivalry Between Brima and Witness TF1-334

123. Under his tenth and eleventh Grounds of Appeal, Brima alleges that the Trial Chamber failed to consider his testimony of the rivalry that existed between himself and Prosecution witness TF1-334 and that this occasioned a miscarriage of justice. Similarly, he submits that out of a total of 146 prosecution and defence witnesses called to testify at the trial, the Trial Chamber disproportionately relied on the evidence of two witnesses namely TF1-334 and TF1-167, and that this occasioned a further miscarriage of justice.

124. In his Appeal Brief filed on 13 September 2007, Brima did not proffer any arguments in support of the above Grounds of Appeal, but opted to associate himself with Kamara's submissions in support of Ground Eight of the latter's Appeal. The Appeals Chamber will therefore consider Grounds Ten and Eleven of Brima's Appeal when it deals with Ground Eight of Kamara's Appeal.

B. Kamara's Eighth Ground of Appeal: Credibility of Prosecution Witnesses

1. Submissions of the Parties

125. Kamara challenges the credibility of Prosecution witnesses TF1-334, TF1-167, TF1-184 and TF1-153 and submits that these witnesses were co-perpetrators of the crimes for which the Appellants were convicted, and therefore the Trial Chamber ought to have approached their evidence with particular caution. In addition, he submits that in return for their testimony before the Trial Chamber, witnesses TF1-334, TF1-167 and TF1-184 received preferential treatment while in detention at Pademba Road prison. Furthermore, according to Kamara, there were unresolved discrepancies in the evidence of the Prosecution witnesses and the Trial Chamber failed to provide a

[208] AFRC Trial Judgment, para. 362.

reasonable explanation why it chose to rely on the evidence of one witness and not the other. He adds that the Trial Chamber should have evaluated the credibility of the Prosecution witnesses in light of the evidence as a whole, and requests the Appeals Chamber to "review the evidence given by witnesses TF1-153, TF1-334, TF1-184 and TF1-167 especially with regard to issues on which the Trial Chamber relied in order to enter a guilty verdict."[209]

126. The Prosecution responds that the Trial Chamber correctly instructed itself on the appropriate legal standards applicable to accomplice evidence.[210] In response to the submission that the Trial Chamber had relied exclusively on certain witnesses, the Prosecution submits that the Trial Chamber had not violated the principle enunciated by the ICTY Appeals Chamber in *Kupreškić et al.* that it must convict in light of the whole trial record.[211] It submits further that the Trial Chamber did address the alleged discrepancies in the testimonies of TF1-334 and TF1-167, and found some to be significant and others not to be so. In its view, Kamara had not established any error in the Trial Chamber's assessment of the credibility of the witnesses in question.[212]

2. Discussion

(a) The Trial Chamber's Approach to Accomplice Evidence

127. The Trial Chamber in paragraph 125 of its Judgment states that "none of these Prosecution witnesses has been charged with any crimes and their evidence cannot, therefore, be described as 'accomplice evidence'."[213] The jurisprudence of the international criminal tribunals demonstrates that a witness facing criminal charges based on the same allegations as the accused may be considered an accomplice under the law. However, there is no requirement that in order to qualify as an accomplice, a witness must have been charged with a specific offence. The Trial Chamber, therefore, erred in finding that the witnesses of the Prosecution were not accomplices simply because they were not charged with any criminal offence.

128. The next issue for the Appeals Chamber's determination is whether the Trial Chamber's error invalidated its decision. If after evaluation of evidence of an accomplice the Trial Chamber comes to the conclusion that the witness is nonetheless credible and his evidence reliable, the Trial Chamber can rely on it to enter a conviction. The Appeals Chamber is of the opinion that in

[209] Kamara Appeal Brief, para. 238.
[210] Prosecution Response Brief, para. 4.41.
[211] *Ibid* at para. 4.57.
[212] Prosecution Response Brief, para. 4.65.
[213] AFRC Trial Judgment, para. 125.

assessing the reliability of accomplice evidence, the main consideration for the Trial Chamber should be whether or not the accomplice has an ulterior motive to testify as he did.

129. Whilst it is safe for a Trial Chamber to look for corroboration in such circumstances, it may convict on the basis of the evidence of a single witness, even an accomplice, provided such evidence is viewed with caution. In considering the credibility of certain Prosecution witnesses, the Trial Chamber noted that:

> "The Defence calls into issue the credibility of certain Prosecution witnesses because these individuals have allegedly been implicated in crimes under the jurisdiction of the court, or in domestic crimes, or that they were informants to the police, or admitted taking drugs. The Brima Defence specifically alleges that Witness George Johnson killed Brima's brother and that this was reason enough for the witness to "attempt to fabricate" evidence against the accused. A witness with a self-interest to serve may seek to inculpate others and exculpate himself, but it does not follow that such a witness is incapable of telling the truth. Hence, the mere suggestion that a witness might be implicated in the commission of crimes is insufficient for the Trial Chamber to discard that witness's testimony." [214]

130. With respect to the specific allegation that certain witnesses might have been induced to testify against the Appellant, the Trial Chamber held that:

> "The Trial Chamber is satisfied that these payments have been made in a transparent way and in accordance with the applicable Practice Direction. Allegations to the contrary are therefore without merit... Accordingly, the Trial Chamber has not given undue weight to these alleged 'incentives' when assessing the credibility of the witnesses in question."[215]

131. The Appeals Chamber is of the opinion that even though the Trial Chamber did not say that prosecution witnesses TF1-334, TF1-184 and TF1-167 (George Johnson) were accomplices, the Trial Chamber was mindful of Kamara's allegations that these witnesses may have been involved in criminal conduct or otherwise have reason to give false testimony.

132. For example, in addressing the issue of the credibility of witness TF1-334, the Trial Chamber noted that "[t]he witness revealed that he had sought and received an assurance from the Office of the Prosecutor that he would not be prosecuted for any crimes he had committed."[216] The Trial Chamber concluded, however, that he was a credible and reliable witness, that his evidence

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[214] *Ibid* at paras 124-125.
[215] *Ibid* at paras 128-130.
[216] *Ibid* at para. 358.

152. Kanu has not established that the Trial Chamber erred in its evaluation of the evidence of the witnesses or that its evaluation was unreasonable. His submission that the Trial Chamber tended to prefer the evidence of Prosecution witnesses, therefore, lacks merit.

153. With respect to Kanu's submission that the Trial Chamber attached less weight to the evidence of Defence witnesses because that evidence had not been put to the Prosecution witnesses in cross-examination, the Appeals Chamber notes that the Trial Chamber did take into consideration the fact that the Rules of the Special Court do not oblige a party to put its case to a witness.[242] The Trial Chamber considered that it would not be in the interests of justice to set aside the relevant Defence testimony, but rather proceeded to take this factor into account in assessing the weight to be attached to such evidence. The Appeals Chamber opines that the Trial Chamber's approach was in conformity with the Rules, which give it a discretion to apply the rules of evidence which best favour a fair determination of the matter before it.[243]

154. Kanu submits that the Trial Chamber failed to examine thoroughly the evidence of Prosecution witnesses TF1-033, TF1-334 and George Johnson, and to give sufficient reasons why it proceeded to accept their evidence in spite of material omissions and inconsistencies in their separate accounts. The Appeals Chamber reiterates that the Trial Chamber has a discretion to determine the weight to be given to discrepancies between a witness' testimony and his prior statements. It is for the Trial Chamber to determine whether discrepancies discredit a witness' testimony and, when faced with competing versions of events, to determine which one is more credible.

155. With respect to Kanu's submissions regarding Prosecution witness George Johnson, the mere fact that the Trial Chamber found his evidence relating to certain events to be unreliable does not warrant dismissal of his entire testimony. The same reasoning applies to the Appellant's

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[242] *Ibid* at paras 132-133. The Trial Chamber found that "[i]n contrast to its ICTY and ICTY counterparts, the Rules of the Special Court do not oblige a Party to put its case to a witness. As claimed by the Prosecution, the Defence did lead evidence in the Defence case which was not put to Prosecution witnesses in cross-examination.... In the circumstances the Trial Chamber considers that it would not be in the interests of justice to set aside the testimony of the relevant Defence witnesses. However, in assessing the weight to be given to such evidence, the Trial Chamber will take into account that the evidence was not put to the Prosecution witnesses, with the result that the Trial Chamber did not have the benefit of observing their reactions." ICTY Rule 90(H)(ii) and ICTR Rule 90(G)(ii) provide that "[i]n the cross-examination of a witness who is able to give evidence relevant to the case for the cross-examining party, counsel shall put to that witness the nature of the case of the party for whom that counsel appears which is in contradiction to the evidence given by the witness."

[243] Rule 89(B).

submission regarding Prosecution witness TF1-033. The Trial Chamber after evaluating that witness' evidence had concluded that:

> "While the witness appears on occasion to have exaggerated figures and was unclear on dates, he did not fabricate events. The Trial Chamber further found the witness truthful at trial, and is unwilling to conclude that his evidence overall is not credible or reliable."[244]

156. Kanu also submits that Prosecution witness TF1-033 did not mention the stay of the AFRC troops in Mansofinia, and that this was a significant omission on the part of the witness given that Mansofinia was the location where the AFRC troops restructured and reorganised for the advance to Freetown. The Trial Chamber noted that witness TF1-033 testified that AFRC troops were restructured at Yaya instead of at Mansofinia, and that the first stop of the troops after Yaya was Yiffin.[245] The Trial Chamber also observed that witness TF1-334 testified that the first stop of the troops after Mansofinia was at a village called "Yayah" and that witness George Johnson testified that "Yarya" was one of the villages the troops passed through on their way to Mansofinia.[246]

157. The Trial Chamber concluded that the reason for this inconsistency was that witness TF1-033's recollection of the location was mistaken, but that nonetheless his evidence generally corroborated that of witnesses TF1-334 and George Johnson. Furthermore, the Trial Chamber reasoned that its conclusion was supported by the fact that witness TF1-033 had also been confused in relation to the hometown of the Appellant Brima. The Appeals Chamber considers that it was reasonable for the Trial Chamber to arrive at this conclusion. The evidence of the three Prosecution witnesses in question i.e. TF1-033, TF1-334 and George Johnson on the troop restructure generally corroborated each other, and all of them mentioned a village called "Yarya" as the place at which the AFRC stopped either on the journey to Mansofinia, or during the advance to Freetown.[247] The alleged inconsistencies in the witnesses' accounts were therefore not so significant as to warrant a different factual finding by the Trial Chamber.

158. With respect to the evidence of Prosecution witness Gibril Massaquoi, the Trial Chamber observed that there were internal discrepancies in his evidence, as well as discrepancies between his

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[244] AFRC Trial Judgment, para. 366.
[245] *Ibid* at para. 584.
[246] *Ibid* at para. 584.
[247] Transcript, TF1-033, 11 July 2005, pp. 13-15; Transcript, TF1-334, 23 May 2005, p. 39; Transcript, George Johnson, 15 September 2005, p. 44.

C. Kamara's Fifth and Sixth Grounds of Appeal: Aiding and Abetting Crimes in Freetown and the Western Area

241. Kamara contends that the Trial Chamber erred in law and in fact by finding him guilty under Article 6(1) for aiding and abetting the mutilation of civilians in Freetown and other parts of the Western Area as well as the killing of civilians at Fourah Bay.[353] In particular, he argues that the Trial Chamber erroneously "applied a wider standard of liability instead of the stricter standard to find the Appellant guilty as an aider and abettor based on its analysis of the *mens rea* of aiding and abetting."[354] He submits that the Trial Chamber was required to find that he was aware that his acts assisted the specific crime committed by the principal perpetrator and that he was aware of the essential elements of that crime.[355]

1. Errors of Law

242. In discussing the *mens rea* for aiding and abetting, the Trial Chamber stated:

> "The *mens rea* required for aiding and abetting is that the accused knew that his acts would assist the commission of the crime by the perpetrator or that he was aware of the substantial likelihood that his acts would assist the commission of a crime by the perpetrator. However, it is not necessary that the aider and abettor had knowledge of the precise crime that was intended and which was actually committed, as long as he was aware that one of a number of crimes would probably be committed, including the one actually committed."[356]

243. The Appeals Chamber finds that the Trial Chamber was correct in its analysis. The Appeals Chamber of the ICTY in both *Blaškić* and *Simić* found that it was not necessary to prove that the aider and abettor knew the precise crime that was intended or actually committed by the principal perpetrator.[357] In both cases the ICTY Appeals Chamber held further that liability for aiding and abetting requires proof that the accused knew that one of a number of crimes would probably be committed, that one of those crimes was in fact committed, and that the accused was aware that his conduct assisted the commission of that crime.[358] The Appeals Chamber endorses this principle.

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[352] *See supra* paras 127-128, 153.
[353] Kamara Appeal Brief, para. 156.
[354] *Ibid* at para. 165.
[355] *Ibid* at para. 166.
[356] AFRC Trial Judgment, para. 776.
[357] *Simić* Appeal Judgment, para. 86; *Blaškić* Appeal Judgment, para. 50.
[358] *Ibid* at para. 50.

(d) Conflicting Testimony of Witness TF1-334 and Witness TF1-167

267. Kamara submits that the Trial Chamber failed to reconcile the conflicting testimony of witness TF1-334 and witness TF1-167 concerning the burning of five young girls inside a house in Karina in Bombali District.[415] He argues that in failing to provide a reasoned opinion explaining its evaluation of the conflicting evidence, the Trial Chamber failed to establish that it was proved beyond reasonable doubt that he is liable as a superior under Article 6(3) of the Statute.[416] Kamara had advanced similar arguments in respect of the testimony of witnesses TF1-167 and TF1-334 concerning an order that prisoners released from Pademba Road Prison should move to State House and that AFRC troops should burn houses and parastatals in Freetown.[417]

268. While it is preferable for the Trial Chamber to state its reasons for accepting the evidence of one witness over that of another when they are contradictory, the Trial Chamber is not obliged to refer to every piece of evidence on the trial record.[418] Rather it may only make findings of material facts that are essential to the determination of guilt in relation to a particular Count. The Appeals Chamber notes that the Trial Chamber has set out in its Judgment the standard of review for the evaluation of witness testimony.[419]

(e) Kamara's Responsibility as a Superior for Crimes in Freetown

269. The Appeals Chamber now turns to Kamara's final contention that the Trial Chamber erred in finding him responsible as a superior for crimes committed by AFRC troops in Freetown on the basis of evidence indicating that he was present at meetings and at headquarters at State House immediately following its capture on 6 January 1999.[420] Kamara asserts that such evidence does not form the basis upon which his liability as a superior could be assessed. The Appeals Chamber considers that Kamara misconstrues the Trial Chamber's findings. The Trial Chamber noted evidence that Kamara was present at meetings, but drew no inferences or conclusions from the evidence as the Prosecution did not lead evidence about Kamara's contributions at those meetings.[421] The Appeals Chamber finds this conclusion to be reasonable.

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[415] Kamara Appeal Brief, paras 213-217.
[416] *Ibid* at para. 215.
[417] *Ibid* at paras 220-222.
[418] *Čelebići* Appeal Judgment, para. 498; *Kupreškić* Appeal Judgment, para. 39; *Kordić* Appeal Judgment, para. 382.
[419] AFRC Trial Judgment, para. 111.
[420] Kamara Appeal Brief, para. 219.
[421] AFRC Trial Judgment, para. 1945.

The Trial Chamber held that Kanu "planned, organised and implemented the system to abduct and enslave civilians which was committed by AFRC troops in Bombali and Western Area." It further held that Kanu "had the direct intent to establish and implement the system of exploitation involving the three enslavement crimes, namely, sexual slavery, conscription and use of children under the age of 15 for military purposes, and abductions and forced labour."[453] The Trial Chamber was, therefore, satisfied beyond reasonable doubt that Kanu bore individual criminal responsibility under Article 6(1) for planning the commission of the above crimes in the Bombali District and the Western Area.[454]

299. Kanu argues that while the evidence shows that it fell upon him, as Chief of Staff, to manage the system of slavery within the AFRC faction, he could not be convicted on that basis for planning the crimes of sexual slavery, conscription and use of children for military purposes, and abductions and forced labour.[455] He further argues that at best, the evidence implicates him at the execution stage in the military training of children and the exploitation of women for sexual purposes.[456]

300. The Prosecution responds that Kanu's position of influence in the AFRC and his admission that he managed this system of slavery amply justify a reasonable inference that he was involved in planning the above crimes.[457]

2. Discussion

301. The Appeals Chamber concurs with the Trial Chamber's definition of planning under Article 6(1). The Trial Chamber stated that " 'planning' implies that one or several persons contemplate designing the commission of a crime at both the preparatory and execution phases."[458] Circumstantial evidence may provide proof of the existence of a plan, and an individual may incur responsibility for planning when his level of participation is substantial even though the crime may have actually been committed by another person.[459] According to the Trial Chamber, the *actus reus* for planning requires that "the accused, alone or together with others, designated [*sic*] the criminal

[453] AFRC Trial Judgment, para. 2095.
[454] *Ibid* at paras 2096-2098.
[455] Kanu Appeal Brief, para. 9.1-9.6.
[456] *Ibid* at para. 9.6.
[457] Response Brief of Prosecution, paras 6.61, 6.64, 6.66.
[458] AFRC Trial Judgment, para. 765.
[459] *Ibid* at para. 765.

conduct constituting the crimes charged."[460] While "there must be a sufficient link between the planning of a crime both at the preparatory and the execution phases," it is "sufficient to demonstrate that the planning was a factor substantially contributing to such criminal conduct."[461] The Trial Chamber further stated that the *mens rea* "requires that the accused acted with direct intent in relation to his or her own planning or with the awareness of the substantial likelihood that a crime would be committed ... in the execution of that plan."[462]

302. With regard to sexual slavery, the Trial Chamber found that:

> "In Bombali District the Accused Kanu designed and implemented a system to control abducted girls and women. All abducted women and girls were placed in the custody of the Accused. Any soldier who wanted an abducted girl or woman to be his "wife" had to 'sign for her'. The Accused informed his fighters that any problems with the women were to be immediately reported back to him, and that he would then monitor the situation. The Accused issued a disciplinary instruction ordering that any woman caught with another woman's husband should be beaten and locked in a box."[463]

On the basis of this evidence, the Trial Chamber was satisfied beyond reasonable doubt that Kanu was responsible for planning the commission of the crime of sexual slavery in the Bombali District and the Western Area. The Appeals Chamber agrees.

303. The Appeals Chamber now turns to the Trial Chamber's findings regarding the conscription and use of children for military purposes, as well as abductions and forced labour in the Bombali District and the Western Area. In the case of Bombali District, the Trial Chamber found that Kanu was in charge of forced military training of civilians at Camp Rosos and that children below the age of 15 years were among those forced to undergo training.[464] On the basis of this evidence, the Trial Chamber was satisfied beyond reasonable doubt that in the Bombali District Kanu was not only responsible for planning the conscription of children under the age of 15 into an armed group, but also for using such children to participate actively in hostilities, as well as for the crime of enslavement.

304. Regarding the Western Area, the Trial Chamber also found that Kanu "continued in his positions as Chief of Staff and commander in charge of civilians in Freetown and the Western Area" and that he had "approximately ten child combatants in his charge in Benguema following

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[460] *Ibid* at para. 766.
[461] *Ibid* at para. 768; *Kordić* Appeal Judgment, para. 26.
[462] AFRC Trial Judgment, para. 766.
[463] *Ibid* at para. 2092.
[464] *Ibid* at para. 2093.

Chamber is able to infer that the Trial Chamber must have failed to exercise its discretion properly."[471]

C. Excessive Sentences: Ground Twelve of Brima's Appeal and Ground Ten of Kamara's Appeal

310. Brima alleges that the Trial Chamber erred by imposing a global sentence of fifty years, that it is "excessively harsh and disproportionate," and that it is inconsistent with the sentencing guidelines of the ICTY and the ICTR.[472] Kamara's Tenth Ground of Appeal argues that the Trial Chamber was required by Article 19(1) of the Statute to consider the sentencing practices in the ICTR and the national courts of Sierra Leone.[473] Kamara further argues that a sentence of 45 years is inconsistent with the penalties that have been imposed by the ICTR.[474]

311. Article 19(1) of the Statute provides that the "Trial Chamber, as appropriate, shall have recourse to the practice regarding prison sentences in the International Criminal Tribunal for Rwanda and the national courts of Sierra Leone." The phrase "where appropriate" shows that the Trial Chamber has a discretion in determining when to have recourse to sentencing practices in the two courts.

D. Mitigating Factors: Ground Nine of Kamara's Appeal and Grounds Eleven, Fifteen, Sixteen, Seventeen and Eighteen of Kanu's Appeal

312. The Appellants make two distinct submissions with regard to mitigating factors. First, that the Trial Chamber did not consider mitigating factors and second, that particular mitigating factors were not given adequate weight.[475]

313. Rule 101(B) of the Rules provides that the "Trial Chamber shall take into account the factors mentioned in Article 19(2) of the Statute, as well as such factors as: ...any mitigating circumstances including the substantial cooperation with the Prosecutor by the convicted person

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[471] *Babić* Judgment on Sentencing Appeal, para. 44. *See also*, *Nikolić* Sentencing Appeal Judgment, para. 95. *Blagojević* Appeal Judgment para. 137; *Brđanin* Appeal Judgment, para. 500; *Brdjo* Sentencing Appeal Judgment, para. 9; *Galić* Appeal Judgment, para. 394.
[472] Brima Appeals Brief, paras 180-181.
[473] Kamara Appeals Brief, para. 246.
[474] *Ibid* at para. 249.
[475] Brima Appeal Brief, paras 184,182; Kamara Appeal Brief, para. 237, Kanue Appeal Brief, paras 11.1, 11.9.

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SPECIAL COURT FOR SIERRA LEONE

TRIAL CHAMBER II

Before: Justice Julia Sebutinde, Presiding Judge
Justice Richard Lussick
Justice Teresa Doherty

Registrar: Herman von Hebel

Date: 19 July 2007

Case No.: SCSL-04-16-T

SPECIAL COURT FOR SIERRA LEONE
RECEIVED
COURT MANAGEMENT
19 JUL 2007
NAME THOMAS GEORGE
SIGN
TIME 14:48

PROSECUTOR

Against

Alex Tamba BRIMA
Brima Bazzy KAMARA
Santigie Borbor KANU

SENTENCING JUDGEMENT

Office of the Prosecutor:
Christopher Staker
Karim Agha
Chile Eboe-Osuji
Anne Althaus

Defence Counsel for Alex Tamba Brima:
Kojo Graham
Glenna Thompson

Defence Counsel for Brima Bazzy Kamara:
Andrew Daniels
Mohamed Pa-Momo Fofanah

Defence Counsel for Santigie Borbor Kanu:
Geert-Jan Alexander Knoops
Agibola E. Manly-Spain
Carry Knoops

II. PRELIMINARY CONSIDERATIONS

6. The Kanu Defence objected to the documents annexed to the Prosecution Sentencing Brief on the grounds that (1) the Prosecution purported to introduce new evidence through these documents;[11] (2) the Prosecution did not comply with its disclosure obligations under the rules in relation to (Annex G); the expert report was not objective and the Defence was not in a position to call their own expert in rebuttal on such short notice;[12] (3) the introduction of new Prosecution evidence would amount to an abuse of process;[13] (4) the witness statements provided by the Prosecution are inadmissible, or alternatively, the Defence should have had an opportunity to cross-examine the proposed witnesses;[14] and (5) other material submitted by the Prosecution is irrelevant.[15]

7. In its oral arguments, the Prosecution submitted that it is allowed to introduce additional evidence at the sentencing stage. The Prosecution argued that since the Special Court has two distinct procedures it was not necessary for it to adduce such evidence at the trial stage.[16]

8. The Trial Chamber upholds the Defence objections and has not taken into consideration the documents annexed to the Prosecution Sentencing Brief.

9. The Trial Chamber recalls the general principle that only matters proved beyond reasonable doubt against the Accused are to be considered against him at the sentencing stage.[17] Aggravating circumstances must be proved beyond reasonable doubt[18], whilst mitigating circumstances need only be proved on a balance of probability.[19]

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[11] Kanu Sentencing Brief, para. 11.
[12] Kanu Sentencing Brief, para. 12-24.
[13] Kanu Sentencing Brief, para. 27.
[14] Kanu Sentencing Brief para. 31.
[15] Kanu Sentencing Brief, para. 33-42.
[16] Oral Submissions, Transcript 16 July 2007, p. 4-7.
[17] *Prosecutor v. Muhimana*, Case No. ICTR- 95-1B-T, Judgement and Sentence, 28 April 2005 ("*Muhimana* Trial Judgement"), para. 590; *Prosecutor v. Elizaphan and Gérard Ntakirutimana*, Case No. ICTR-96-10 & ICTR-96-17-T, Judgement and Sentence, 21 February 2003 ("*Ntakiturimana* Trial Judgement"), para. 893.
[18] *Prosecutor v. Tihomir Blaskić*, Case No. IT-95-14-A, Judgement, 29 July 2004 ("*Blaskić* Appeal Judgement"), para. 688.
[19] *Blaskić* Appeal Judgement, para. 697.

III. APPLICABLE LAW

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A. Applicable Provisions

10. Sentencing in the Special Court is regulated by the provisions of Article 19 of the Statute of the Special Court ("Statute") and Rule 101 of the Rules of Procedure and Evidence ("Rules"). Article 19 of the Statute provides:

> 1. The Trial Chamber shall impose upon a convicted person, other than a juvenile offender, imprisonment for a specified number of years. In determining the terms of imprisonment, the Trial Chamber shall, as appropriate, have recourse to the practice regarding prison sentences in the International Criminal Tribunal for Rwanda and the national courts of Sierra Leone.
>
> 2. In imposing the sentences, the Trial Chamber should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.
>
> 3. In addition to imprisonment, the Trial Chamber may order the forfeiture of the property, proceeds and any assets acquired unlawfully or by criminal conduct, and their return to their rightful owner or to the State of Sierra Leone.

Rule 101 of the Rules provides:

> (A) A person convicted by the Special Court, other than a juvenile offender, may be sentenced to imprisonment for a specific number of years.
>
> (B) In determining the sentence, the Trial Chamber shall take into account the factors mentioned in Article 19 (2) of the Statute, as well as such factors as:
>
> (i) Any aggravating circumstances;
>
> (ii) Any mitigating circumstances including the substantial cooperation with the Prosecutor by the convicted person before or after conviction;
>
> (iii) The extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served, as referred to in Article 9(3) of the Statute.
>
> (C) The Trial Chamber shall indicate whether multiple sentences shall be served consecutively or concurrently.
>
> (D) Any period during which the convicted person was detained in custody pending his transfer to the Special Court or pending trial or appeal, shall be taken into consideration on sentencing.

11. According to the above provisions the Trial Chamber is obliged to take into account such factors as the gravity of the offence and the individual circumstances of the convicted person. Aggravating and mitigating circumstances and the general practice regarding prison sentences in the International Criminal Tribunal for Rwanda (ICTR) and the domestic courts of Sierra Leone shall, where appropriate, be taken into account. These requirements are not exhaustive and the Trial

Chamber has the discretion to determine an appropriate sentence depending on the individual circumstances of the case.[20]

12. The Trial Chamber agrees with the holding of the ICTR Appeals Chamber in *Prosecutor v. Kambanda*, that "[...] the Statute is sufficiently liberally worded to allow for a single sentence to be imposed. Whether or not this practice is adopted is within the discretion of the Chamber".[21] The governing criteria is that the final or aggregate sentence should reflect the totality of the culpable conduct, or generally, that it should reflect the gravity of the offences and the overall culpability of the offender, so that it is both just and appropriate.[22] In the present case the Trial Chamber finds it is appropriate to impose a global sentence for the multiple convictions in respect of Brima, Kamara and Kanu.

B. Sentencing Objectives

13. The preamble of the United Nations Security Council Resolution 1315 (2000)[23] recognises that

> [...]in the particular circumstances of Sierra Leone, a credible system of justice and accountability for the very serious crimes committed there would end impunity and would contribute to the process of national reconciliation and to the restoration and maintenance of peace.[24]

14. Retribution, deterrence and rehabilitation have been considered as the main sentencing purposes in international criminal justice.[25]

15. Furthermore, international criminal tribunals have held that retribution is not to be understood as fulfilling a desire for revenge but rather as duly expressing the outrage of the national and international community at these crimes,[26] and that is meant to reflect a fair and balanced

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[20] *Prosecutor v. Momir Nikolić*, Case No. IT-02-60/1-A, Judgement on Sentencing Appeal, 8 March 2006, ("*Momir Nikolić* Appeal Sentencing Judgement"), para. 106: "Sentencing decisions are discretionary and turn on the particular circumstances of each case."

[21] *Kambanda* Appeal Judgement, para. 113

[22] *Čelebići* Appeal Judgement, paras. 429-430

[23] UN Sec Res. 1315(2000), 14 August 2000.

[24] UN Sec Res. 1315(2000), 14 August 2000, para. 7.

[25] See also *Prosecutor v. Zlatko Aleksovski,* Case No. IT-95-14/1-A, Judgement, 24 March 2000 ("*Aleksovski* Appeal Judgement"), para. 185; *Prosecutor v. Zejnil Delalić, Zdravko Mucić (aka "Pavo"), Hazim Delić and Esad Landžo (aka "Zenga")*, Case No. IT-96-21-A, Judgement, 20 February 2001 ("*Čelebići* Appeal Judgement"), para. 806; *see also Prosecutor v. Stevan Todorović,* Case No. IT-95-9/1-S, Sentencing Judgement, 31 July 2001 ("*Todorović* Sentencing Judgement"), paras 28-29; *Gacumbtsi* Trial Judgement, para. 335; *Semanza* Trial Judgement, para. 554; *Kambanda* Trial Judgement, para. 28.

[26] See also *Aleksovski* Appeal Judgement, para. 185; *Prosecutor v. Dragan Nikolić*, Case No. IT-94-2-S, Sentencing Judgement, 18 December 2003, ("*Dragan Nikolić* Sentencing Judgement"), para. 140, stating that retribution should solely be seen as: "an objective, reasoned and measured determination of an appropriate punishment which properly reflects the [...] culpability of the offender, having regard to the intentional risk-taking of the offender, the consequential harm caused by the offender, and the normative character of the offenders conduct. Furthermore, unlike vengeance, retribution incorporates a principle of restraint; retribution requires the imposition of a just and appropriate punishment, and nothing more", *R. v. M. (C.A.)* (1996) 1 S.C.R. 500, para. 80 (emphasis in original).

underlying criminal conduct;[34] the form and degree of participation of the Accused[35] or the specific role played by the Accused in the commission of the crime;[36] the degree of suffering, impact or consequences of the crime for the immediate victim in terms of physical, emotional and psychological effects;[37] the effects of the crime on relatives of the immediate victims and/or the broader targeted group;[38] the vulnerability of the victims;[39] and the number of victims.[40]

20. Where an Accused has been found liable as a commander pursuant to Article 6(3) of the Statute, two levels of consideration are necessary in determining the gravity of the offence: (1) the gravity of the underlying crime committed by a subordinate under the effective control of the Accused, and (2) the gravity of the Accused's own conduct in failing to prevent or punish the crimes committed by that subordinate.[41]

2. Aggravating Circumstances

21. The aggravating and mitigating circumstances to be taken into account by the Trial Chamber are not exhaustively set out in the Rules.[42] Thus, the Trial Chamber is tasked with the charge of weighing the individual circumstances of each case and has discretion to identify the relevant factors. The Trial Chamber may consider, for example,

> (i) the position of the accused, that is, his position of leadership, his level in the command structure, or his role in the broader context of the conflict [...]; (ii) the discriminatory intent or the discriminatory state of mind for crimes for which such a state of mind is not an element or ingredient of the crime; (iii) the length of time during which the crime continued; (iv) active and direct criminal participation, if linked to a high-rank position of command, the accused's role as fellow perpetrator, and the active participation of a superior in the criminal acts of subordinates; (v) the informed, willing or enthusiastic participation in crime; (vi) premeditation and motive; (vii) the sexual, violent, and humiliating nature of the acts and the vulnerability of the victims; (viii) the status of the victims, their youthful age and number, and the effect of the crimes on them; (ix) the character of the accused; and (x) the circumstances of the offences generally.[43]

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[34] *Blaskić* Appeal Chamber Judgement, para. 683; *Blagojević* Trial Judgement, para. 833.
[35] *Prosecutor v. Dario Kordić and Mario Čerkez,* Case No. IT-95-14/2-A, Judgement, 17 December 2004 ("Kordić Appeal Judgement"), para. 1061.
[36] *Blaskić* Appeal Judgement, para. 683, *Blagojević* Trial Judgement, para. 833.
[37] *Blaskić* Appeal Judgement, para. 683; *Blagojević* Trial Judgement, para. 833.
[38] *Blaskić* Appeal Judgement, para. 683; *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-T, Judgement, 5 December 2003 ("*Galić* Trial Judgement"), para. 758.
[39] *Blaskić* Appeal Judgement, para. 683.
[40] *Babić* Trial Judgement, para. 47; *Galić* Trial Judgement, para. 758.
[41] *Čelebići* Appeal Judgement, para. 732.
[42] SCSL RPE, Rule 101(B).
[43] *Blaskić* Appeal Judgement, para. 686 (citing *Čelebići* Appeal Judgement, para. 763); *Jokić* Sentencing Judgement, paras 61-62; *Tadić* Appeal Judgement, paras 55-56; *Vasiljević* Appeal Judgement, paras 172-173; *Vasiljević* Trial Judgement, para. 277; *Kunarac* Appeal Judgement, paras 356, 357; *Todorović* Trial Judgement, para. 57; *Todorović* Sentencing Judgement, para. 65; *Krstić* Trial Judgement, paras 708, 711-712; *Prosecutor v. Anto Furundžija,* Case No. IT-95-17/1-T, Judgement, 10 December 1998 ("*Furundžija* Trial Judgement"), para. 281; *Čelebići* Appeal Judgement, paras 736-737, 788; *Jelisić* Appeal Judgement, para. 86; *Kayishema* Appeal Judgement, para. 351; *Krstić* Appeal

22. The Trial Chamber may also consider the fact that attacks directed against protected persons were carried out in places of religious worship or sanctuary, to be an aggravating factor in sentencing.

23. Facts which go to proof of the gravity of the offence and facts which constitute aggravating factors may overlap.[44] The practice of some Trial Chambers has been to consider the gravity of the offence together with aggravating circumstances.[45] The Trial Chamber considers that, regardless of the approach, where a factor has already been taken into account in determining the gravity of the offence, it cannot be considered additionally as an aggravating factor and *vice versa*.[46] Similarly, if a factor is an element of the underlying offence, then it cannot be considered as an aggravating factor.[47]

24. The Trial Chamber may consider the abuse of a position of power by an accused held criminally responsible for a crime under Article 6(1) of the Statute to be an aggravating factor.[48] Where an accused has been found liable for the crimes of a subordinate under Article 6(3) of the Statute his/her mere position of command will not be considered by the Trial Chamber as an aggravating factor as it is an element of liability.[49] However, where it has been proved that an accused actively abused his/her command position or otherwise promoted, encouraged or participated in the crimes of his/her subordinates, such conduct may amount to an aggravating circumstance.[50]

3. Mitigating Circumstances

25. Under Rule 101(B) any substantial cooperation with the Prosecutor by the convicted person before or after conviction must be considered as a mitigating circumstance.[51] In addition, the Trial Chamber has the discretion to identify and weigh other mitigating factors according to the

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Judgement, para. 258; *Kunarac* Trial Judgement, paras 864, 866 867; *Kunarac* Appeal Judgement, para. 353; *Kunarac* Appeal Judgement, para. 355; *Furundžija* Trial Judgement, para. 283; *Tadić* Sentencing Judgement, para. 19.

[44] *Bralo* Trial Judgement, para. 27.

[45] *Gacumbitsi*, Trial Judgement, paras 58-59; *Prosecutor v. Ruggiu*, Case No. ICTR-97-32-I, Judgement and Sentence, 1 June 2000 ("Ruggiu Trial Jugement"), para. 48.

[46] *Deronjić* Appeal Judgement, paras 106-107.

[47] *Kordić* Appeal Judgement, para. 1089; *Blagojević* Trial Judgement, para. 849;*Blaskić* Appeal Judgement, para. 693.

[48] *Deronjić* Appeal Judgement, para. 67; *Babić* Appeal Judgement, para. 80; *Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović and Vladimir Šantić (aka "Vlado")*, Case No. IT-95-16-A, Judgement, 23 October 2001 ("*Kupreškić* Appeal Judgement"), para. 451.

[49] *Jokić* Appeal Judgement, para. 28; *Deronjić* Appeal Judgement, para. 67; *Kayishema* Judgement, at para. 15; *Babić* Sentencing Judgement, at para. 60.

[50] *Čelebići* Appeal Judgement, para. 736; *Obrenović* Trial Judgement, para. 99

[51] SCSL RPE, Rule 101 (B).

Leonean practice can only be considered as a guide but is not binding on the Trial Chamber.[57] It further refers to the *Serushago* Trial Chamber's assessment of mitigating circumstances in that case,[58] and cites a number of cases before the ICTY and ICTR in which high ranking officials convicted on numerous counts were given lighter sentences than those proposed by the Prosecutor in the instant case.[59]

30. The Kamara Defence notes that the Kamara was convicted of having ordered the killing of five girls in Karina, Bombali District, and submits that the average sentencing period at the ICTR for the offences of murder and extermination has been between ten and fifteen years.[60] It further argues that Sierra Leonean practice on sentencing for murder is not binding on the Trial Chamber.[61]

31. The Kanu Defence proposes that the Trial Chamber should take into consideration the sentencing practice of the ICTY, as it is a basis for ICTR practice, and may provide the Trial Chamber with additional guidance.[62] The Prosecution would appear to agree as it provided a chart on ICTY sentencing practice in Annex B of its Sentencing Brief. The Kanu Defence contends that in Sierra Leone, a sentence of life imprisonment can be imposed for a range of crimes including "rape, burglary and gilding coinage"[63] while the ICTR has only imposed life sentences on individuals convicted of the crime of genocide.[64] In oral arguments, the Kanu Defence further submitted that Sierra Leonean sentencing practice is only relevant for convictions under Article 5 of the Statute which deals with crimes under Sierra Leonean law, which crimes were not charged in the indictment.[65]

B. Deliberations

(a) Sentencing Practice in Sierra Leone

32. Article 19(1) states that as appropriate, the Trial Chamber shall have recourse to the practice regarding prison sentences in the national courts of Sierra Leone as and when appropriate. This does not oblige the Trial Chamber to conform to that practice, but rather to take into account

[57] Brima Sentencing Brief, paras 10 and 11.
[58] Brima Sentencing Brief, para. 42.
[59] Brima Sentencing Brief, paras 50-56 citing the cases: *Blaskić* Trial Judgement, para. 808; *Prosecutor v. Mladen Naletilić (aka "Tuta") and Vinko Martinović (aka "Štela")*, Case No. IT-98-34-T, Judgement, 31 March 2003 ("*Naletilić* Trial Judgement"), para. 74 before the ICTY and *Akayesu* before the ICTR.
[60] Kamara Sentencing Brief, paras 22-28. citing *Imanishimwe, Akayesu, Ntakirutimana, Muvunyi, Serushago* at the ICTR and *Kordić* at the ICTY.
[61] Kamara Sentencing Brief, para. 29.
[62] Kanu Sentencing Brief, para. 57.
[63] Kanu Sentencing Brief para. 72.
[64] Kanu Sentencing Brief, para. 72.
[65] Transcipt, 16 July 2007, p. 76.

that practice as and when appropriate.[66] The Trial Chamber finds that it is not appropriate to adopt the practice in the present case since none of the Accused was indicted for, nor convicted of, offences under Article 5 of the Statute.

(b) Sentencing Practice at other International Tribunals

33. Article 19(1) of the Statute provides that the Trial Chamber shall, where appropriate, have recourse to the practice regarding prison sentences in the ICTR in determining the terms of imprisonment. The Trial Chamber will also consider the sentencing practice of the ICTY as its statutory provisions are analogous to those of the Special Court and the ICTR. The Trial Chamber is therefore guided by the sentencing practices at both the ICTR and the ICTY. The Chamber further notes that the pronouncement of global sentences is a well established practice at those tribunals.[67] The mitigating and aggravating factors that the Trial Chamber has considered in the instant case have also been widely considered by the ICTR and ICTY.[68]

V. DETERMINATION OF SENTENCES

34. Brima, Kamara and Kanu have been found responsible for some of the most heinous, brutal and atrocious crimes ever recorded in human history. Innocent civilians – babies, children, men and women of all ages – were murdered by being shot, hacked to death, burned alive, beaten to death. Women and young girls were gang raped to death. Some had their genitals mutilated by the insertion of foreign objects. Sons were forced to rape mothers, brothers were forced to rape sisters. Pregnant women were killed by having their stomachs slit open and the foetus removed merely to settle a bet amongst the troops as to the gender of the foetus. Men were disembowelled and their intestines stretched across a road to form a barrier. Human heads were placed on sticks on either side of the road to mark such barriers. Hacking off the limbs of innocent civilians was commonplace. The victims were babies, young children and men and women of all ages. Some had

[66] See also *Serushago* Appeal Judgement, para. 30; Semanza Appeal Judgement, para. 377.
[67] *Kambanda* Appeal Judgement, para. 113. *Gacumbitsi* Trial Chamber Judgement, para. 356. *Nahimana* Trial Judgement, paras 1105, 1106, 1108. *Muvunyi*, Trial Chamber Judgement, para. 545; Simba Trial Judgement, para. 445.
[68] *Blaskić* Judgement, *supra* note 22, at para. 686 (citing *Čelebići* Appeal Judgement, para. 763); *Jokić* Sentencing Judgement, paras 61-62; *Tadić* Appeal Judgement, paras 55-56; *Vasiljević* Appeal Judgement, paras 172-173; *Vasiljević* Trial Judgement, para. 277; *Kunarac* Appeal Judgement, para. 357; *Todorović* Trial Judgement, para. 57; *Kunarac* Appeal Judgement, para. 356; *Todorović* Sentencing Judgement, para. 65; *Krstić* Trial Judgement, para. 708; *Furundžija* Trial Judgement, para. 281; *Čelebići* Appeal Judgement, paras 736-737; *Jelisic* Appeal Judgement, para. 86; *Kayishema* Appeal Judgement, para. 351; *Krstić* Trial Judgement, paras 711-712; *Krstić* Appeal Judgement, para. 258; *Kunarac* Trial Judgement, para. 867, and *Kunarac* Appeal Judgement, para. 353; *Kunarac et al.* Trial Judgement, para.

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SCSL-04-16-T
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SPECIAL COURT FOR SIERRA LEONE

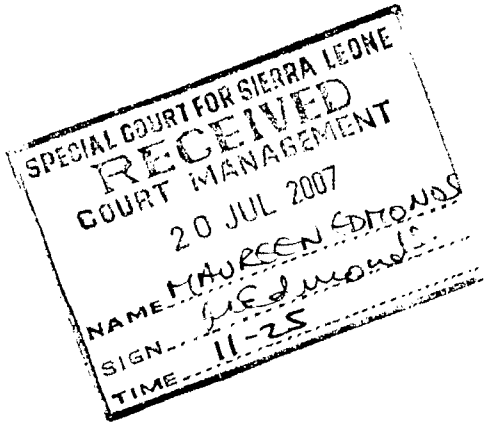
TRIAL CHAMBER II

Before: Justice Julia Sebutinde, Presiding Judge
Justice Richard Lussick
Justice Teresa Doherty

Registrar: Herman von Hebel

Date: 20 June 2007

Case No.: SCSL-04-16-T



PROSECUTOR

Against

Alex Tamba BRIMA
Brima Bazzy KAMARA
Santigie Borbor KANU

JUDGEMENT

Office of the Prosecutor:
Karim Agha
Christopher Staker
Charles Hardaway
Lesley Taylor
Melissa Pack
Vincent Wagona
Shyamala Alagendra

Defence Counsel for Alex Tamba Brima:
Kojo Graham
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Defence Counsel for Brima Bazzy Kamara:
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Carry Knoops

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Revised pursuant to Corrigendum issued by the Trial Chamber on 19 July 2007.

(a) Discrepancies Between the Evidence of Various Witnesses, or Between the Evidence of a Particular Witness and a Previous Statement

110. It is the responsibility of the Trial Chamber to resolve any inconsistencies that may arise within and/or amongst witnesses' testimonies. In doing so, the Trial Chamber has discretion to evaluate any inconsistencies, to consider whether the evidence taken as a whole is reliable and credible and to accept or reject the 'fundamental features' of the evidence.[168] In this context, the Trial Chamber endorses the statement of the ICTY Appeals Chamber in *Kupreškić* that

> [t]he presence of inconsistencies in the evidence does not, *per se*, require a reasonable Trial Chamber to reject it as being unreliable. Similarly, factors such as the passage of time between the events and the testimony of the witness, the possible influence of third persons, discrepancies, or the existence of stressful conditions at the time the events took place do not automatically exclude the Trial Chamber from relying on the evidence.[169]

111. A number of witnesses gave evidence of horrific events in which they personally suffered the amputation of one or both arms, or were raped, or saw such atrocities inflicted on members of their families, or who witnessed family members being tortured and killed. Recounting this evidence in court evoked strong emotional reactions in all of these witnesses, many of whom broke down in tears. As a result, the Trial Chamber took the view that there may have been memories which prevented the witnesses from giving a full account of their experiences to the Court, or which prevented them from articulating in detail what they had endured.[170] The Trial Chamber also took into consideration the possibility that any observations made by the witnesses at the relevant time may have been affected by terror or stress[171]. While these circumstances do not necessarily mean that such evidence is not reliable, the Trial Chamber has weighed it with particular scrutiny.

112. During the trial, both the Prosecution and the Defence made use of pre-trial statements from witnesses – and sometimes of interview notes – for the purpose of cross-examination. In many instances both parties alleged inconsistencies and contradictions between the pre-trial statements of witnesses and their evidence at trial. The Trial Chamber accepts that the information given in such a statement will not always be identical to the witness's oral evidence. This may be because the witness was asked questions at trial not previously asked, or may in his or her testimony remember details previously forgotten[172]. The Trial Chamber has also taken into account that the six to eight years that have passed since the events in the Indictment have, in all likelihood, affected the

[168] *Kupreškić* Appeal Judgement, para. 31.
[169] *Ibid.*
[170] See *Čelebići* Appeal Judgement, para. 496.
[171] *Limaj* Trial Judgement, para. 15.
[172] *Brđanin* Trial Judgement, para. 26.

altered his findings. For instance, he was reluctant to accept the new evidence of witness TRC-01 and other Defence witnesses which contradicted his own position.[1083]

551. Ultimately, however, the Trial Chamber considers both military expert reports to be of limited use in examining the organisational structure of the AFRC faction. This is firstly because their reports are primarily relevant for only a short temporal and geographic period in the Indictment, as both experts focused on the organisation of the AFRC troops from Colonel Eddie Town to Freetown (November 1998 through January 1999). However, throughout the Indictment period (May 1997 through January 2000), the AFRC underwent significant organisational changes at certain key points and it is therefore erroneous to assume that the structure at one point in time is reflective of the structure throughout the entire period.

552. In addition, the Trial Chamber found the methodology used by the experts of little assistance. Both experts examined the AFRC with a view to determining whether it was a traditional military organisation, using a four pronged test devised by Colonel Iron.[1084]

553. The experts defined a number of structural features of traditional military organisations which, in the Trial Chamber's view, were present in the AFRC in only a rudimentary form. For example, the experts discussed the importance of the span of command, which refers to the number of units or sub-units at any one level that one person might command.[1085] Colonel Iron explained that the establishment of sub-units at each hierarchical level of command increases the control that each individual commander possesses.[1086] The evidence indicates that AFRC troops were divided into battalions, but the number of battalions varied at different times and the number of men in each battalion appears to have fluctuated.[1087] In a regular army, a "staff" is appointed to assist the commander.[1088] While SAJ Musa established some kind of staff structure at Colonel Eddie Town,[1089] the evidence establishes that the AFRC officers lacked sufficient military training to properly fulfil staff functions.[1090]

[1083] Major-General Prins, Transcript 24 October 2006, p. 53.
[1084] Major-General Prins adopted Colonel Iron's methodology: Exhibit D-36, Prins Report para. 10. The four elements of the test were whether the AFRC had a recognisable military hierarchy and structure; whether it exhibited the characteristics of a traditional military organisation; whether there was coherent linkage between strategic, operational and tactical levels; and whether command was effective.
[1085] Exhibit D-36, Prins Report, para. 66; Exhibit P-36, Iron Report, para. B3.1.
[1086] Iron report, p. B-2, para. B3.1.
[1087] TF1-334, Transcript 16 June 2005, p. 48.
[1088] 'Staff' is the generic term for those officers and other personnel who support and assist the commander: Exhibit P-36, Iron Report, paras B3.2 – B3.7; Colonel Iron, Transcript 12 October 2005, p. 18.
[1089] Exhibit D-36, Prins Report, paras 71 and 89.
[1090] Exhibit D-36, Prins Report, paras 74-80, 89; Colonel Iron, Transcript 13 October 2005, p. 83; George Johnson, Transcript 15 September 2005, p. 10.

not be associated with, or acting on behalf, a State. To give the protection against crimes relating to child soldiers its intended effect, it is justified not to restrict 'conscription' to the prerogative of States and their legitimate Governments, as international humanitarian law is not grounded on formalistic postulations.[1427] Rather, the Trial Chamber adopts an interpretation of 'conscription' which encompasses acts of coercion, such as abductions[1428] and forced recruitment[1429], by an armed group against children, committed for the purpose of using them to participate actively in hostilities.

735. 'Enlistment' entails accepting and enrolling individuals when they volunteer to join an armed force or group.[1430] Enlistment is a voluntary act, and the child's consent is therefore not a valid defence.[1431]

736. 'Using' children to "participate actively in the hostilities" encompasses putting their lives directly at risk in combat.[1432] As a footnote attached to the Preparatory Conference on the establishment of the International Criminal Court states

> The words "using" and "participate" have been adopted in order to cover both participation in combat and also active participation in military activities linked to combat such as scouting, spying, sabotage and use of children as decoys, couriers or at military checkpoints."[1433]

737. It is the Trial Chamber's view that the use of children to participate actively in hostilities is not limited to participation in combat. An armed force requires logistical support to maintain its operations. Any labour or support that gives effect to, or helps maintain, operations in a conflict constitutes active participation. Hence carrying loads for the fighting faction, finding and/or acquiring food, ammunition or equipment, acting as decoys, carrying messages, making trails or finding routes, manning checkpoints or acting as human shields are some examples of active participation as much as actual fighting and combat.

738. The elements of 'armed forces or groups' entail that the armed forces or groups must be under responsible command, which entails a degree of organization which should be such as to

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[1427] See *Tadić* Appeal Judgement, para. 96.
[1428] See Secretary-General's Report on the Establishment of the Special Court, UN Doc. S/2000/915, para. 18: "While the definition of the crime as 'conscripting' or 'enlisting' connotes an administrative act of putting one's name on a list and formal entry into the armed forces, the elements of the crime under the proposed Statute of the Special Court are: (a) abduction, which in the case of children of Sierra Leone was the original crime and is in itself a crime under common article 3 of the Geneva Conventions; [...]". This proposal was however rejected by the Security Counsel.
[1429] See *Prosecutor v. Thomas Lubanga Dyilo*, Case No. ICC-01/04-01/06, Decision on the confirmation of charges, 29 January 2007 ("*Dyilo* Confirmation Decision"), para. 246.
[1430] Dissenting Opinion of Justice Robertson to Appeals Chamber Decision on Child Recruitment, para. 5; see also French Code of National Service, Art. L111-3; Military Selective Act (US), 10 USC ¶ 513.
[1431] *Dyilo* Confirmation Decision, para. 247.
[1432] Dissenting Opinion of Justice Robertson to Appeals Chamber Decision on Child Recruitment, para. 5.
[1433] Report of the Preparatory Committee on the Establishment of an International Criminal Court, A/CONF. 183/2/Add. 1, 14 April 1998, p. 21 at footnote 12.

774. The Trial Chamber agrees with the Prosecution that an accused may be responsible for "reissuing illegal orders", *i.e.*, for receiving a criminal order from a superior and, in turn, instructing subordinates to act upon it.[1497]

(e) Aiding and abetting

775. The *actus reus* of 'aiding and abetting' requires that the accused gave practical assistance, encouragement, or moral support which had a substantial effect on the perpetration of a crime.[1498] "Aiding and abetting" may be constituted by contribution to the planning, preparation or execution of a finally completed crime.[1499] Such contribution may be provided directly or through an intermediary[1500] and irrespective of whether the participant was present or removed both in time and place from the actual commission of the crime.[1501] Mere presence at the scene of crime without preventing its occurrence does not *per se* constitute aiding and abetting.[1502]. However, the presence at a crime scene of a person who is in a position of authority may be regarded as an important indication for encouragement or support.[1503]

776. The *mens rea* required for aiding and abetting is that the accused knew that his acts would assist the commission of the crime by the perpetrator or that he was aware of the substantial likelihood that his acts would assist the commission of a crime by the perpetrator. However, it is not necessary that the aider and abettor had knowledge of the precise crime that was intended and which was actually committed, as long as he was aware that one of a number of crimes would probably be committed, including the one actually committed.[1504]

777. The Prosecution contends that a "persistent failure to prevent or punish crimes by subordinates over time may also constitute aiding or abetting."[1505] The Trial Chamber agrees that, while such failure entails a superior's responsibility under Article 6(3) of the Statute, it may also be a basis for his liability for aiding and abetting, subject to the *mens rea* and *actus reus* requirements being fulfilled.[1506]

[1497] Prosecution Final Brief, para. 423, referring to *Kupreškić* Trial Judgement, para. 862.
[1498] *Blaškić* Appeal Judgement, para.46.
[1499] *Blaškić* Appeal Judgement, paras 45, 48; *Prosecutor v. Jean de Dieu Kamuhanda*, Case No. ICTR-99-54A-T, Judgement, 23 January 2003 ("*Kamuhanda* Trial Judgement"), para. 597; Orić Trial Judgement, para. 282.
[1500] *Limaj* Trial Judgement, para. 516; *Orić* Trial Judgement, para. 282.
[1501] *Orić* Trial Judgement, para. 282; *Blaškić* Appeal Judgement, para. 48.
[1502] *Orić* Trial Judgement, para. 283.
[1503] *Kayishema* Appeal Judgement, para. 201; *Orić* Trial Judgement, para. 283; see also *Aleksovski* Trial Judgement, para. 65; *Kajelijeli* Trial Judgement, para. 769; see also Brima Final Brief, para. 92; Kamara Final Brief, para. 31.
[1504] *Blaškić* Appeal Judgement, para. 50.
[1505] Prosecution Final Brief, para. 431.
[1506] On the relationship between Article 6(1) and 6(3), see para. 800 *infra*.

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TRIAL CHAMBER II

Before: Justice Teresa Doherty, Presiding Judge
Justice Richard Lussick
Justice Julia Sebutinde

Registrar: Robin Vincent

Date: 28 July 2005

PROSECUTOR Against **Alex Tamba Brima**
Brima Bazzy Kamara
Santigie Borbor Kanu
(Case No.SCSL-04-16-T)

DECISION ON JOINT DEFENCE MOTION FOR GENERAL ORDERS PURSUANT TO RULE 54

Office of the Prosecutor:
Luc Côté
Lesley Taylor
James Hodes

Defence Counsel for Alex Tamba Brima:
Kojo Graham
Glenna Thompson

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Defence Counsel for Brima Bazzy Kamara:
Andrew Daniels
Mohamed Pa-Momo Fofanah

Defence Counsel for Santigie Borbor Kanu:
Geert-Jan Alexander Knoops
Carry Knoops
Abibola E. Manly-Spain

III. DELIBERATIONS

19. Rule 54 states:

> *"At the request of either party or of its own motion, a Judge or a Trial Chamber may issue such orders, summonses, subpoenas, warrants and transfer orders as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial".*

20. The Rule is a general rule in unambiguous language. Clearly, the test for whether the Trial Chamber ought to issue the orders sought by the Defence, is whether to do so is necessary (not simply useful or helpful) for the purposes of an investigation or for the preparation or conduct of the trial.[4]

21. The relief sought by the Motion is based on events alleged to have occurred on two dates, 6 April, 2005, when a group of 5 soldiers and ex-soldiers visited the Special Court, and 23 April 2005, when Military Police searched the houses of a potential witness and a clerk to one of the Defence Counsel. From what Defence Counsel told the Court on 26 April 2005, it is probable that the potential witness involved in the latter incident was one of the group of 5 involved in the earlier incident.[5]

Incident on 6 April, 2005.

22. According to the Defence, the group of 5 soldiers and ex-soldiers were denied access to the detainees and have since refused to visit again because of the way they were treated by Special Court security.

23. Considering all the facts available, we were unable to find anything to justify the claim that they were refused access to the detainees. In fact, they were permitted to visit the Special Court[6], but when they asked to see the detainees they were asked to fill out an application and wait for approval[7]. That requirement is not unreasonable and is well within the powers of the Chief of Detention. In fact, it would be unreasonable for any visitor to expect to be shown a red carpet straight through to the Detention Facility without having to undergo any formalities.

24. Under Rule 41 of the Rules of Detention, the Chief of Detention, in consultation with the Registrar, has the power to impose such restrictions and supervision on visits to detainees as he may deem necessary in the interests of the administration of justice or the security and good order of the Detention Facility. All visitors are obliged to comply with the separate requirements of the visiting regime of the Detention Facility, which may include personal searches, and any person who refuses to comply with such requirements shall be refused access.

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[4] See *Prosecutor v. Delalic et al.*, Case No. No. IT-96-21-T, Decision of the President on the Prosecutor's Motion for the Production of Notes Exchanged between Zejnil Delalic and Zdravko Mucic, 11 November 1996; see also Jones & Powles, International Criminal Practice 3rd. Edition, at para. 8.4.3.

[5] See transcript 26 April 2005, page3 lines 16 - 19.

[6] See statement of Claire Carlton-Hanciles, Annex C, and copy of email from Acting Chief of Security, Annex D to Motion.

[7] See copy of email from Acting Chief of Security, Annex D to Motion.

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SCSL

SPECIAL COURT FOR SIERRA LEONE

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THE TRIAL CHAMBER

Before:	Judge Bankole Thompson, Presiding Judge Judge Benjamin Mutanga Itoe Judge Pierre Boutet
Registrar:	Robin Vincent
Date:	1 April 2004

PROSECUTOR Against Alex Tamba Brima
Brima Bazzy Kamara
Santigie Borbor Kanu
(Case No. SCSL-04-16-PT)

DECISION AND ORDER ON DEFENCE PRELIMINARY MOTION ON DEFECTS IN THE FORM OF THE INDICTMENT

Office of the Prosecutor:
Luc Côté
Robert Petit

Defence Counsel for Alex Tamba Brima:
Terence Terry

Defence Counsel for Brima Bazzy Kamara:
Ken Fleming

Defence Counsel for Santigie Borbor Kanu:
Geert-Jan Alexander Knoops

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light of the several challenges to the indictment raised by the Defence, this Trial Chamber deems it necessary to recall, with emphasis, its major judicial focus as regards defects in the form of indictments in the context of international criminality. The Trial Chamber's focus is that:

> where the allegations relate to ordinary or conventional crimes within the setting of domestic or national criminality, the degree of specificity required for pleading the indictment may be much greater than it would be where the allegations relate to unconventional or extraordinary crimes for example, mass killings, mass rapes and wanton and widespread destruction of property (in the context of crimes against humanity and grave violations of international humanitarian law) within the setting of international criminality.[19]

20. The Trial Chamber wishes to observe that the same general judicial focus is shared by our sister tribunals ICTY and ICTR. Admittedly, how each tribunal applies this judicial approach to individual cases of alleged defects in the form of the indictment must, and will, necessarily vary with the particular context, specific parameters of the criminal activities forming the substrata of the allegations charged in the indictment, and the totality of the circumstances as alleged.

21. Given the frequent citation before the Trial Chamber of ICTY and ICTR case-law authorities for the Chamber's guidance as the interpretation of general principles of law in the context of international criminal adjudication, largely due to the nascent character of the Special Court's evolving jurisprudence, this Trial Chamber deems it necessary to comment on this forensic trend.

22. In this connection, the Trial Chamber emphasises that its application of the ICTY and ICTR jurisprudence is not due to a statutory imperative predicated upon a binding relationship of these UN Security Council-established International Criminal Tribunals on the Special Court; indeed, the Statute of the Special Court specifies that the Appeals Chamber of the Special Court shall be "guided" by, and not bound by, decisions of the Appeals Chamber of the two International Tribunals.[20] There is, however, a special relationship envisioned between the Special Court and the

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magnitude on which the acts or events allegedly took place, (iv) the circumstances under which the crimes were allegedly committed, (v) the duration of time over which the said acts or events constituting the crimes occurred, (vi) the time span between the occurrence of the events and the filing of the indictment, (vii) the totality of the circumstances surrounding the commission of the alleged crimes."

[19] *Sesay* Decision, para. 9.

[20] Article 20(3) of the Statute of the Special Court. See also, Report of the Secretary-general on the establishment of a Special Court for Sierra Leone, S/2000/915, 4 October 2000 ("Report of the Secretary-General on Special Court"), paras 40-46 (on the proposal of sharing one Appeals Chamber between the International Tribunals and the Special Court). Paragraph 41 is particularly instructive: "While in theory the establishment of an overarching Appeals Chamber as the ultimate judicial authority in matters of interpretation and application of international humanitarian law offers a guarantee of developing a coherent body of law, in practice, the same result may be achieved by linking the jurisprudence of the Special Court to that of the International Tribunals, without imposing on the shared Appeals Chamber the financial and administrative constraints of formal institutional link."

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SCSL-04-14-A
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SPECIAL COURT FOR SIERRA LEONE

IN THE APPEALS CHAMBER

Before:	Justice George Gelaga King, Presiding Judge Justice Emmanuel Ayoola Justice Renate Winter Justice Raja Fernando Justice Jon M. Kamanda
Registrar:	Herman von Hebel
Date:	28 May 2008

PROSECUTOR **Against** MOININA FOFANA
ALLIEU KONDEWA
(Case No.SCSL-04-14-A)

JUDGMENT

Office of the Prosecutor:
Stephen Rapp
Christopher Staker
Karim Agha
Joseph Kamara
Régine Gachoud
Elisabeth Baumgartner
Bridget Osho
Francis Banks-Kamara

Defence Counsel for Moinina Fofana:
Wilfred Davidson Bola-Carrol
Mohamed Pa-Momo Fofana

Defence Counsel for Allieu Kondewa:
Yada Williams
Osman Jalloh

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33. **In regard to errors of fact**: On appeal where errors of fact are alleged also pursuant to Article 20 of the Statute and Rule 106 of the Rules, the Appeals Chamber will not lightly overturn findings of fact reached by a Trial Chamber. Where it is alleged that the Trial Chamber committed an error of fact, the Appeals Chamber will give a margin of deference to the Trial Chamber that received the evidence at trial. This is because it is the Trial Chamber that is best placed to assess the evidence, including the demeanour of witnesses. The Appeals Chamber will only interfere in those findings where no reasonable trier of fact could have reached the same finding or where the finding is wholly erroneous.[62] The Appeals Chamber applies the same reasonableness standard to alleged errors of fact regardless of whether the finding of fact was based on direct or circumstantial evidence.[63]

34. The Appeals Chamber adopts the statement of general principle contained in the ICTY Appeals Chamber decision in *Kupreškić*, as follows:

> ". . . the task of hearing, assessing and weighing the evidence presented at trial is left primarily to the Trial Chamber. Thus, the Appeals Chamber must give a margin of deference to a finding of fact reached by a Trial Chamber. Only where the evidence relied on by the Trial Chamber could not have been accepted by any reasonable tribunal of fact or where the evaluation of the evidence is wholly erroneous may the Appeals Chamber substitute its own finding for that of the Trial Chamber."[64]

35. **In regard to procedural errors**: Although not expressly so stated in Article 20 of the Statute, not all procedural errors vitiate the proceedings. Only errors that occasion a miscarriage of justice would vitiate the proceedings. Such are procedural errors that would affect the fairness of the trial. By the same token, procedural errors that could be corrected or waived or ignored (as immaterial or inconsequential) without injustice to the parties would not be regarded as procedural errors occasioning a miscarriage of justice.

Tadić, IT-94-1-A, International Criminal Tribunal for the former Yugoslavia, Appeals Chamber, Judgement, 15 July 1999, para. 247 [*Tadić* Appeal Judgement].

[62] *Kupreškić* Appeal Judgement, para. 30. *Prosecutor v. Ntakirutimana*, ICTR-96-10-A & ICTR-96-17-A, International Criminal Tribunal for Rwanda, Appeals Chamber, Judgement, 13 December 2004, para. 12 [*Ntakirutimana* Appeal Judgement].

[63] *See Galić* Appeal Judgement, para. 9, fn. 21; *Stakić* Appeal Judgement, para. 219; *Prosecutor v. Delalić et al.*, IT-96-21-A, International Criminal Tribunal for the former Yugoslavia, Appeals Chamber, Judgement, 20 February 2001, para. 458 [*Čelebići* Appeal Judgement]. Similarly, the standard of proof at trial is the same regardless of the type of evidence, direct or circumstantial.

[64] *Kupreškić* Appeal Judgement, para. 30.

"encouragement" and "moral support" are two forms of conduct which may lead to criminal responsibility for aiding and abetting a crime.[156]

72. The Appeals Chamber agrees that "encouragement" and "moral support" may constitute the *actus reus* and that acts of aiding and abetting can be made at a time and place removed from the actual crime.

73. In regard to the *actus reus* for aiding and abetting, the Trial Chamber found that Kondewa's speech at the First Passing Out Parade had a substantial effect on the perpetration of the crimes in Tongo.[157] The Appeals Chamber recalls that the Trial Chamber found that at the First Passing Out Parade Norman instructed the Kamajors "to kill captured enemy combatants and 'collaborators' to inflict physical suffering or injury upon them and to destroy their houses."[158] After Norman and Fofana spoke "all the fighters looked at Kondewa, admiring him as a man with mystic powers, and he made the last comment saying that the time for surrender of the rebels had long been exhausted and that they did not need any surrendered rebels."[159] The Trial Chamber then found that in uttering these words Kondewa effectively supported Norman's instructions and encouraged the Kamajors to execute Norman's unlawful orders.[160] The Trial Chamber also noted that no fighter would go to war without Kondewa's blessing because they believed that Kondewa transferred his mystical powers to commit such acts.[161]

74. In addition to his spiritual responsibilities, Kondewa was, together with Norman and Fofana, the three people regarded as what was referred to as the "Holy Trinity" at Base Zero; the three of them were the key and essential components of the leadership structure[162] and were the three people

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[156] *Tadić* Appeal Judgement, para. 229; *Prosecutor v. Aleksovski*, IT-95-14/1-A, International Criminal Tribunal for the former Yugoslavia, Appeals Chamber, Judgement, 24 March 2000, para. 162 [*Aleksovski* Appeal Judgement]; *Prosecutor v. Vasiljević*, IT-98-32-A, International Criminal Tribunal for the former Yugoslavia, Appeals Chamber, Judgement, 25 February 2004, para. 102 [*Vasiljević* Appeal Judgement]; *Blaškić* Appeal Judgement, para. 48; *Prosecutor v. Kvočka et al.*, IT-98-30/1-A, International Criminal Tribunal for the former Yugoslavia, Appeals Chamber, Judgement, 28 February 2005, para. 89 [*Kvočka* Appeal Judgement]; *Prosecutor v. Simić*, IT-95-9-A, International Criminal Tribunal for the former Yugoslavia, Appeals Chamber, Judgement, 28 November 2006, para. 85 [*Simić* Appeal Judgement]; *Prosecutor v. Brđanin*, IT-99-36-A, International Criminal Tribunal for the former Yugoslavia, Appeals Chamber, Judgement, 3 April 2007, para. 277 [*Brđanin* Appeal Judgement]; *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-A, International Criminal Tribunal for Rwanda, Appeals Chamber, Judgement, 1 June 2001, paras 201-202.

[157] CDF Trial Judgment, para. 736.

[158] *Ibid* at para. 737.

[159] *Ibid* at para. 735.

[160] *Ibid*.

[161] *Ibid*.

[162] *Ibid* at para. 337.

who according to the Trial Chamber actually made the decisions and nobody could make a decision in their absence.[163]

75. Even though the First Passing Out Parade in December 1997 was temporally and geographically removed from the second and third attacks on Tongo Town, the Appeals Chamber observes that one of the purposes of the Passing Out Parade was for Norman to give instructions to the Kamajors for the second and third attacks on Tongo Town,[164] not just instructions concerning unlawful acts. For this reason temporal and geographic remoteness is not of significance to the question of whether Kondewa's speech substantially contributed to the perpetration of the crimes. Thus, in the light of all the circumstances of this case, a reasonable trier of fact could have concluded that the only inference available on the evidence was that through his blessings and speech at the First Passing Out Parade Kondewa substantially contributed to the perpetration of the crimes in Tongo Town.

76. Regarding the requisite *mens rea*, the Appeals Chamber agrees with Kondewa that the Trial Chamber erroneously relied on the fact that he had received the report to Base Zero of the Kamajors' previous crimes in Tongo. On the contrary, the Trial Chamber found that Norman and Fofana received this report, not Kondewa.[165] Thus, the Appeals Chamber finds that the Trial Chamber erred in fact in relying on this report.[166]

77. It is the unchallenged finding of the Trial Chamber, that Norman at the Passing Out Parade ordered the Kamajors to commit criminal acts in Tongo, and that Kondewa who spoke after Norman, knew of the orders of Norman when he said: "a rebel is a rebel; surrendered, not surrendered, they're all rebels . . . [t]he time for their surrender had long since been exhausted, so we don't need any surrendered rebel ... I give you my blessings; go my boys, go."[167] The Trial Chamber further found that "no fighter would go to war without Kondewa's blessings because they

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[163] *Ibid.*
[164] *Ibid* at para. 721(x).
[165] Kondewa Appeal Brief, para. 141; CDF Trial Judgment, para. 721(ix) ("TF2-079 prepared a situation report on events occurring between 19 September and 13 November 1997 in Zone II Operational Frontline which included Lower Bambara and Dodo Chiefdoms [...]. It [...] narrated crimes which were committed by Kamajors in that area [...]. At Base Zero they gave the report first to Fofana and then to Norman.").
[166] CDF Trial Judgment, para. 737.
[167] *Ibid* at para. 321.

appropriate caution in reviewing the hearsay evidence.[385] Third, Kondewa submits that the Trial Chamber erred in its reliance on circumstantial evidence to convict him of murder because "inferences reasonably to be drawn from the evidence must not only be consistent with Kondewa's guilt but inconsistent with every reasonable hypothesis of Kondewa's innocence."[386] He asserts that a number of alternative explanations exist, such as that the Town Commander could have been murdered by someone else.[387]

197. In response, the Prosecution argues that the Trial Chamber took into account the hearsay evidence only as corroborating the eyewitness testimony of Witness TF2-096.[388] Therefore, the Prosecution submits that this evidence and the inferences to be drawn from all of the relevant evidence in the case as a whole were not only consistent with Kondewa's individual responsibility for shooting and killing one of the town commanders, but were inconsistent with any reasonable hypothesis of Kondewa's innocence.[389] The Prosecution argues that Witness TF2-096's testimony that the Town Commander "fell" should naturally be understood as a statement that the victim was shot dead.[390] The Prosecution argues that this was the understanding of everyone in the courtroom including the Defence Counsel, as there was no objection to the Prosecution's subsequent question about how the witness knew the person who killed the town commander.[391]

198. Before assessing whether the Trial Chamber erred in its application of the law to the facts, the Appeals Chamber considers it necessary to set out the applicable law. The Appeals Chamber considers that as a matter of law it is permissible to base a conviction on circumstantial evidence and/or hearsay evidence.[392] Because hearsay evidence is admissible as substantive evidence in order to prove the truth of its contents, the Appeals Chamber considers that establishing the reliability of hearsay evidence is of paramount importance.[393]

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[385] *Ibid* at para. 114.
[386] *Ibid* at para. 118.
[387] *Ibid.*
[388] Prosecution Response Brief, paras 4.21-4.22.
[389] *Ibid* at para. 4.25.
[390] *Ibid* at para. 4.21.
[391] *Ibid.*
[392] *Gacumbitsi v. Prosecutor,* ICTR-01-64-A, International Criminal Tribunal for Rwanda, Appeals Chamber, Judgement, 7 July 2006, para. 115 [*Gacumbitsi* Appeal Judgement]; *Prosecutor v. Kamuhanda,* ICTR-99-54-A-A, International Criminal Tribunal for Rwanda, Appeals Chamber, Judgement, 19 September 2005, para. 241; *Kupreškić* Appeal Judgement, para. 303.
[393] *Prosecutor v. Kordić & Čerkez,* IT-95-14/2-A, International Criminal Tribunal for the former Yugoslavia, Appeals Chamber, Judgement, 17 December 2004, para. 281 [*Kordić* Appeal Judgement], *citing Prosecutor v. Aleksovski,* IT-

collective punishments in Count 7 and the crimes in Counts 2, 4 and 5, the Trial Chamber impermissibly widened the interpretation of punishment for the purposes of collective punishments beyond the conduct charged in Counts 2, 4 and 5.[419] In particular, the Trial Chamber found that "the term punishment in the first element [of collective punishments] is meant to be understood in its broadest sense and refers to all types of punishments."[420] Kondewa submits that the Trial Chamber therefore erred in finding that "because the *actus reus* and the *mens rea* of collective punishments can be broader than the 'punishments' of Count [*sic*] 1-5, it is permissible to enter convictions under Count 7 as well as Counts 2-5."[421]

219. The Prosecution argues that when an accused has been charged with two crimes in relation to the same conduct, the relevant question is whether the two statutory provisions, as a matter of law, both contain a materially distinct element not contained in the other.[422] The question is not whether the two statutory provisions, as a matter of fact, are each based on a material fact on which the other is not based.[423] The Prosecution argues that the relevant crimes, as a matter of law, contain materially distinct elements and that cumulative convictions are therefore permissible.[424]

2. Discussion

220. The Trial Chamber held that the "issue of cumulative convictions arises when more than one conviction is imposed for the same criminal conduct" and that multiple convictions for the same conduct are permissible if each statutory provision has a materially distinct element not contained in the other.[425] Elements are materially distinct from one another if each requires proof of a fact not required by the other.[426] The Trial Chamber stated that "multiple convictions may only be upheld if

[419] *Ibid* at paras 164-168.
[420] *Ibid* at paras 164-168; CDF Trial Judgment, para. 181.
[421] Kondewa Appeal Brief, para. 167. The Appeals Chamber notes that Kondewa was only convicted of murder (Count 2), cruel treatment (Count 4) and pillage (Count 5).
[422] Prosecution Response Brief, para. 6.14.
[423] *Ibid* (emphasis omitted).
[424] *Ibid* at paras 6.15-6.28.
[425] CDF Trial Judgment, para. 974, *quoting Čelebići* Appeal Judgement, para. 412, *citing Prosecutor v. Musema*, ICTR 96-13-A, International Criminal Tribunal for Rwanda, Appeals Chamber, Judgement, 16 November 2001, paras 361-363 [*Musema* Appeal Judgement]; and *Prosecutor v. Naletilić and Martinović*, IT-98-34-A, International Criminal Tribunal for the former Yugoslavia, Appeals Chamber, Judgement, 3 May 2006, paras 584-585.
[426] *Ibid*.

circumstances be cured by timely, clear and consistent information detailing the factual basis underpinning the charges against him or her.[723]

364. The Appeals Chamber finds that paragraph 28 of the Indictment is clear in establishing that the material facts supporting criminal responsibility under Count 6 are the material facts pleaded in relation to Counts 1 to 5 of the Indictment. These include "threats to kill, destroy and loot." The Trial Chamber, therefore, erred in stating it would only consider crimes "charged and found to have been committed under Counts 1-5 in the Indictment."[724] The Trial Chamber should have considered all conduct that was adequately pleaded in the Indictment irrespective of whether such conduct satisfied the elements of any other crimes under Counts 1-5.

365. Whether the Trial Chamber's error invalidates the decision is discussed below as it is dependent on whether the Trial Chamber erred in its determination of the *mens rea* requirement for acts of terrorism. In particular, Fofana's and Kondewa's liability for acts of terrorism under Article 6(1) and Article 6(3) of the Statute depends on whether they had the requisite *mens rea* for liability as aiders and abetters or superiors. Accordingly, the Appeals Chamber will examine whether a reasonable tribunal of fact could have found, as the Trial Chamber did, that neither Fofana nor Kondewa had the requisite *mens rea*.

(b) Fofana's and Kondewa's Responsibility for Aiding and Abetting Acts of Terrorism in Tongo

366. The Appeals Chamber has previously endorsed the following statement of the *mens rea* for aiding and abetting:

> "The *mens rea* required for aiding and abetting is that the accused knew that his acts would assist the commission of the crime by the perpetrator or that he was aware of the substantial likelihood that his acts would assist the commission of a crime by the perpetrator. However, it is not necessary that the aider and abettor had knowledge of the precise crime that was intended and which was actually committed, as long as he was aware that one of a number of crimes would probably be committed, including the one actually committed."[725]

[723] *Ibid* at para. 114.
[724] CDF Trial Judgment, para. 49.
[725] AFRC Appeal Judgment, paras 242-243.

of Fofana's and Kondewa's sentences. The Submissions of the Parties are discussed below in relation to each alleged error.

2. Standard of Review

465. The relevant provisions on sentencing are Article 19 of the Statute and Rules 99 to 105 of the Rules. Both Article 19 of the Statute and Rule 101 of the Rules contain provisions for sentencing. According to the provision of Article 19, a Trial Chamber must take into account the gravity of the offence[897] and the individual circumstances of the convicted person.[898] The Statute also provides that in determining the term of imprisonment the Trial Chamber shall have recourse to the practice regarding prison sentences in the ICTR and the national courts of Sierra Leone, as appropriate. According to Rule 101 of the Rules, aggravating and mitigating circumstances shall, *inter alia,* be taken into account.[899] Rule 101(c) of the Rules provides that the Trial Chamber shall indicate whether multiple sentences shall be served consecutively or concurrently.

466. Appeals against sentence, as appeals from a judgement of a Trial Chamber, are appeals *stricto sensu.* They are not trials *de novo.*[900] Trial Chambers are vested with broad discretion in

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[897] The ICTY Appeals Chamber has held that the determination of the gravity of the crime requires a consideration of the particular circumstances of the case, as well as the form and degree of the participation of the accused in the crime. *Prosecutor v. Kupreškić et al.*, IT-95-16-T, International Criminal Tribunal for the former Yugoslavia, Trial Chamber, Judgement, 14 January 2000, para. 852, *endorsed in Aleksovski* Appeal Judgement, para. 182. *See also Blaškić* Appeal Judgement, para. 683.

[898] The ICTY Appeals Chamber has held that the individual circumstances of the convicted person consist of a non-exhaustive list of mitigating and aggravating circumstances. Mitigating circumstances previously recognized by the ICTY include: (1) co-operation with the Prosecution; (2) the admission of guilt or a guilty plea; (3) the expression of remorse; (4) voluntary surrender; (5) good character with no prior criminal convictions; (6) comportment in detention; (7) personal and family circumstances; (8) the character of the accused subsequent to the conflict; (9) duress and indirect participation; (10) diminished mental responsibility; (11) age; and (12) assistance to detainees or victims. Aggravating circumstances previously recognized by the ICTY include: (i) the position of the accused, that is, his position of leadership, his level in the command structure, or his role in the broader context of the conflict of the former Yugoslavia; (ii) the discriminatory intent or the discriminatory state of mind for crimes for which such a state of mind is not an element or ingredient of the crime; (iii) the length of time during which the crime continued; (iv) active and direct criminal participation, if linked to a high-rank position of command, the accused's role as fellow perpetrator, and the active participation of a superior in the criminal acts of subordinates; (v) the informed, willing or enthusiastic participation in crime; (vi) premeditation and motive; (vii) the sexual, violent, and humiliating nature of the acts and the vulnerability of the victims; (viii) the status of the victims, their youthful age and number, and the effect of the crimes on them; (ix) civilian detainees; (x) the character of the accused; and (xi) the circumstances of the offences generally. *See Blaškić* Appeal Judgement, paras 685-686, 696

[899] In addition, Trial Chambers are obliged to take into account the extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served, as referred to in Article 9(3) of the Statute and in Rule 101(B)(iii).

[900] *Kupreškić* Appeal Judgement, para. 408; *Prosecutor v. Mucić et al.*, IT-96-21-A*bis*, International Criminal Tribunal for the former Yugoslavia, Appeals Chamber, Judgement on Sentence Appeal, 8 April 2003, para. 11; *Čelebići* Appeal Judgement, para. 203.

determining an appropriate sentence due to their obligation to individualise the penalties to fit the circumstances of the accused and the gravity of the crime.[901] The Appeals Chamber will not lightly overturn findings relevant to sentencing by the Trial Chamber.[902] As a general rule, the Appeals Chamber will not revise a sentence unless the Appellant demonstrates that the Trial Chamber has committed a "discernible error" in exercising its discretion or has failed to follow the applicable law.[903]

467. In the AFRC Appeal Judgment, the Appeals Chamber explained that to demonstrate that the Trial Chamber committed a discernible error in exercising its discretion:

> "the Appellant has to demonstrate that the Trial Chamber gave weight to extraneous or irrelevant considerations, failed to give weight or sufficient weight to relevant considerations, made a clear error as to the facts upon which it exercised its discretion, or that the Trial Chamber's decision was so unreasonable or plainly unjust that the Appeals Chamber is able to infer that the Trial Chamber must have failed to exercise its discretion properly."[904]

3. Alleged Refusal to Consider Sentencing Practices of the National Courts of Sierra Leone

(a) Trial Chamber Findings

468. Article 19(1) of the Statute states: "the Trial Chamber shall, as appropriate, have recourse to the practice regarding prison sentences in the International Criminal Tribunal for Rwanda and the national courts of Sierra Leone."[905]

469. The Trial Chamber held that it would not give consideration to the sentencing practice in Sierra Leone because Fofana and Kondewa had not been convicted of any crime under Sierra Leone

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[901] *See e.g., Čelebići* Appeal Judgement, para. 717. *See also* Article 19(2) of the Statute, Rule 101(B) of the Rules.
[902] AFRC Appeal Judgment, para. 309; *see also Krnojelac* Appeal Judgement, para. 11.
[903] *See Tadić* Judgement in Sentencing Appeals, para. 22; *Aleksovski* Appeal Judgement, para. 187; Prosecutor v. *Furundžija*, IT-95-17/1-A, International Criminal Tribunal for the former Yugoslavia, Appeals Chamber, Judgement, 21 July 2000, para. 239 [*Furundžija* Appeal Judgement]; *Čelebići* Appeal Judgement, para. 725; *Kupreškić* Appeal Judgement, para. 408; *Prosecutor v. Jelisić*, IT-95-10-A, International Criminal Tribunal for the former Yugoslavia, Appeals Chamber, Judgement, 5 July 2001, para. 99; *Prosecutor v. Krstić*, IT-98-33-A, International Criminal Tribunal for the former Yugoslavia, Appeals Chamber, Judgement, 19 April 2004, para. 242; *Blaškić* Appeal Judgement, para. 680.
[904] AFRC Appeal Judgment, para. 309.
[905] Article 19(1) of the Statute.

(c) Discussion

475. The Appeals Chamber notes that at the time the ICTY Statute took effect, the former Yugoslavia had domestic legislation criminalizing "acts against humanity and international law."[919] Similarly, at the time the ICTR Statute took effect, Rwanda had domestic legislation criminalizing war crimes, crimes against humanity and genocide.[920] In contrast, Sierra Leone has not criminalized war crimes and crimes against humanity as such, and consequently there is no specifically relevant sentencing practice for a Trial Chamber to refer to.

476. The Special Court has jurisdiction over crimes defined in Sierra Leone law in addition to certain international crimes. Bearing this in mind, the Appeals Chamber is of the view that the best interpretation of the word "appropriate" is that a Trial Chamber is to have recourse to the practice of the ICTR for convictions for war crimes and crimes against humanity and is to have recourse to the national courts in Sierra Leone for convictions under Sierra Leone law contained in Article 5 of the Statute.

477. In the result, the Appeals Chamber concludes that the Trial Chamber did not err in holding that it will not consider the sentencing practice of Sierra Leone.

4. Alleged Error in Considering Mitigating Factors

(a) Fofana's and Kondewa's Statements at the Sentencing Hearing

(i) Trial Chamber Findings

478. Under the heading "Remorse," the Trial Chamber stated the following:

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[919] *See The Criminal Code of the Socialist Federal Republic of Yugoslavia,* adopted by the SFRJ Assembly at the session of the Federal Council held on September 28, 1976, published in the Official Gazette SFRJ No. 44 of October 8, 1976, a correction was made in the Official Gazette SFRJ No. 36 of July 15, 1977, *available at* http://pbosnia.kentlaw.edu/resources/legal/bosnia/criminalcode_fry.htm#chap_16, Articles 141-156 (pertaining to genocide and war crimes).

[920] Rwandan Organic Law No. 8/96, on the Organization of Prosecutions for Offences constituting Genocide or Crimes Against Humanity committed since 1 October 1990, published in the Gazette of the Republic of Rwanda, 35th year. No. 17, 1 September 1996. *See Semanza* Appeal Judgement, para. 378; *Prosecutor v. Akayesu*, ICTR-96-4-T, International Criminal Tribunal for Rwanda, Trial Chamber, Sentencing Judgement, 2 October 1998, para. 16 [*Akayesu* Sentencing Judgement]. Under Rwandan law, genocide and crimes against humanity carry the possible penalties of death or life imprisonment, depending on the nature of the accused's participation. *See Prosecutor v. Simba*, ICTR-01-76-T, International Criminal Tribunal for Rwanda, Trial Chamber, Judgement and Sentence, 13 December 2005, para. 434 [*Simba* Judgement and Sentence].

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Before:	Hon. Justice Benjamin Mutanga Itoe, Presiding Judge Hon. Justice Bankole Thompson Hon. Justice Pierre Boutet	
Registrar:	Herman von Hebel	
Date:	9th of October 2007	
PROSECUTOR	Against	MOININA FOFANA ALLIEU KONDEWA (Case No.SCSL-04-14-T)

Public Document

JUDGEMENT ON THE SENTENCING OF MOININA FOFANA AND ALLIEU KONDEWA

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> Additionally, the process of sentencing is intended to convey the message that globally accepted laws and rules have to be accepted by everyone.[44]

31. In fact, the sentence imposed must be individualized and proportionate to the conduct of the Accused.[45]

3. Sentencing Factors

32. The Chamber notes that Article 19 and Rule 101(B) stipulate that certain factors have to be considered in determining an appropriate sentence. These include the gravity of the offence, the individual circumstances of the Accused, any aggravating and mitigating factors, and where appropriate, the general sentencing practices of the ICTR and of the national courts of Sierra Leone.

3.1. Gravity of the Offence

33. The Chamber is of the view that the "gravity of the offence" is an important principle in determining the sentence to be imposed by the Court. The determination of the gravity of the offence, which has been regarded as the "litmus test for the appropriate sentence",[46] requires a "consideration of the particular circumstances of the case, as well as the form and degree of participation of the Accused in the crime".[47] In considering the gravity of the offence, the Chamber has taken into account such factors as the scale and brutality of the offences committed,[48] the role played by the Accused in their commission,[49] the degree of suffering or

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[44] *Prosecutor v. Dragan Nikolic*, IT-94-2-S, Sentencing Judgement (TC), 18 December 2003, para 139.
[45] *Prosecutor v. Tadic*, IT-94-1-A, Judgement in Sentencing Appeals (AC), 26 January 2000 [*Tadic* Sentencing Appeal], para 22, *Prosecutor v. Todorovic*, IT-95-9/1-S, Sentencing Judgement (TC), 31 July 2001, para 29, *Prosecutor v. Kupreskic, Kupreskic, Kupreskic, Josipovic and Santic*, IT-95-16-A, Judgement (AC), 23 October 2001 [*Kupreskic* Appeal Judgement], para 445, *Prosecutor v. Furundzija*, IT-95-17/1-A, Judgement (AC), 21 July 2000 [*Furundzija* Appeal Judgement], para 249.
[46] *Prosecutor v. Delalic, Mucic, Delic and Landzo*, IT-96-21-T, Judgement (TC), 16 November 1998 [*Celibici* Trial Judgement], para 1225, *Aleksovski* Appeal Judgement, para 182.
[47] *Prosecutor v. Kupreskic, Kupreskic, Kupreskic, Josipovic and Santic*, IT-95-16-T, Judgement (TC), 14 January 2000 [*Kupreskic* Trial Judgement], para 852, *Prosecutor v. Kordic and Cerkez*, IT-95-14/2-A, Judgement (AC), 17 December 2004, para 1061, *Prosecutor v. Stakic*, IT-97-24-A, Judgement (AC), 22 March 2006 [*Stakic* Appeal Judgement], para 380.
[48] *Stakic* Appeal Judgement, para 380, *Prosecutor v. Oric*, IT-03-68-T, Judgement (TC), 30 June 2006 [*Oric* Trial Judgement], para 729.
[49] *Celibici* Appeal Judgement, para 847, *Prosecutor v. Blagojevic*, IT-02-60-T, Judgement (TC), 17 January 2005, para 833.

impact of the crime on the immediate victim, as well as its effect on relatives of the victim,[50] and the vulnerability and number of victims.[51]

34. In assessing the role of the Accused in the crime, the Chamber has taken into account the mode of liability under which the Accused was convicted, as well the nature and degree of his participation in the offence. In particular, the Chamber has considered whether the Accused was held liable as an indirect or a secondary perpetrator.[52] In assessing the gravity of offences for which the Accused was convicted as a superior, the Chamber has considered the gravity of the underlying offence and the gravity of the conduct of the Accused in failing to prevent or punish the crimes committed by the subordinate.[53]

35. The Chamber is of the opinion however, that the factors it has taken into account in assessing the gravity of the offence, cannot, in addition, be taken into account as aggravating circumstances.[54] Similarly, the Chamber takes the view that factors which it considers and accepts to lessen the gravity of the offence, cannot be taken into account as mitigating circumstances.

3.2. Aggravating Factors

36. Aggravating factors must be shown to have been established by the Prosecution beyond a reasonable doubt.[55] Only circumstances directly related to the commission of the offence charged, and for which the Accused has been convicted, can be considered to be aggravating.[56] If a

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[50] *Prosecutor v. Blaskic*, IT-95-14-A, Judgement (AC), 29 July 2004 [*Blaskic* Appeal Judgement], para 683, *Stakic* Appeal Judgement, para 380, *Oric* Trial Judgement, para 729.

[51] *Blaskic* Appeal Judgement, para 683, *Prosecutor v. Babic*, IT-03-72-S, Sentencing Judgement (TC), 29 June 2004 [*Babic* Sentencing Judgement], para 47. The Chamber notes that the Prosecution has discussed some of these factors, including the vulnerability and age of victims and the humiliating and degrading nature of the acts, as aggravating factors (Prosecution Sentencing Brief, para 56). The Chamber is of the view that these are more appropriately considered in relation to its determination of the gravity of the offence.

[52] *Prosecutor v. Ntagerura, Bagambiki and Iminishimwe*, ICTR-99-46-T, Judgement and Sentence (TC), 25 February 2004, para 813, *Prosecutor v. Vasiljevic*, IT-98-32-A, Judgement (AC), 25 February 2004 [*Vasiljevic* Appeal Judgement], para 182.

[53] *Celibici* Appeal Judgement, para 732.

[54] *Deronjic* Sentencing Appeal, para 106.

[55] *Celibici* Appeal Judgement, para 763, *Blaskic* Appeal Judgement, para 688.

[56] *Prosecutor v. Kunarac, Kovac and Vokovic*, IT-96-23-T and IT-96-23/1-T, Judgement (TC), 22 February 2001, para 850, *Prosecutor v. Hadsahasanovic*, IT-01-47-T, Judgement (TC), 15 March 2006, para 2069.

particular circumstance is an element of the underlying offence, it cannot be taken into account as an aggravating factor.[57]

37. We observe that since the Statute and the Rules do not exhaustively list the circumstances that the Chamber may consider to be aggravating, the courts have, through their Decisions and Judgements, developed jurisprudence on the factors that may be considered as aggravating. These include the leadership role of the Accused,[58] premeditation and motive,[59] a willing and enthusiastic participation in the crime,[60] and the length of time during which the crime was committed.[61]

38. The Chamber is of the view that the position of leadership of an Accused held criminally responsible for a crime under Article 6(1) of the Statute, can be considered to be an aggravating circumstance.[62] However, if an Accused has been found liable under Article 6(3), his leadership position cannot be considered by the Chamber as an aggravating factor as it is in itself a constitutive element of the offence.[63] Where the Accused has actively abused his position of command or participated in the crimes of his subordinates however, such conduct can be considered to be aggravating.[64]

39. Breach of trust or authority, where the Accused was in a position that carries with it a duty to protect or defend the victims, such as in the case of a government official, police chief or commander, can be an aggravating factor, and even where the Accused held no official position of

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[57] *Blaskic* Appeal Judgement, para 693, *Vasiljevic* Appeal Judgement, paras 172-173, *Prosecutor v. Ndindabahizi*, ICTR-01-71-A , Judgement (AC), 16 January 2007, para 137.

[58] *Prosecutor v. Jokic*, IT-01-42/1-A, Judgement on Sentencing Appeal (AC), 30 August 2005 [*Jokic* Sentencing Appeal], paras 28-29, *Prosecutor v. Obrenovic*, IT-02-60/2-S, Sentencing Judgement (TC), 10 December 2003 [*Obrenovic* Trial Judgement], para 99, *Prosecutor v. Babic*, IT-03-72-A, Judgement on Sentencing Appeal (AC), 18 July 2005 [*Babic* Sentencing Appeal], para 80.

[59] *Blaskic* Appeal Judgement, para 686.

[60] *Ibid.*

[61] *Blaskic* Appeal Judgement, para 686. As noted, the Chamber has considered certain factors, such as the vulnerability and age of victims, and the humiliating or degrading nature of the acts, that are sometimes considered as aggravating factors, as part of the gravity of the offence (see n. 51).

[62] *Jokic* Sentencing Appeal, paras 28-29, *Obrenovic* Trial Judgement, para 99, *Babic* Sentencing Appeal, para 80.

[63] *Obrenovic* Trial Judgement, para 99, *Deronjic* Sentencing Appeal, para 67, *Jokic* Sentencing Appeal, para 28, *Babic* Sentencing Judgement, para 60.

[64] *Celibici* Appeal Judgement, para 736, *Aleksovski* Appeal Judgement, para 183.

authority, it is an aggravating factor, if he held a position of prominence or trust in the community.[65]

3.3. Mitigating Factors

40. Mitigating factors must be established by the Defence on a balance of probabilities.[66] Under Rule 101(B), the only mitigating circumstance that the Chamber is required to consider is the substantial cooperation of the Accused with the Prosecutor. The Chamber, however, has the discretion to consider other factors or circumstances in mitigation, such as the expression of remorse,[67] good character with no prior convictions,[68] personal and family circumstances,[69] behaviour and conduct subsequent to the conflict, particularly with respect to promoting peace and reconciliation,[70] good behaviour in detention,[71] and assistance to detainees or victims.[72] The Chamber has also considered the prevailing circumstances operating at the time of the commission of the crimes, and the motive of the Accused in determining whether there should be a mitigation of the sentence.

4. Sentencing Practice of Other International Tribunals

41. Article 19(1) directs the Chamber to consider, where appropriate, the sentencing practices adopted at the ICTR. In their written and oral submissions, the Parties also drew the Chamber's attention to jurisprudence from the International Criminal Tribunal for the Former Yugoslavia ("ICTY").[73] The Chamber is of the view that the sentencing practice of both international

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[65] *Prosecutor v. Semanza*, ICTR-97-20-T, Judgement (TC), 15 May 2003, para 573, *Prosecutor v. Kamuhanda*, ICTR-99-54A-A, Judgement (AC), 19 September 2005, para 347, *Prosecutor v. Niyitegeka*, ICTR-96-14-T, Judgement and Sentence (TC), 16 May 2003, para 499, *Prosecutor v. Ntakirutimana and Ntakirutimana*, ICTR-96-10-A and ICTR-96-17-A, Judgement (AC), 13 December 2004, para 563.

[66] *Blaskic* Appeal Judgement, para 697.

[67] *Babic* Sentencing Judgment, paras 81-84, *Oric* Trial Judgement , para 752.

[68] *Blaskic* Appeal Judgement, para 696, *Prosecutor v. Erdemovic*, IT-96-22-Tbis, Sentencing Judgement (TC), 5 March 1998, para 16(i), *Celibici* Appeal Judgment, para 788, *Prosecutor v. Deronjic*, IT-02-61-S, Sentencing Judgement, 30 March 2004 [*Deronjic* Sentencing Judgement], para 156.

[69] *Prosecutor v. Kunarac, Kovac and Vokovic*, IT-96-23- & IT-96-23/1-A (AC), Judgement (AC), 12 June 2002 [*Kunarac* Appeal Judgement], para 362, *Blaskic* Appeal Judgement, para 708.

[70] *Babic* Appeal Judgement, paras 56-59, *Prosecutor v. Plavsic*, IT-00-39- & 40/1-S, Sentencing Judgement (TC), 27 February 2003 [*Plavsic* Sentencing Judgement], paras 85-93.

[71] *Blaskic* Appeal Judgement, para 696.

[72] *Blaskic* Appeal Judgement, para 696, *Babic* Appeal Judgement, para 43, *Deronjic* Sentencing Judgement, para 156.

[73] The Parties have also submitted that the jurisprudence of the ICTY, as well as that of the ICTR, should be considered (Prosecution Sentencing Brief, para 31, Fofana Sentencing Brief, para 7, Kondewa Sentencing Brief, para

tribunals is instructive, and has considered these practices where appropriate. However, it is also aware of the limitations of the use that can be made of the sentencing practices of these tribunals. In particular, it notes that the practice of imposing global sentences at both tribunals makes it difficult to ascertain the sentence imposed for each individual crime. Moreover, the Chamber notes that many of the sentences at the ICTR were imposed in relation to the crime of genocide, which is not an offence within the jurisdiction of the Special Court.

5. Sentencing Practice of Sierra Leonean Courts

42. Article 19(1) authorizes the Trial Chamber to consider, where appropriate, the sentencing practices of Sierra Leonean domestic courts. The Prosecution contends that in determining the gravity of the offence, the Chamber should consider that the offences for which the Accused have been found guilty, would attract the death penalty or life imprisonment under Sierra Leonean law.[74] Both Fofana and Kondewa submit that given that the Accused were not convicted of any offences under Article 5 of the Statute which incorporates offences under Sierra Leonean legislation, the court should not consider Sierra Leonean sentencing practice.[75]

43. In this regard, the Chamber notes that the Accused were neither indicted nor convicted for any of the offences enumerated under Article 5 of the Statute. Furthermore, the Statute of the Special Court does not provide for either capital punishment or imposition of a "life sentence", which are the punishments that the most serious crimes under Sierra Leonean law attract. For these reasons, the Chamber finds that it would be inappropriate to rely on the sentencing practices of Sierra Leonean Courts in determining the punishment to be imposed on either Fofana or on Kondewa.

V. DELIBERATIONS

44. The Chamber has considered both the Parties' written briefs and their oral submissions, made in court during the Sentencing Hearing, as they relate to the gravity of the offence, as well as

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16). See also AFRC Sentencing Judgement, where the Chamber held that the sentencing practice of the ICTY should also be considered, as "its statutory provisions are analogous to those at the Special Court and the ICTR" (para 33).

[74] Prosecution Sentencing Brief, paras 78, 139-140.

[75] Fofana Sentencing Brief, para 7 and Kondewa Sentencing Brief, para 14. See also AFRC Sentencing Judgement, where the Chamber held that "it is not appropriate to adopt the practice in the present case since none of the Accused was indicted for, nor convicted of, offences under Article 5 of the Statute" (para 32).

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SPECIAL COURT FOR SIERRA LEONE

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TRIAL CHAMBER I

Before:	Hon. Justice Benjamin Mutanga Itoe, Presiding Judge Hon. Justice Bankole Thompson Hon. Justice Pierre Boutet
Registrar:	Herman von Hebel
Date:	2 August 2007

PROSECUTOR **Against** **MOININA FOFANA**
ALLIEU KONDEWA
(Case No.SCSL-04-14-T)

Public Document

JUDGEMENT

<u>Office of the Prosecutor</u>:
Stephen Rapp
Christopher Staker
James C Johnson
Joseph Kamara
Kevin Tavener
Mohamed A Bangura
Adwoa Wiafe

<u>Court Appointed Counsel for Moinina Fofana</u>:
Victor Koppe
Arrow Bockarie
Michiel Pestman
Steven Powles

<u>Court Appointed Counsel for Allieu Kondewa</u>:
Charles Margai
Yada Williams
Ansu Lansana
Susan Wright

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subordinate is required. It is sufficient that there is proof of some position of authority on the part of the Accused that would compel another to commit a crime in compliance with the Accused's order.[286] Such authority can be *de jure* or *de facto* and can be reasonably implied.[287] The Chamber is of the view that a "causal link between the act of ordering and the physical perpetration of a crime [...] also needs to be demonstrated as part of the *actus reus* of ordering" but that this "link need not be such as to show that the offence would not have been perpetrated in the absence of the order."[288]

226. The Chamber finds that to establish the *mens rea* requirement for "ordering" a crime, the Prosecution must prove that the Accused either intended to bring about the commission of the crime or that the Accused had reasonable knowledge that the crime would likely be committed as a consequence of the execution or implementation of that order.

4.1.6. Aiding and Abetting

227. The Chamber notes that the Prosecution charges the Accused pursuant to Article 6(1) of the Statute with aiding and abetting in the planning, preparation or execution of the crimes referred to in the Indictment.[289]

228. It is the view of the Chamber that "aiding and abetting" consists of the act of rendering practical assistance, encouragement or moral support, which has a substantial effect on the perpetration of a certain crime.[290] "Aiding and abetting" can include providing assistance, helping, encouraging, advising, or being sympathetic to the commission of a particular act by the principal offender.[291]

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[286] *Gacumbitsi* Appeal Judgement, paras 181-182; *Prosecutor v. Semanza*, ICTR-97-20-A, Judgement (AC), 20 May 2005, para. 361 [*Semanza* Appeal Judgement], referring to *Kordic and Cerkez* Appeal Judgement, para. 28. *See also Prosecutor v. Kamuhanda*, ICTR-99-54A-A, Judgement (AC), 19 September 2005, para. 75 [*Kamuhanda* Appeal Judgement]: "To be held responsible under Article 6(1) of the Statute for ordering a crime, on the contrary, it is sufficient that the accused have authority over the perpetrator of the crime, and that his order have a direct and substantial effect on the commission of the illegal act." [Footnotes omitted].

[287] *Limaj et al.* Trial Judgement, para. 515 referring to *Brdjanin* Trial Judgement, para. 270.

[288] *Strugar* Trial Judgement, para. 332.

[289] Indictment, para. 20.

[290] *Krstic* Trial Judgement, para. 601; *Limaj et al.* Trial Judgement, para. 516; *Tadic* Appeals Judgement, para. 229.

[291] *Limaj et al.* Trial Judgement, para. 516; *Kvocka et al.* Trial Judgement, para. 254; *Semanza* Trial Judgement, para. 384; *Prosecutor v. Gacumbitsi*, ICTR-2001-64-T, Judgment (TC), 17 June 2004, para. 286 [*Gacumbitsi* Trial Judgement].

229. The Chamber is of the opinion that the *actus reus* of aiding and abetting requires that the Accused carries out an act specifically directed to assist, encourage or lend moral support to the perpetration of a certain specific crime and that this act of the aider and abettor must have a substantial effect upon the perpetration of the crime.[292] "Proof of a cause-effect relationship between the conduct of the aider or abettor and the commission of the crime, or proof that such conduct served as a condition precedent to the commission of the crime, is not required."[293] Further, taking into account the specific wording of Article 6(1) of the Statute that "[a] person who [...] aided and abetted *in the planning, preparation or execution* of a crime referred to in articles 2 to 4 of the present Statute shall be individually responsible for the crime", this Chamber is of the opinion that the *actus reus* of aiding and abetting a crime may occur before, during, or after the principal crime has been perpetrated and at a location geographically removed from the location of the principal crime.[294] The Chamber reiterates, however, that the act of the aider and abettor must have a substantial effect upon the perpetration of the crime.

230. Mere presence at the scene of a crime will not usually constitute aiding and abetting. Where, however, such presence provides encouragement or support to the principal offender, that may be sufficient. For example, the presence of a person with superior authority at the scene of a principal crime may be probative to determining whether such person encouraged or supported the principal perpetrator.[295] The Chamber also notes that a superior's failure to punish for past crimes might result in acts that would constitute instigation or aiding and abetting for *further* crimes.[296]

231. The Chamber recognises that the *mens rea* of aiding and abetting is the knowledge that the acts performed by the Accused assist the commission of the crime by the principal offender.[297]

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[292] *Vasiljevic* Appeal Judgement, para. 102; *see also Blaskic* Appeal Judgement, para. 46 referring to *Furundzija* Trial Judgement, para. 249.
[293] *Blaskic* Appeal Judgement, para. 48; *see* also *Gacumbitsi* Appeal Judgement, para. 140.
[294] *Blaskic* Appeal Judgement, para. 48; *see also Vasiljevic* Trial Judgement, para. 70, *Aleksovski* Trial Judgement, para. 62.
[295] *Blaskic* Appeal Judgement, para. 47; *see also Limaj et al.* Trial Judgement, para. 517; *Brdjanin* Trial Judgement, para. 271 and footnoted references; *Aleksovski* Trial Judgement, para. 65.
[296] *Blaskic* Trial Judgement, para. 337;
[297] *Vasiljevic* Appeal Judgement, para. 102; *see also Blaskic* Appeal Judgement, para. 49; *Tadic* Appeal Judgement, para. 229.

796. The Chamber finds that the evidence adduced proves beyond reasonable doubt that the acts described in paragraph 786 [Count 2] and in paragraph 791 [Count 4] were perpetrated with the specific intent to punish the civilian population in Koribondo and the surrounding areas.

797. The Chamber is therefore satisfied, in relation to those acts described in paragraph 786 [Count 2] and in paragraph 791 [Count 4], that both the general requirements of war crimes and the specific elements of collective punishments have been proved beyond reasonable doubt with respect to each incident.

3.5.1.4. Conclusion

798. On the basis of the foregoing, the Chamber finds that it has been proved beyond reasonable doubt that Fofana is individually criminally responsible as a superior, pursuant to Article 6(3), for the crimes committed in Koribondo as found under Counts 2, 4 and 7 above.

3.5.2. Responsibility of Kondewa

3.5.2.1. Responsibility pursuant to Article 6(1)

799. The Chamber takes the view that Kondewa's speech at the passing out parade in early January 1998 was words of moral support and encouragement to the Kamajor fighters who were about to conduct military operations on the junta-held territories. The Chamber finds, however, that this speech does not amount to urging, encouraging or prompting the Kamajors to commit criminal acts. This evidence does not demonstrate beyond reasonable doubt that Kondewa intended to provoke or induce the commission of the criminal acts which the Chamber found were committed by Kamajors subsequently during the attack on Koribondo or that Kondewa had reasonable knowledge that criminal acts would likely be committed as a result of his speech.

800. Furthermore, the Chamber finds that giving moral support or blessing as well as providing medicine which the Kamajors believed would protect them against the bullets does not constitute aiding and abetting in the planning, preparation of execution of the criminal acts. We find that there is no evidence to conclude beyond reasonable doubt that at the time of giving his speech and providing his medicine Kondewa was aware of the Kamajors' intention to commit any criminal acts, which the Chamber found were committed by the Kamajors in Koribondo during the attack.

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THE APPEALS CHAMBER

Before: Justice George Gelaga King, Presiding
Justice Emmanuel Ayoola
Justice Renate Winter
Justice Geoffrey Robertson, Q.C.
Justice Raja Fernando

Registrar: Lovemore Munlo, SC

Date: 11 September 2006

PROSECUTOR Against **Sam Hinga Norman**
Moinina Fofana
Allieu Kondewa
(Case No.SCSL-2004-14-T)

DECISION ON INTERLOCUTORY APPEALS AGAINST TRIAL CHAMBER DECISION REFUSING TO SUBPOENA THE PRESIDENT OF SIERRA LEONE

Office of the Prosecutor:
Christopher Staker
James C. Johnson
Joseph Kamara

Court Appointed Counsel for Norman:
Dr. Bu-Buakei Jabbi
John Wesley Hall, Jr.

Court Appointed Counsel for Fofana:
Victor Koppe
Michiel Pestman
Arrow Bockarie

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Chamber, in applying Rule 54 of the Rules, chose an unduly restrictive standard for the issuance of a subpoena. According to the Appellant, this standard, which was erroneously drawn from the jurisprudence of the ICTY, resulted in an infringement of his fundamental rights under Article 17(4)(c) of the Statute.[16] Appellant Norman makes a similar submission in his third ground of appeal, arguing that the threshold for issuing a subpoena was set too high, "trivialising" the rights of the accused.[17] The Prosecution submits that the Trial Chamber applied the correct test and that it was appropriate for the Trial Chamber to be guided by the jurisprudence of the ICTY Appeals Chamber.[18]

12. Both Appellants argue that it was inappropriate for the Trial Chamber to adopt the test articulated in the ICTY Appeals Chamber jurisprudence.[19] We disagree. In accordance with Article 20 of the Statute – which provides that the Appeals Chamber "shall be guided by the decisions of the Appeals Chamber of the international tribunals for the former Yugoslavia and for Rwanda" – the Trial Chamber was right in choosing to be guided by the decisions of the Appeals Chambers of these tribunals. While the Trial Chambers are not technically required by Article 20 to refer to the jurisprudence of the international tribunals, it is nevertheless prudent for the Trial Chamber to carefully consider relevant comparative jurisprudence. This is logical since Trial Chamber decisions may be reviewed by the Appeals Chamber, which is statutorily required to consider ICTR and ICTY "guidance".[20]

13. Article 20 of the Statute does not say that decisions of the ICTR and ICTY are binding on the Trial or Appeals Chambers of the Special Court for Sierra Leone – this Chamber is only required to refer to them as a guide. We, therefore, do not accept the Prosecutor's submission that the Appeals Chamber of the Special Court may not depart from the jurisprudence of the ICTY and ICTR Appeals Chambers unless there are "cogent reasons

[16] Fofana Appeal, paras. 7–15; Reply to Prosecution Response to Fofana Notice of Appeal of the Subpoena Decision and Submissions in Support Thereof, 17 July 2006 ("Fofana Reply"), paras. 10–15.
[17] Norman Appeal, para. 26.
[18] Prosecution Response to Fofana, paras. 17–34. Prosecution Response to Norman, paras. 16–31.
[19] Fofana Appeal, paras. 7–15; Norman Appeal, paras. 28–30; Norman Reply to the Prosecution Response to Norman Notice of Appeal and Submissions Against the Trial Chamber's Decision on the Issuance of a Subpoena, ("Norman Reply"), 17 July 2006, paras. 6–7. *See also*, Prosecution Response to Fofana, paras. 13–16, 20–24.
[20] *Cf.* Dissenting Opinion, paras. 11–12.

in the interests of justice for so doing, and only after the most careful consideration . . . ."[21] The Statute requires the Appeals Chamber to look to the jurisprudence of the ICTY and ICTR Appeals Chambers for guidance, but does not require the Appeals Chamber of the Special Court to follow this jurisprudence. This body of case law is persuasive, but it is not directly applicable or binding. While there is value in developing a coherent approach across international criminal tribunals on both substantive and procedural questions, it must be emphasised that the Special Court is a hybrid court. Useful guidance may be gleaned from the experience of the other international criminal tribunals, but this Special Court is not bound by their decisions. This Appeals Chamber will, however, follow relevant jurisprudence where it is appropriate to do so.

14. Moreover, the Appeals Chamber does not accept the Appellants' arguments that the Trial Chamber should have preferred the ICTR approach to issuing a subpoena over that of the ICTY.[22] A Trial Chamber does not commit an error of law when it opts to follow one line of persuasive jurisprudence rather than another or rather than breaking new ground.

15. As correctly determined by the Trial Chamber, appropriate guiding authority is found in the ICTY Appeals Chamber interlocutory appeals decisions in the *Halilović*[23] and *Krstić* cases.[24] Neither Appellant has satisfied the Appeals Chamber that the ICTR has taken a different approach or that the alleged ICTR approach should have been adopted. The Appellants rely on two ICTR Trial Chamber decisions to support their argument. Rather than showing a difference in approach, these two decisions tend to demonstrate that the ICTR Trial Chambers applied the same test as that of the ICTY Appeals Chamber.

16. In order to demonstrate the ICTR's divergent approach to the subpoena question, the Appellants first cite a decision of a single judge of ICTR Trial Chamber I in the *Bagosora et al.* case.[25] Although this decision does not directly refer to any authority, it nevertheless

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[21] Prosecution Response to Fofana, para. 13. *See also*, Prosecution Response to Fofana, paras. 14-16; Fofana Reply, paras. 7-9.
[22] Fofana Appeal, para. 10; Norman Appeal, paras. 28-30. *See also*, Prosecution Response to Fofana, paras.20-24; Prosecution Response to Norman, paras. 24-31.
[23] *Prosecutor v. Halilović*, ICTY Appeals Chamber, Case No. IT-01-48-AR73, Decision on the Issuance of Subpoenas, 21 June 2004.
[24] *Prosecutor v. Krstić*, ICTY Appeals Chamber, Case No. IT-98-33-A, Decision on Application for Subpoenas, 1 July 2003.
[25] *Prosecutor v. Bagosora et al.*, ICTR Trial Chamber, Case No. ICTR-98-41-T, Decision on Request for Subpoena of Major General Yaache and Cooperation of the Republic of Ghana, 23 June 2004.

SCSL-2004-14-AR72(E)
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SPECIAL COURT FOR SIERRA LEONE

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THE APPEALS CHAMBER

Before: Justice Geoffrey Robertson, Presiding
Justice George Gelaga King
Justice Emmanuel Ayoola
Justice Renate Winter

Registrar: Robin Vincent

Date: 13 March 2004

PROSECUTOR Against SAM HINGA NORMAN
(Case No.SCSL-2004-14-AR72(E))

DECISION ON PRELIMINARY MOTION BASED ON LACK OF JURISDICTION (JUDICIAL INDEPENDENCE)

Office of the Prosecutor:

Desmond de Silva
Luc Côté
Walter Marcus-Jones
Abdul Tejan-Cole

Defence Counsel:

James Blyden Jenkins-Johnson
Sulaiman Banja Tejan-Sie

Intervener:
Michiel Pestman for *Moinina Fofana*

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THE APPEALS CHAMBER of the Special Court for Sierra Leone ("the Special Court");

SEIZED of a Preliminary Motion Based on Lack of Jurisdiction: Judicial Independence, filed on 26 June 2003 on behalf of Sam Hinga Norman ("the Preliminary Motion");

NOTING the Prosecution Response filed on 7 July 2003[1]; the Applicant's Reply filed on 14 July 2003[2]; and the referral of the Motion to the Appeals Chamber under Rule 72(E) of the Rules of Procedure and Evidence of the Special Court ("the Rules") on 17 September 2003[3];

NOTING the intervention by Moinina Fofana for which substantive submissions were filed on 31 October 2003[4];

NOTING that an oral hearing was held on 5 November 2003;

HAVING CONSIDERED THE ORAL AND WRITTEN SUBMISSIONS OF THE PARTIES;

HEREBY DECIDES AS FOLLOWS:

I. INTRODUCTION

1. This ruling concerns a Preliminary Motion filed on 26 June 2003 on behalf of Sam Hinga Norman ("the Applicant"), one of the persons standing trial before the Special Court for Sierra Leone ("the Court") in Case No. SCSL-2004-14[5]. The Preliminary Motion was referred to the Appeals Chamber of the Court pursuant to Rule 72(E) of the Rules of Procedure and Evidence of the Special Court ("the Rules").

2. By the Preliminary Motion the applicant challenges the jurisdiction of the Court to try him.

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[1] Prosecution Response to the Third Defence "Preliminary Motion based on Lack of Jurisdiction: Judicial Independence", 7 July 2003 ("Prosecution Response").
[2] Reply - Preliminary Motion based on Lack of Jurisdiction: Judicial Independence, 14 July 2003 ("Defence Reply").
[3] Order Pursuant to Rule 72(E): Defence Preliminary Motion on Lack of Jurisdiction: Judicial Independence, 17 September 2003.
[4] Reply to the Prosecution Response to the Motion on Behalf of Moinina Fofana for leave to intervene as an interested party in the Preliminary Motion filed by Mr. Norman based on Lack of Jurisdiction: Judicial Independence and Substantive Submissions, 31 October 2003.
[5] The Preliminary Motion was filed under Case No.SCSL-2003-08. Following the Decision and Order on Prosecution Motions for Joinder of 27 January 2004, and the subsequent Registry Decision for the Assignment of a new Case Number of 3 February 2004, this new case number has been assigned.

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3. By virtue of Rule 72(B) of the Rules, preliminary motions by an accused are objections based on lack of jurisdiction; defects in the form of indictment; the denial of request for assignment of counsel; and abuse of process or applications for severance of crimes joined in one indictment under Rule 49, or for separate trials under Rule 82(B).

4. Rule 72(B) does not expressly describe a motion based on the fairness of a trial or alleging an infringement of the right of an accused to a fair hearing or, in effect, seeking a reclusion of the judges as a preliminary motion. An objection that the Court lacks judicial independence is basically, and in substance, an objection to the fairness of the trial and an allegation that the right of the accused to a fair hearing is likely to be infringed by the trial. Evidently, it is to enable the applicant to find a platform within Rule 72 from which to raise these issues as a threshold issue that the objection has been described as a jurisdictional objection.

5. Notwithstanding that doubt may legitimately be entertained whether an allegation of real likelihood of bias is a challenge to the jurisdiction of the Court, the ground of the objection raised by the applicant's motion that the Court lacks judicial independence is sufficiently fundamental to make it imprudent to deny a hearing of the Preliminary Motion on the merits and not to determine the issues raised by the Preliminary Motion.

II. THE SPECIAL COURT FOR SIERRA LEONE

6. The Court is established by an agreement made on 16 June 2002 between the United Nations ("UN") and the Government of Sierra Leone to prosecute persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996[6].

7. The basic documents of the Court are:
   (a) The Agreement between the UN and the Government of Sierra Leone ("the Agreement");
   (b) The Statute of the Court which is annexed to the Agreement and forms an integral part thereof ("the Statute")[7]; and
   (c) The Rules of Procedure and Evidence of the Special Court.

[6] Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, 16 January 2002 ("Special Court Agreement"), Article 1(1).
[7] Statute of the Special Court for Sierra Leone, 16 January 2002.

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SEPARATE OPINION OF JUSTICE GEOFFREY ROBERTSON:

1. This is a challenge to the jurisdiction of the Special Court by Sam Hinga Norman in Case No. SCSL-2004-14[1] on the grounds that the arrangements for funding its operations and the structure of its Management Committee deprive the Court of those guarantees of independence and impartiality which are essential prerequisites for its exercise of judicial power over the Applicant, or indeed over anyone else. Although, as an intervener points out,[2] domestic laws differ about whether this challenge goes strictly to jurisdiction (the exercise of judicial power), as distinct from legality (the right to exercise that power), the distinction is beside any practical point. If the structure of any body purporting to exercise judicial power is so fundamentally flawed that its judges may realistically be perceived as puppets moved by the purse strings or the politics of their progenitors or paymasters, then it cannot be acknowledged as a "court" at all. It will be an emanation of power, of the state or some conglomeration of states, but it will lack the defining quality of legality, namely independence *from* the state. In international criminal law, there can be no such creature as a 'kangaroo court': entities which lack independence and impartiality are not courts at all and their decisions, however portentous, do not have the quality of legality.

2. "Independence and impartiality" is an alliterative conjunction found in most human rights treaties, although the two concepts are in fact disparate and have different legal histories. "Independence" means putting judges in a position to act according to their conscience and the justice of the case, free from pressures from governments, funding bodies, armies, churches, newspapers or any other source of power and influence that may otherwise bear upon them. It was established in the common law by an enactment of the long parliament in 1641, as an early victory (to be defended subsequently by arms) in the struggle against Stuart absolutism. "*Impartiality*", on the other hand, is generally regarded as the judicial characteristic of disinterest towards parties and their causes. The common law began to develop concrete rules against bias in the nineteenth century, beginning with the disqualification of judges who held stock in companies which were parties in their court. There is, of course, an overlap: judges who are not independent of the state will be perceived

[1] The Preliminary Motion was filed under Case No.SCSL-2003-08. Following the Decision and Order on Prosecution Motions for Joinder of 27 January 2004, and the subsequent Registrar's Decision for the Assignment of a new Case Number of 3 February 2004, Case No.SCSL-2004-14 has been assigned.
[2] Counsel for Moinina Fofana, oral argument, 5 November 2003.

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(and may actually become) partial to the state when it is a party to litigation. But for present purposes any such overlap, real or perceptual, is not alleged: the Applicant's challenge is to the perception created by the fact that certain states contribute the lion's share of funds and nominate representatives to the Management Committee.

3. The Applicant eschews any suggestion that the Special Court lacks the quality of independence through any constitutive arrangement other than funding, in particular the funding of judicial salaries.[3] These arrangements for what has been termed a "voluntary contribution" are certainly novel, and some apprehension about them was expressed, prior to their implementation by the Security Council and the Sierra Leone government, by the UN's own Secretary General,[4] although these concerns related to whether the funding would be sufficient and not to independence. In order to establish that novel arrangements affect judicial independence, there must be a realistic danger that they are or will be productive of pressure on the judges of the Court to decide cases in a particular way - in respect of this Applicant, to convict him. The Applicant argues that the funding arrangements "create a legitimate fear of political interference by economic manipulation".[5] When pressed in oral argument, his counsel conceded that this must translate into a fear that major donors would withhold funding unless the Court convicted all or most of its indictees and that such fear would so play on the minds of the judges that they would strive (not withstanding the burden of proof or the state of the evidence) to convict the Applicant. This is a far-fetched and difficult proposition.[6] Nonetheless, courts which claim true independence should be ready to examine any respect in which learned counsel allege that this fundamentally important quality may be imperiled. Courts which are so starved of funds that they cannot do justice should close themselves down rather than continue under the expectation that sufficient funding will be forthcoming only if they render verdicts acceptable to the funding body.

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[3] Defence Reply, para. 7.
[4] Report of the Secretary-General on the Establishment of a Special Court for Sierra Leone, 4 October 2000, S/2000/915, paras 68-72. ("Report of the Secretary-General")
[5] *Prosecutor v Sam Hinga Norman*, Case No. SCSL-2003-08-PT, Preliminary Motion based on Lack of Jurisdiction: Judicial Independence ("Preliminary Motion"), 26 June 2003, para. 2.
[6] Oral argument, 5 November 2003.

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SPECIAL COURT FOR SIERRA LEONE

IN THE APPEALS CHAMBER

Before: Justice Renate Winter, Presiding Judge
Justice Jon M. Kamanda
Justice George Gelaga King
Justice Emmanuel Ayoola
Justice Shireen Avis Fisher

Acting Registrar: Binta Mansaray

Date: 26 October 2009

PROSECUTOR **Against** **ISSA HASSAN SESAY**
MORRIS KALLON
AUGUSTINE GBAO
(Case No. SCSL-04-15-A)

JUDGMENT

Office of the Prosecutor:
Christopher Staker
Vincent Wagona
Nina Jørgensen
Reginald Fynn
Elisabeth Baumgartner
Régine Gachoud

Defence Counsel Issa Hassan Sesay:
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SPECIAL COURT FOR SIERRA LEONE
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II. APPELLATE REVIEW

A. Standard of Review on Appeal

30. Before the Appeals Chamber embarks on a detailed consideration of the Parties' Grounds of Appeal, it is expedient to recall at the threshold, albeit in general terms, some of the principles of appellate review that will guide it.[58]

31. **In regard to errors of law**: Where the appellant alleges an error of law pursuant to Article 20 of the Statute and Rule 106 of the Rules of Procedure and Evidence ("Rules"), only arguments relating to errors in law that invalidate the decision of the Trial Chamber would merit consideration. The appellant must provide details of the alleged error and state with precision how the legal error invalidates the decision.[59] In exceptional circumstances, the Appeals Chamber may consider legal issues raised by a party or *proprio motu* although they may not lead to the invalidation of the judgment, if they are nevertheless of general significance to the Special Court's jurisprudence.[60]

32. **In regard to errors of fact**: On appeal where errors of fact are alleged also pursuant to Article 20 of the Statute and Rule 106 of the Rules, the Appeals Chamber will not lightly overturn findings of fact reached by a Trial Chamber; the error of fact must have resulted in a miscarriage of justice.[61] The appellant must provide details of the alleged error and state with precision how the error of fact occasioned a miscarriage of justice. A miscarriage of justice is defined as "[a] grossly unfair outcome in judicial proceedings, as when a defendant is convicted despite a lack of evidence on an essential element of the crime."[62] For an error to be one that occasioned a miscarriage of justice it must have been "critical to the verdict reached."[63] Where it is alleged that the Trial Chamber committed an error of fact, the Appeals Chamber will give a margin of deference to the Trial Chamber that received the evidence at trial.[64] This is because it is the Trial Chamber that is best placed to assess the evidence, including the demeanour of witnesses.[65] The Appeals Chamber will only interfere in those findings where no reasonable trier of fact could have reached the same

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[58] *See Fofana and Kondewa* Appeal Judgment, paras 32-36.
[59] *Norman et al.* Subpoena Decision, para. 7.
[60] *Fofana and Kondewa* Appeal Judgment, para. 32. *See* also *Galić* Appeal Judgment, para. 6; *Stakić* Appeal Judgment, para. 7; *Kupreškić et al.* Appeal Judgment, para. 22; *Tadić* Appeal Judgment, para. 247.
[61] *Fofana and Kondewa* Appeal Judgment, para. 33, *Kupreškić et al.* Appeal Judgment, para. 29.
[62] *Kupreškić et al.* Appeal Judgment, para. 29, *citing Furundzija* Appeal Judgment, para. 37.
[63] *Kupreškić et al.* Appeal Judgment, para. 29.
[64] *Fofana and Kondewa* Appeal Judgment, para. 33.
[65] *Fofana and Kondewa* Appeal Judgment, para. 33.

finding or where the finding is wholly erroneous.[66] The Appeals Chamber has adopted the statement of general principle contained in the ICTY Appeals Chamber decision in *Kupreškić et al.*, as follows:

> [T]he task of hearing, assessing and weighing the evidence presented at trial is left primarily to the Trial Chamber. Thus, the Appeals Chamber must give a margin of deference to a finding of fact reached by a Trial Chamber. Only where the evidence relied on by the Trial Chamber could not have been accepted by any reasonable tribunal of fact or where the evaluation of the evidence is 'wholly erroneous' may the Appeals Chamber substitute its own finding for that of the Trial Chamber.[67]

The Appeals Chamber applies the same reasonableness standard to alleged errors of fact regardless of whether the finding of fact was based on direct or circumstantial evidence.[68]

33. The same standard of reasonableness and deference to factual findings applies when the Prosecution appeals against an acquittal,[69] however, the Appeals Chamber endorses the view that:

> Considering that it is the Prosecution that bears the burden at trial of proving the guilt of the accused beyond reasonable doubt, the significance of an error of fact occasioning a miscarriage of justice is somewhat different for a Prosecution appeal against acquittal than for a defence appeal against conviction. A convicted person must show that the Trial Chamber's factual errors create a reasonable doubt as to his guilt. The Prosecution must show that, when account is taken of the errors of fact committed by the Trial Chamber, all reasonable doubt of the convicted person's guilt has been eliminated.[70]

34. **In regard to procedural errors**: Although not expressly so stated in Article 20 of the Statute, not all procedural errors vitiate the proceedings. Only errors that occasion a miscarriage of justice would vitiate the proceedings. Such are procedural errors that would affect the fairness of the trial. By the same token, procedural errors that could be waived or ignored (as immaterial or inconsequential) without injustice or prejudice to the parties would not be regarded as procedural errors occasioning a miscarriage of justice.

35. **In regard to appellate review of the exercise of discretionary powers by the Trial Chamber**: The guiding principles can be stated succinctly. The Trial Chamber's exercise of

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[66] *Fofana and Kondewa* Appeal Judgment, para. 33; *Ntakirutimana* Appeal Judgment, para. 12; *Kupreškić et al.* Appeal Judgment, para. 30.
[67] *Fofana and Kondewa* Appeal Judgment, para. 34, *quoting Kupreškić et al.* Appeal Judgment, para. 30.
[68] *See Galić* Appeal Judgment, para. 9, fn. 21; *Stakić* Appeal Judgment, para. 219; *Čelebići* Appeal Judgment, para. 458. Similarly, the standard of proof at trial is the same regardless of the type of evidence, direct or circumstantial.
[69] *Muvunyi* Appeal Judgment, para. 10; *Mrkšić and Sljivančanin* Appeal Judgment, para. 15; *Martić* Appeal Judgment, para. 12.
[70] *Muvunyi* Appeal Judgment, para. 10; *Mrkšić and Sljivančanin* Appeal Judgment, para. 15; *Martić* Appeal Judgment, para. 12.

discretion will be overturned if the challenged decision was based: (i) on an error of law; or (ii) on a patently incorrect conclusion of fact; or (iii) if the exercise of discretion was so unfair or unreasonable as to constitute an abuse of the Trial Chamber's discretion. The scope of appellate review of discretion is, thus, very limited: even if the Appeals Chamber does not agree with the impugned decision, it will stand unless it was so unreasonable as to force the conclusion that the Trial Chamber failed to exercise its discretion judiciously.[71] Where the issue on appeal is whether the Trial Chamber correctly exercised its discretion in reaching its decision the Appeals Chamber will only disturb the decision if an appellant has demonstrated that the Trial Chamber made a discernible error in the exercise of discretion.[72] A Trial Chamber would have made a discernible error if it misdirected itself as to the legal principle or law to be applied, took irrelevant factors into consideration, failed to consider relevant factors or failed to give them sufficient weight, or made an error as to the facts upon which it has exercised its discretion.[73] Provided therefore that the Trial Chamber has properly exercised its discretion, its decision will not be disturbed on appeal even though the Appeals Chamber itself may have exercised the discretion differently.

B. Defective submissions

36. The Appeals Chamber has the inherent discretion to find that any of the Parties' submissions do not merit a reasoned opinion in writing and summarily dismiss arguments that are evidently unfounded. In particular, the Appeals Chamber cannot effectively and efficiently carry out its mandate without focused submissions by the Parties. In order for the Appeals Chamber to assess a Party's arguments, the Party is expected to set out its Grounds of Appeal clearly, logically and exhaustively.[74] Accordingly, submissions that are obscure, contradictory, vague or suffer from other formal and obvious insufficiencies may be, on that basis, summarily dismissed without detailed reasoning.[75]

37. In the instant proceeding, the Appeals Chamber has identified the following seven types of deficiencies in the Parties' submissions.

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[71] *Norman* Subpoena Decision, para. 5, *citing Milošević* Decision on Appeal from Refusal to Order Joinder, para. 4; *Karemera* Decision on Leave to File Amended Indictment, para. 9.
[72] *Norman* Subpoena Decision, para. 5, *citing Milošević* Decision on Appeal from Refusal to Order Joinder, para. 4.
[73] *Norman* Subpoena Decision, para. 6, *citing Milošević* Decision on Appeal from Refusal to Order Joinder, para. 5.
[74] *Brima et al.* Appeal Judgment, para. 34.
[75] *See Krajišnik* Appeal Judgment, para. 16; *Martić* Appeal Judgment, para. 14; *Strugar* Appeal Judgment, para. 16; *Orić* Appeal Judgment, para. 14.

38. First, some submissions are vague. An appellant is expected to identify the challenged factual finding and put forward its factual arguments with specificity.[76] As a general rule, where an appellant's references to the Trial Judgment or the evidence are missing, vague or incorrect, the Appeals Chamber will summarily dismiss that alleged error or argument.[77] The Appeals Chamber has summarily dismissed a number of the Parties' argument on this basis.[78]

39. Second, some submissions merely claim a failure to consider evidence. A Trial Chamber is not required to refer to the testimony of every witness and to every piece of evidence on the record, and failure to do so does not necessarily indicate lack of consideration.[79] This holds true as long as there is no indication that the Trial Chamber completely disregarded any particular piece of evidence. Such disregard is shown "when evidence which is clearly relevant to the findings is not addressed by the Trial Chamber's reasoning."[80] Where the Appeals Chamber finds that an appellant merely asserts that the Trial Chamber failed to consider relevant evidence, without showing that no reasonable trier of fact, based on the totality of the evidence, could have reached the same conclusion as the Trial Chamber did, or without showing that the Trial Chamber completely disregarded the evidence, it will, as a general rule, summarily dismiss that alleged error or argument.[81] The Appeals Chamber has summarily dismissed the arguments suffering from this type of deficiency.[82]

40. Third, some submissions merely seek to substitute alternative interpretations of the evidence. As a general rule, mere assertions that the Trial Chamber erred in its evaluation of the evidence, such as claims that the Trial Chamber failed to give sufficient weight to certain evidence, or should have interpreted evidence in a particular manner, are liable to be summarily dismissed.[83] Similarly, where an appellant merely seeks to substitute its own evaluation of the evidence for that

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[76] *Martić* Appeal Judgment, para. 18; *Strugar* Appeal Judgment, para. 20. *See* also *Halilović* Appeal Judgment para. 13; *Blagojević and Jokić* Appeal Judgment, para. 11; *Brđanin* Appeal Judgment, para. 15; *Gacumbitsi* Appeal Judgment, para. 10.
[77] *Martić* Appeal Judgment, para. 18; *Strugar* Appeal Judgment, para. 20.
[78] These arguments are found in parts of the following paragraphs of the Parties' Appeals: Sesay Appeal, paras 80 (Sesay Ground 23 in its entirety), 149 (in Ground 29), 169 (in Ground 32), 276-279 (in Ground 35); Kallon Appeal, paras 77-85 (Kallon Ground 7 in its entirety), 98 (in Ground 9), 147 (in Ground 15), 194 (in Ground 20), 198 (in Ground 20), 203 (in Ground 20); Gbao Appeal, para. 163 (in Ground 8(m)).
[79] *Strugar* Appeal Judgment, para. 24; *Kvočka et al.* Appeal Judgment, para. 23; *Kupreškić et al.* Appeal Judgment, para. 458.
[80] *Strugar* Appeal Judgment, para. 24; *Limaj* Appeal Judgment, para. 86.
[81] *See Brđanin* Appeal Judgment, para. 24; *Galić* Appeal Judgment, paras 257-258.
[82] These arguments are found in parts of the following paragraphs of the Parties' Appeals: Sesay Appeal, paras 109 (in Ground 24), 113 (in Ground 24), 142 (in Ground 29), 169 (in Ground 31); Kallon Appeal, para. 142 (in Ground 13).
[83] *See Martić* Appeal Judgment, para. 19; *Strugar* Appeal Judgment, para. 21; *Brđanin* Appeal Judgment, para. 24.

of the Trial Chamber, such submissions may be dismissed without detailed reasoning. The same applies to claims that the Trial Chamber could not have inferred a certain conclusion from circumstantial evidence, without further explanation.[84] An appellant must address the evidence the Trial Chamber relied on and explain why no reasonable trier of fact, based on the evidence, could have evaluated the evidence as the Trial Chamber did, and the Appeals Chamber may summarily dismiss arguments that fail to make such a minimum pleading on appeal. The Appeals Chamber has summarily dismissed the arguments that fail to comply with this rule.[85]

41. Fourth, some submissions fail to identify the prejudice. Where the Appeals Chamber considers that an appellant fails to explain how the alleged factual error had an effect on the conclusions in the Trial Judgment, it will summarily dismiss that alleged error or argument. The arguments of the Parties suffering from this deficiency have been summarily dismissed.[86]

42. Fifth, some submissions are mere repetitions of arguments at trial. The Appeals Chamber will, as a general rule, summarily dismiss submissions that merely repeat arguments that did not succeed at trial unless it is shown that their rejection by the Trial Chamber constituted an error warranting the intervention of the Appeals Chamber.[87] The Appeals Chamber emphasizes that an appellant must contest the Trial Chamber's findings and conclusions, and should not simply invite the Appeals Chamber to reconsider issues *de novo*. Submissions that merely put forward an appellant's position without addressing the Trial Chamber's allegedly erroneous finding or conclusion therefore fail to properly develop an issue for appeal. Some of the Parties' arguments have been summarily dismissed on this basis.[88]

43. Sixth, many submissions are otherwise incomplete. Submissions may be dismissed without detailed reasoning where an appellant makes factual claims or presents arguments that the Trial

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[84] *Martić* Appeal Judgment, para. 19; *Strugar* Appeal Judgment, para. 21.
[85] These arguments are found in parts of the following paragraphs of the Parties' Appeals: Sesay Appeal, paras 164 (in Ground 31), 177-182 (in Ground 28), 196-203 (in Ground 33), 219 (in Ground 33), 221 (in Ground 33), 222 (in Ground 33), 240 (in Ground 34), 248 (in Ground 34), 309 (in Ground 40), 310 (in Ground 40), 334 (in Ground 43); Kallon Appeal, paras 168 (in Ground 16), 194 (in Ground 20), 196 (in Ground 20), 197 (in Ground 20), 199 (in Ground 20), 201 (in Ground 20), 202 (in Ground 20), 204 (in Ground 20), 209 (in Ground 20), 217 (in Ground 20), 218 (in Ground 20); Gbao Appeal, paras 405-415 (in Ground 18(c)).
[86] These arguments are found in parts of the following paragraphs of the Parties' Appeals: Sesay Appeal, paras 113 (in Ground 24), 169 (in Ground 32), 276-279 (in Ground 35), 292 (in Ground 38); Kallon Appeal, paras 41 (in Ground 2), 196-198 (in Ground 20), 201-203 (in Ground 20), 223 (in Ground 21); Gbao Appeal, para. 140 (in Ground 8(i)).
[87] *Martić* Appeal Judgment, para. 14; *Strugar* Appeal Judgment, para. 16; *Halilović* Appeal Judgment para. 12; *Blagojević and Jokić* Appeal Judgment, para. 10; *Brđanin* Appeal Judgment, para. 16; *Galić* Appeal Judgment, paras 10 and 303; *Simić* Appeal Judgment, para. 12; *Gacumbitsi* Appeal Judgment, para. 9.

Chamber should have reached a particular conclusion without advancing any evidence in support. Indeed, an appellant is expected to provide the Appeals Chamber with an exact reference to the parts of the trial record invoked in support of its arguments.[89] As a general rule, in instances where this is not done, the Appeals Chamber will summarily dismiss the alleged error or argument.[90] Similarly, the Appeals Chamber will, as a general rule, summarily dismiss undeveloped arguments and alleged errors, as well as submissions where the appellant fails to articulate the precise error committed by the Trial Chamber.[91] The Appeals Chamber has, therefore, summarily dismissed numerous arguments because they are unsupported,[92] undeveloped,[93] or fail to articulate the precise error alleged.[94]

44. Lastly, some submissions exceed the applicable page limit. The Parties are obliged to comply with the page limits for their appeal briefs set out in Article 6(E) of the Practice Direction on Filing Documents before the Special Court for Sierra Leone, as amended, and to seek authorisation pursuant to Article 6(G) of the said Practice Direction before filing appeal briefs which exceed that page limit. In the present case, the Parties were granted extensions of pages for

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[88] These arguments are found in parts of the following paragraphs of the Parties' Appeals: Sesay Appeal, paras 248 (in Ground 34), 339-346 (in Ground 44).

[89] *Martić* Appeal Judgment, para. 20; *Strugar* Appeal Judgment, para. 22. *See* also *Halilović* Appeal Judgment, para. 13; *Blagojević and Jokić* Appeal Judgment, para. 11; *Brđanin* Appeal Judgment, para. 15; *Gacumbitsi* Appeal Judgment, para. 10.

[90] *Martić* Appeal Judgment, para. 20.

[91] *Galić* Appeal Judgment, para. 297.

[92] These arguments are found in parts of the following paragraphs of the Parties' Appeals and Notices of Appeal: Sesay Appeal, paras 80 (Sesay Ground 23 in its entirety), 143 (in Ground 29), 150 (in Ground 29), 151 (in Ground 29), 182 (in Ground 28), 240 (in Ground 34), 307 (in Ground 40), 308 (in Ground 40), 311 (in Ground 40), 334 (in Ground 43), fn. 712 (in Ground 27); Kallon Appeal, paras 38 (in Ground 2), 48 (in Ground 2), 64 (in Ground 2), 147 (in Ground 15), 154 (in Ground 15), 168 (in Ground 16), 193 (in Ground 20), 194 (in Ground 20), 203 (in Ground 20), 209 (in Ground 20), 212 (in Ground 20), 216 (in Ground 20),331-334 (in Ground 31), fn. 263 (in Ground 9); Kallon Notice of Appeal, paras 10.15 (in Ground 9), 10.16 (in Ground 9), 10.18 (in Ground 9); Gbao Appeal, paras 24-26 (Gbao Ground 7 in its entirety).

[93] These arguments are found in parts of the following paragraphs of the Parties' Appeals: Sesay Appeal, paras 2-22 (in Grounds 1, 2, 3 and 14), 58 (Sesay Grounds 1, 2, 3, 14 and 15 in their entirety) 27-30 (in Ground 6), 33 (in Ground 6), 35-37 (in Ground 6), 46-48 (Sesay Ground 10 in its entirety), 80 (Sesay Ground 23 in its entirety), 142 (in Ground 29), 144 (in Ground 29), 145 (in Ground 29), 148 (in Ground 30), 150 (in Ground 29), 151 (in Ground 29), 164 (in Ground 31), 169 (in Ground 31), 182 (in Ground 28), 196-203 (in Ground 33), 288 (in Ground 38), 292 (in Ground 38), 296 (in Ground 39), 298 (in Ground 39), 301 (in Ground 39), 307 (in Ground 40), 308 (in Ground 40), 309 (in Ground 40), 310 (in Ground 40), 311 (in Ground 40), 334 (in Ground 43); Kallon Appeal, paras 1-22 (Kallon Ground 1 in its entirety), 28 (in Ground 2), 38 (in Ground 2), 42 (in Ground 2), 64 (in Ground 2), 68-69 (Kallon Ground 4 in its entirety), 77-85 (Kallon Ground 7 in its entirety), 147 (in Ground 15), 142 (in Ground 13), 154 (in Ground 15), 193 (in Ground 20), 194 (in Ground 20), 199-204 (in Ground 20), 209 (in Ground 20), 212 (in Ground 20), 216 (in Ground 20), 231 (in Ground 21), 331-334 (in Ground 31), fn. 263 (in Ground 9); Kallon Notice of Appeal, paras 5.2 (in Ground 4), 5.5 (in Ground 4), 9.4 (in Ground 8), 10.15 (in Ground 9), 10.16 (in Ground 9), 10.18 (in Ground 9). Gbao Appeal, paras 24-26 (Gbao Ground 7 in its entirety), 133 (in Ground 8(i)), 140 (in Ground 8(i)).

[94] These arguments are found in parts of the following paragraphs of the Parties' Appeals: Sesay Appeal, paras 189 (in Ground 28), 232 (in Ground 25, 27, 34, 36), 247 (in Ground 34); Kallon Appeal, paras 28 (in Ground 2), 42 (in Ground 2), 155 (in Ground 15), 193 (in Ground 20), 200 (in Ground 20), 203 (in Ground 20), 204 (in Ground 20).

their appeal and response briefs.[95] Additional arguments of the Parties presented in annexes to their Appeals in violation of the page limit thus imposed have been summarily dismissed.[96]

45. In addition to the abovementioned formal deficiencies in the pleadings, the Appeals Chamber observes that large parts of the Parties' Grounds of Appeal are, in general, poorly structured and organised. For instance, rather than making distinct challenges under separate grounds of appeal, the Parties arrange different parts of different grounds to support a variety of arguments without indicating which portion of each argument develops which ground of appeal. Similarly, in other instances the Parties group a range of disparate arguments, each concerning a substantial issue, under a single ground of appeal. The Parties also frequently raise the same argument in numerous grounds of appeal. Finally, the Parties have often used "sub-grounds" of appeal to designate apparently new grounds of appeal, rendering meaningless the practice of pleading distinct errors as distinct grounds of appeal. In the interests of justice, the Appeals Chamber has endeavoured to fully consider these problematic submissions, subject to the summary dismissals outlined above. We note, however, that the poorly structured and disorganized grounds of appeal failed to assist the Appeals Chamber in its consideration of the issues and arguments.

46. Finally, the Appeals Chamber observes that the tone and language of some submissions do not meet the standard expected of those appearing before the Special Court. Although zealous advocacy is encouraged, Counsel should nevertheless maintain a respectful and decorous tone in their submissions.

[95] Decision on "Kallon Defence Motion for Extension of Time to File Appeal and Extension of Page Limit", 4 May 2009, pp. 3, 4.
[96] This ruling applies to the arguments made in Annexes A, B, C1-C9, E, G, H, I, J to the Sesay Appeal, and Annexes III and V to the Gbao Appeal. The Appeals Chamber notes that Sesay refers to "Annex D" to his Appeal (*see e.g.* Sesay Appeal, paras 31, 48), but that no "Annex D" to his appeal was filed.

Prosecution.[401] He argues specifically that the Trial Chamber did not properly consider payments made to TF1-035, TF1-360, TF1-366, TF1-334, TF1-015, and TF1-362.[402] The Prosecution responds that Sesay's submission is unsubstantiated.[403]

(b) Discussion

197. In its Decision on Sesay Motion on Payment to Witnesses, the Trial Chamber dismissed Sesay's Motion to Hear Evidence Concerning the Prosecution's Witness Management Unit and its Payments to Witnesses.[404] This motion was made on 30 May 2008 after the conclusion of the Prosecution and Defence cases in chief. The motion alleged that Prosecution witnesses who had appeared at the RUF trial were given material assistance by the Office of the Prosecutor and that this came to light when the same witnesses testified in the *Taylor* trial.[405] In denying the motion, the Trial Chamber considered that Sesay: had the opportunity, in the course of cross-examination of witnesses called by the Prosecution, to put these questions to the witnesses, and exercised that right in respect to some of them; did not pursue this line of cross-examination with other witnesses called by the Prosecution; and did not attempt to introduce additional evidence of payments during the Prosecution case or his own case.[406] As Sesay neither contests this nor indicates what error of "law, fact and/or procedure" the Trial Chamber made in dismissing the motion, his submission is dismissed.[407]

198. Sesay's second assertion is equally unavailing. Sesay contends that the Trial Chamber failed to take into consideration payments by the Prosecution to witnesses.[408] However, in the Trial Judgment at paragraph 523, directly under the heading "Witness Incentives," the Trial Chamber considered the Defence allegations of improper inducement for witness testimony by the Prosecution and expressly recognised that "[t]his issue was raised in motions filed by the Defence, during the cross examination of several witnesses and in their Final Trial Briefs."[409] The "issue" to

[400] Sesay Appeal, para. 59.
[401] Sesay Appeal, para. 60.
[402] Sesay Appeal, para. 61.
[403] Prosecution Response, para. 4.46.
[404] Decision on Sesay Motion on Payment to Witnesses.
[405] Sesay Motion on Payment to Witnesses, para. 30.
[406] Decision on Sesay Motion on Payment to Witnesses, p. 2.
[407] *See supra*, para. 43.
[408] Sesay Appeal, para. 60.
[409] Trial Judgment, para. 523.

200. Finally, as to Sesay's contention that the Trial Chamber neglected to properly consider and reason the credibility of witnesses because of its alleged failure to take into account evidence of Prosecution payments to witnesses specifically in connection with their credibility is misplaced.[418] The Trial Chamber thoroughly explained its analysis of the credibility of the witnesses. It expressly considered the evidence of Prosecution payments to witnesses.[419] It stated in particular that it had considered factors such "as any personal interest witnesses may have that may influence their motivation to tell the truth; and observational criteria such as the witnesses' demeanour, conduct and character."[420] In addition, the Trial Chamber provided individual assessment of the credibility of a number of Prosecution witnesses, including three of the six witnesses cited in this ground.[421] The Appeals Chamber recalls that the credibility of witnesses and the weight to be given the evidence is within the Trial Chamber's discretion.[422] In that regard, the Appeals Chamber finds that the Trial Chamber adequately reasoned its use of discretion and that this discretion has been properly exercised.

(c) Conclusion

201. For the foregoing reasons, Sesay's Ground 16 is dismissed in its entirety.

3. Alleged False Testimony of Prosecution Witness TF1-366 (Sesay Ground 17)

(a) Trial Chamber's findings

202. In a Decision of 25 July 2006, the Trial Chamber dismissed Sesay's Motion concerning the False Testimony of TF1-366.[423] In respect of each portion of TF1-366's evidence that Sesay alleged amounted to false testimony, the Trial Chamber considered that the inconsistency and contradiction in the witness's testimony did not amount to knowingly giving false testimony, and stated that the determination of the credibility, reliability and probative value of the witness's s evidence would be considered at the appropriate time.[424] In assessing the credibility of TF1-366 in the Trial Judgment, the Trial Chamber stated that it had "share[d] the concerns of Defence Counsel for the Accused that

[418] Sesay Appeal, para. 61.
[419] Trial Judgment, para. 523 and discussion above.
[420] Trial Judgment, para. 486.
[421] Trial Judgment, paras 544-546; 553-555; 562-564.
[422] *Nahimana et al.* Appeal Judgment, para. 194; *Kvočka et al.* Appeal Judgment, para. 659.
[423] Sesay Motion Concerning the False Testimony of TF1-366.
[424] Decision Concerning the False Testimony of TF1-366, para. 42.

TF1-108's testimony was the sole basis for the finding of two RUF farms in Giema in 1996 and 1998 where about 300 civilians were forced to work.[456]

(c) Discussion

217. Although Sesay alleges errors in the Decision on his Motion for Various Relief and in the Trial Judgment as regards the assessment of TF1-108's credibility and the reliance on TF1-108's evidence, the Appeal Chamber only addresses the latter because Sesay has not shown any prejudice from the alleged errors in the Trial Chamber's Decision on Sesay Motion for Various Relief.

218. Sesay's challenges the Trial Chamber's assessment of TF1-108's credibility and the use of the witness's evidence for its findings. Assessing the credibility and reliability of TF1-108's evidence, the Trial Chamber stated:

> In assessing the veracity of TF1-108's testimony, the Chamber shares the concerns of the Defence, and doubts the credibility of this witness, particularly in light of his misleading evidence concerning the death of his wife. The Chamber, while exercising caution with regard to the evidence given by TF1-108, has accepted portions of his testimony that are corroborated by a reliable source when such evidence dealt with the acts and conduct of the Accused, as well as his general descriptions of events. The Chamber has accordingly rejected his testimony on the raping to death of his wife as fallacious. We however, have found and accepted his testimony on matters within his personal knowledge and touching on his activities and involvement in the conflict within his locality as credible where corroborated by other credible and reliable evidence particularly on issues of forced labour, 'forced marriages' and inhumane treatment of civilians.[457]

Sesay contends that "it was not within the reasonable exercise of discretion to assess TF1-108's credibility as requiring corroboration only."[458]

219. The Appeals Chamber notes that neither the Rules nor the relevant international jurisprudence require a Chamber to exclude in its entirety a witness's evidence because the witness is found to have lied when giving testimony. While some Trial Chambers have found evidence of witnesses who have lied not to be credible and rejected it in whole,[459] others have elected to accept portions of the witness's testimony, approaching it with caution and/or requiring corroboration.[460]

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[456] Sesay Reply, para. 42, *citing* Trial Judgment, para. 1422.
[457] Trial Judgment, para. 597.
[458] Sesay Appeal, para. 68.
[459] *Seromba* Trial Judgment, para. 92 (finding one witness not credible "as he admits having lied before the Chamber."); *Nahimana* Trial Judgment, para. 551 (finding that a witness "lied repeatedly" and rejecting her testimony in its entirety), upheld on appeal, *Nahimana* Appeal Judgment, para. 820.
[460] *Nshogoza* Trial Judgment, paras 65-67 (Where the Trial Chamber considered a witness' evidence with particular care,in view of his prior criminal record and that he admitted to lying under oath before the Appeals Chamber.;

The effect given to a witness's false testimony upon his overall credibility is thus to be assessed on a case-by-case basis. As a matter of law, the Trial Chamber was not required to reject TF1-108's evidence in its entirety on the basis that he provided fallacious evidence in relation to his wife. Rather, the credibility and reliability of this evidence, as any other permissible evidence, was a matter for the Trial Chamber to assess in view of the circumstances of the case. The Trial Chamber duly took into consideration the fact that TF1-108 made fallacious allegations and as a result required corroboration of the entirety of his evidence. In view of the caution displayed by the Trial Chamber, the Appeals Chamber considers that Sesay fails to demonstrate that no reasonable trier of fact could have assessed TF1-108's credibility as the Trial Chamber did. This prong of Sesay's present appeal is therefore dismissed.

220. The Appeals Chamber now turns to Sesay's claim that the Trial Chamber erred in law and in fact in relying on TF1-108's testimony as the only support for various allegations which resulted in convictions for the crimes charged in Counts 12 and 13 of the Indictment.

221. As a preliminary matter, the Appeals Chamber holds that a Trial Chamber enjoys discretion to use uncorroborated evidence, to decide whether corroboration is necessary in the circumstances,[461] and to rely on uncorroborated, but otherwise credible, witness testimony.[462] Any appeal based on the absence of corroboration must therefore necessarily be against the weight attached by the Trial Chamber to the evidence in question.[463] Nonetheless, should a Chamber consider that a witness's evidence is to be approached with caution and/or require corroboration by other reliable evidence, it is bound to abide itself by the required caution or corroboration.[464]

Zigiranyirazo Trial Judgment, paras 337-344 (where the Trial Chamber declined to accept his uncorroborated testimony who acknowledged to have given false testimony to the Rwandan authorities."); *Kordić and Čerkez* Trial Judgment, paras 629-630, upheld on appeal: *Kordić and Čerkez* Appeal Judgment, paras 254-267; *Naletilić and Martinović* Appeal Judgment, para. 175 ("In the Appeals Chamber's view, the fact that, at trial, Witness [...] admitted to having lied on the two aforementioned occasions and to having committed the crimes mentioned above fails to demonstrate that the Trial Chamber erred in its assessment of the overall credibility of the witness in spite of these admissions."); *Limaj* Trial Judgment para. 26.

[461] *Karera* Appeals Judgment, para. 45, *citing Muhimana* Appeal Judgment, para. 49; *Kajelijeli* Appeal Judgment, para. 170, *Niyitegeka* Appeal Judgment, para. 92; *Rutaganda* Appeal Judgment, para. 29.

[462] *Karera* Appeals Judgment, para. 45, citing *Muvunyi* Appeal Judgment, para. 128; *Muhimana* Appeal Judgment, paras 101, 120, 159, 207; *Nahimana et al.* Appeal Judgment, paras 547, 633, 810.

[463] *Karera* Appeals Judgment, para. 45, *citing Kordić and Čerkez* Appeal Judgment, para. 274.

[464] *See Karera* Appeal Judgment, paras 203-204 (where the Appeals Chamber noted that the Trial Chamber decided to consider one witness with caution in view of the fact that he may have been influenced by a wish to positively affect the criminal proceeding. It found that that no reasonable trier of fact could have accepted this witness's uncorroborated hearsay testimony about one alleged event.)

222. Turning to the instant case, in relation to Count 12 of the Indictment, Sesay refers to the Trial Chamber's finding that "girls as young as 6 years old were trained to fight at Bunumbu" Training base,[465] in support of which the Trial Chamber only referred to the testimony of TF1-108.[466] However, the factual and legal findings of the Trial Chamber that children, including girls,[467] under the age of fifteen were trained at Bunumbu Training Base (Camp Lion) were based on the testimony of numerous witnesses,[468] and an exhibit.[469] Sesay therefore fails to demonstrate any error in the Trial Chamber's assessment of the evidence.

223. In relation to Count 13 of the Indictment, Sesay refers to the Trial Chamber's findings of two "government" farms in Giema which were organised and managed by the RUF with approximately 300 civilians working on these farms,[470] that civilians working on these farms could not refuse to farm because armed men were observing and supervising them while they were working,[471] and that civilians working on Gbao's farm in Giema were guarded by Gbao's bodyguard, Korpomeh.[472] The Appeals Chamber notes that in relation to parts of its findings on the existence in 1996 and 1998 of two big "government" farms in Giema, which were organised and managed by the RUF and where approximately 300 civilians were forced to work, the Trial Chamber only cited the evidence of TF1-108.[473] However, the Trial Chamber also relied on the testimony of TF1-330 for its finding that "[f]rom 1996 to 2001, farming occurred at RUF farms located in Giema, Talia, Sembehun, Bandajuma and Sandialu."[474] Sesay does not make any submissions as to how the testimony of TF1-330 fails to corroborate TF1-108's evidence. Sesay's only submissions concerning TF1-330 in this ground of appeal pertain to his allegation that TF1-

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[465] Sesay Appeal, para. 69. Although Sesay refers to paragraph 1435 of the Trial Judgment, the relevant paragraph of the Trial Chamber's findings related to training of children at Bunumbu Training base is contained at paragraph 1438.
[466] Trial Judgment, para. 1438, *citing* Transcript, TF1-108, 8 March 2006, pp. 43 46, 47 and Transcript, TF1-330, 14 March 2006, p. 51 (closed session). The Appeals Chamber notes that, as correctly pointed out by Sesay, TF1-330's testimony does not include statement regarding training of children under the age of fifteen at Bunumbu Training base but rather at Bayama Training base (*see*, Transcript, TF1-330, 14 March 2006, p. 51.)
[467] Trial Judgment, para. 1636, based on the testimony of TF1-141; Trial Judgment, para. 1635 (finding the existence of Small Girls Unit in Camp Lion) based on the testimony of TF1-362, TF1-036; Trial Judgment, para. 1438 (finding the existence in Camp Lion of a Women's Auxiliary Corps for girls where children were trained to become bodyguards of senior commanders), based on the testimony of TF1-113, TF1-168.
[468] Trial Judgment, paras 1438 (TF1-168), 1438 (TF1-113), 1438 (TF1-114), 1439 (TF1-263), 1440, 1636, 1640-1645 (TF1-141), 1635 (TF1-362), 1638 (TF1-366), 1640 (TF1-036).
[469] Trial Judgment, para. 1635, *citing* Exhibit 25, Report from Camp Lion Training Base Training Commandant Buedu to G-1 Commander at Buedu on Recruits, 21 May 1998.
[470] Sesay Appeal, para. 69, *citing* Trial Judgment, para. 1422.
[471] Sesay Appeal, para. 69, *citing* Trial Judgment, para. 1422.
[472] Sesay Appeal, para. 69, *citing* Trial Judgment, para. 1426.
[473] Trial Judgment, paras 1422.
[474] Trial Judgment, para. 1422, *citing* Transcript, TF1-330, 14 March 2006, pp 24-31 (closed session).

108 tried to influence him in respect of the evidence related to the alleged death of his wife.[475] Sesay does not argue that the evidence of TF1-330 concerning the RUF farms in Giema was tainted by his contact with TF1-108. The Appeals Chamber further recalls it has dismissed the related challenges to TF1-108's allegedly uncorroborated testimony in Gbao's Ground 11.[476]

(d) Conclusion

224. In view of the above, the Appeals Chamber dismisses Sesay's Ground 18 in its entirety.

5. Alleged error relating to admission of evidence under Rule 92*bis* (Sesay Ground 20)

(a) Trial Chamber's findings

225. At trial, Sesay filed four motions[477] requesting the admission of a total of 23 witness statements under Rule 92*bis* in lieu of their examination-in-chief and without cross examination.[478] The Trial Chamber decided the motions in a single decision on 15 May 2008.[479] The Trial Chamber found that the statements of 17 witnesses were repetitive of other witness statements and of the *viva voce* testimony already heard by the Trial Chamber,[480] and that admission of these witness statements would result in duplicating evidence and would cause unnecessary delay in the proceedings.[481] It therefore dismissed the request to admit these 17 witness statements under Rule 92*bis*.[482] The Trial Chamber considered that six of the 23 witness statements contained admissible evidence under Rule 92*bis* and were non-repetitive.[483] It therefore admitted those six statements.[484]

(b) Submissions of the Parties

226. In Ground 20, Sesay submits that the Trial Chamber erred in dismissing 18 Rule 92*bis* and Rule 92*ter* witness statements.[485] He contends that the "the reasons proffered for rejecting the statements were demonstrably flawed," that the "evidence would not have been repetitive" and

[475] Sesay Appeal, paras 67, 70.
[476] *See infra*, paras 1098 (Gbao Ground 11), 745 (Sesay Ground 40).
[477] Sesay Motion for Admission of Written Evidence; Sesay First Application for Admission of Written Statements; Sesay Second Application for Admission of Written Statements; Sesay Third Application for Admission of Written Evidence.
[478] Decision on Admission of 23 Witness Statements.
[479] Decision on Admission of 23 Witness Statements, para. 21.
[480] Decision on Admission of 23 Witness Statements, para. 47.
[481] Decision on Admission of 23 Witness Statements, para. 48.
[482] Decision on Admission of 23 Witness Statements, Disposition, paras 1-3.
[483] Decision on Admission of 23 Witness Statements, para. 49.
[484] Decision on Admission of 23 Witness Statements, Disposition, paras 1-3.

category" of witnesses. The Appeals Chamber however finds that Sesay misrepresents the Trial Chamber's findings. The Trial Chamber considered that witnesses who had been themselves the victims of brutal crimes or were eye-witnesses to the commission of such crimes against relatives and friends were emotional when testifying and were sometimes unable to provide every detail of their experience. As a result, minor inconsistencies in their testimony are to be expected.[517] The Trial Chamber did not treat those witnesses as an "inviolable category." It considered instead that minor inconsistencies in their testimony may be attributed to their traumatic experience, thereby taking due account of the impact of trauma of the victim witnesses upon their testimony, for the purpose of evaluating their credibility.

238. The Appeals Chamber sees no error in the Trial Chamber's reasoning, and considers it a sound practice to bear in mind the likely distorting effect of trauma upon a witness's testimony and to accordingly consider the suffering he or she has experienced when evaluating his/her overall credibility.[518] The Appeals Chamber agrees with the observation of the ICTY Appeals Chamber that traumatic experiences often generate minor inconsistencies in a witness's testimony, but this fact should not impugn the witness's credibility.[519] On the other hand, the evident trauma suffered by a witness does not provide a guarantee that their testimony is reliable.[520]

239. Sesay complains that the Trial Chamber found the evidence of "victim witnesses" and "former child soldiers" reliable merely because it related to their own experience. In fact, the Trial Chamber found those witnesses credible "especially as [their] testimony relates to personal accounts of witnesses experiencing the crimes charged"[521] and "especially as it relates to their own experiences," respectively.[522] Sesay fails to show how it was an abuse of the Trial Chamber's discretion to consider that the witnesses testified credibly about their personal experiences.

240. Sesay provides scant support for his assertion that the Trial Chamber did not assess the credibility of witnesses individually. It is true that the Trial Chamber made general observations on the overall reliability of evidence of "victim witnesses" and "former child soldiers;" however, Sesay fails to argue why their partly similar circumstances did not warrant partly similar consideration by

[517] Trial Judgment, para. 533.
[518] *Rutaganda* Appeal Judgment, para. 216; *Musema* Appeal Judgment, para. 63; *Čelibići* Appeal Judgment, para. 485; *Kalijeli* Appeal Judgment, para. 13; *Kunarac et al.* Appeal Judgment, para. 267; *Furundžija* Appeal Judgment, para. 122.
[519] *Furundžija* Appeal Judgment, para. 122; *Furundžija* Trial Judgment, para. 109.
[520] *Rutaganda* Appeal Judgment, para. 216.
[521] Trial Judgment, para. 536.

the Trial Chamber. It is also clear that the Trial Chamber considered the credibility of witnesses within the categories on an individual basis. For example, in relation to TF1-141,[523] TF1-263,[524] TF1-117,[525] and TF1-314,[526] all of whom were former child soldiers, the Trial Chamber reasoned differently regarding the credibility of their evidence, taking into account factors such as the demeanour of the witness,[527] inconsistencies in their statements,[528] or whether the evidence of the witness was useful and compelling.[529]

241. Sesay further submits that the Trial Chamber distinguished between evidence related to the witnesses' own experience, which it found generally reliable, and evidence that goes to the "acts and conduct of the accused," which it found to require corroboration. The distinction, Sesay contends, was unsustainable given that the use of the evidence of the concerned witnesses in relation to their own experience was "critical to proof of essential elements of crime and proof of responsibility."[530] Sesay, however, does not substantiate this argument at all in this ground. Instead he directs the Appeals Chamber to "[s]ee Grounds 25, 32, 36, 37, 39, 40, 42 and 43,"[531] and cites without explanation or argument decisions under Rule 92*bis* from this Court and the other international tribunals.[532]

242. His reference in this relation to case law that applies the term of art "acts and conduct" of the accused in the context of Rule 92*bis* is misguided. There is no suggestion in the Trial Judgment that the Trial Chamber applied the term "acts and conduct of the accused" in the context of Rule 92*bis* when discussing the credibility of the witnesses.

(c) Conclusion

243. In view of the above, the Appeals Chamber dismisses Sesay's Grounds 21 and 22 in their entirety.

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[522] Trial Judgment, para. 579.
[523] Trial Judgment, paras 580-583.
[524] Trial Judgment, paras 584-587.
[525] Trial Judgment, paras 588-590.
[526] Trial Judgment, paras 591-594.
[527] Trial Judgment, para. 583 (noting that TF1-141, although diagnosed with PTSD, was able to give truthful testimony, and that he appeared as a "candid witness").
[528] Trial Judgment, para. 587 (TF1-263); para. 594 (TF1-314).
[529] Trial Judgment, para. 590.
[530] Sesay Appeal, para. 79.
[531] Sesay Appeal, para. 79, fn. 206.
[532] Sesay Appeal, para. 79, fn. 207, *citing* Decision on Admission of 23 Witness Statements, para. 33; *Galić* Decision on Rule 92bis, para. 10.

258. The Prosecution responds that the testimony of a witness who lies need not necessarily be discarded in its entirety and that the Trial Chamber has discretion to accept parts of a witness's evidence even when knowing that other part of the evidence has been dishonest.[555]

(b) Discussion

259. In relation to Gbao's submission that evidence of a witness who admits to lying under oath should be disregarded in its entirety, the Appeals Chamber recalls its previous holding that, as a matter of law, a Trial Chamber is not required to reject the entirety of the evidence of witness should it be apparent that the witness lied while testifying under solemn declaration.[556] While a Trial Chamber may decide, in its exercise of discretion, to entirely disregard the evidence of a witness deemed unworthy of belief,[557] it may also find portions of the testimony believable and decide to rely on the evidence it determines to be credible, using necessary caution.[558] The effect of untruthful testimony on the evaluation of a witness's overall credibility, and the reliability of all of other evidence adduced from that witness must be assessed on a witness by witness basis by the trier of fact.

260. In relation to Prosecution Witness TF1-108, the Appeals Chamber has previously determined that the Trial Chamber did not abuse its discretion in accepting portions of the witness's evidence that are corroborated by other reliable evidence.[559]

261. In relation to Prosecution Witness TF1-366, the Appeals Chamber already stated that it saw no abuse of discretion in the Trial Chamber's Decision on Sesay Motion concerning the False Testimony of TF1-366.[560] In this Decision, the Trial Chamber stated that the inconsistencies and contradictions in the witness's testimony would be addressed at its final determination of the credibility, reliability and probative value of TF1-366 in light of all the evidence adduced by the Prosecution and the Defence.[561] In the Trial Judgment, the Trial Chamber stated that it was required

[555] Prosecution Response, para. 4.36.
[556] *See supra*, paras 217-219.
[557] *Seromba* Trial Judgment, para. 92; *Nahimana et al.* Trial Judgment, para. 551; *Nahimana et al.* Appeals Judgment, para. 820
[558] *Nshogoza* Trial Judgment, paras 65-67; *Zigiranyirazo* Trial Judgment, paras 337-344; *Kordić and Čerkez* Trial Judgment, paras 629-630; *Kordić and Čerkez* Appeal Judgment, paras 254-267, 292-293; *Naletilić and Martinović* Appeal Judgment, para. 175; *Limaj et al.* Trial Judgment para. 26.
[559] *See supra*, paras 220-223.
[560] *See supra*, paras 207-211.
[561] Sesay Decision on False Testimony of TF1-366, paras 42, 48.

342. The Prosecution responds that there is little to distinguish the Trial Chamber's overall approach from that taken in *Martić*.[797] Gbao makes no additional submissions in reply.

(c) Discussion

(i) Did the Trial Chamber fail to explain how the Common Criminal Purpose involved crimes?

343. Gbao's key argument—under both Ground 8(e) and consolidated Grounds 8(g)/(h)—is that the Trial Chamber failed to provide a sufficiently reasoned opinion for its conclusion that the Common Criminal Purpose involved the commission of the crimes charged. Sesay's submission under his Ground 24 that certain crimes could not form part of the Common Criminal Purpose because the Trial Chamber found that they were not committed with the intent to take control of Sierra Leone or to terrorise and collectively punish civilians similarly turns on the Trial Chamber's own reasoning.

344. The fair trial requirements of the Statute include the right of the accused to a reasoned opinion by the Trial Chamber under Article 18 of the Statute and Rule 88(C) of the Rules. The Appeals Chamber finds the well-established jurisprudence of the ICTY and ICTR which interpret their identical provisions[798] persuasive as to the law in this regard.[799] As recently held by the ICTY Appeals Chamber:

> A reasoned opinion ensures that the accused can exercise his or her right of appeal and that the Appeals Chamber can carry out its statutory duty under Article 25 to review these appeals. The reasoned opinion requirement, however, relates to a Trial Chamber's Judgment rather than to each and every submission made at trial.[800]

345. As a general rule, a Trial Chamber is required only to make findings on those facts which are "essential to the determination of guilt in relation to a particular Count";[801] it "is not required to

[797] Prosecution Response, para. 5.10.
[798] Article 23 of the ICTY Statute; Article 22 of the ICTR Statute; Rule 98*ter*(C) of the Rules of Procedure and Evidence of the ICTY; Rule 88(C) of the Rules of Procedure and Evidence of the ICTR.
[799] *See* Article 20(3) of the Statute.
[800] *Krajišnik* Appeal Judgment, para. 139, *quoting Limaj et al.* Appeal Judgment, para. 81 [references omitted]. *See* also *Hadžihasanović and Kubura* Appeal Judgment, para. 13; *Naletilić and Martinović* Appeal Judgment, para. 603; *Kvočka et al.* Appeal Judgment, paras 23 and 288.
[801] *Brima et al.* Appeal Judgment, para. 268; *Krajišnik* Appeal Judgment, para. 139; *Hadžihasanović and Kubura* Appeal Judgment, para. 13.

articulate every step of its reasoning for each particular finding it makes"[802] nor is it "required to set out in detail why it accepted or rejected a particular testimony."[803] However, the requirements to be met by the Trial Chamber may be higher in certain cases.[804] It is "necessary for any appellant claiming an error of law because of the lack of a reasoned opinion to identify the specific issues, factual findings or arguments, which he submits the Trial Chamber omitted to address and to explain why this omission invalidated the decision."[805]

346. Turning to the present case, the Appeals Chamber considers at the outset that Gbao's comparison between the length of parts of the Trial Judgment and the corresponding parts of other trial judgments in different cases is unhelpful,[806] as "general observations on the length of the Trial Judgment, or of particular parts of the Trial Judgment, usually do not suffice to show an error of law because of a lack of reasoned opinion."[807]

347. The Appeals Chamber is not persuaded that the findings now at issue fall short of this threshold. Contrary to Gbao's claim, the Trial Chamber did not "merely state" that the Junta intended crimes to reach its objective without reference to any "explicit or implicit agreement" nor did it fail to consider whether the crimes were simply "committed in the midst of the conflict."[808] In particular, the Trial Chamber specified what the criminal means of the JCE were, and how they actually furthered the AFRC/RUF's objective of controlling the territory of Sierra Leone. The "spread of extreme fear"—that is, acts of terrorism—was intended to "subdue the civilian population in order to exercise power and control over captured territory."[809] These acts included unlawful killings, sexual violence and physical violence.[810] Collective punishments were employed to subdue the civilian population to the same end.[811] Recruitment of child soldiers served to re-enforce the AFRC/RUF military forces in order to assist in specific military operations.[812] Enslavement of civilians was perpetrated to perform farming, logistical chores or diamond

[802] *Krajišnik* Appeal Judgment, para. 139; *Musema* Appeal Judgment, para. 18. *See* also *Brđanin* Appeal Judgment, para. 39.
[803] *Krajišnik* Appeal Judgment, para. 139; *Musema* Appeal Judgment, para. 20.
[804] *Krajišnik* Appeal Judgment, para. 139; *Kvočka et al.* Appeal Judgment, para. 24.
[805] *Krajišnik* Appeal Judgment, para. 139; *Kvočka et al.* Appeal Judgment, para. 25 [reference omitted]. *See* also *Halilović* Appeal Judgment, para. 7; *Brđanin* Appeal Judgment, para. 9.
[806] Gbao Appeal, paras 101, 102.
[807] *Krajišnik* Appeal Judgment, para. 134; *Kvočka et al.* Appeal Judgment, para. 25.
[808] Gbao Appeal, paras 80, 82, 102.1, 102.2; Trial Judgment, paras 257, 1980, 1981.
[809] Trial Judgment, para. 1981.
[810] Trial Judgment, para. 1982.
[811] Trial Judgment, paras 1981, 1982.
[812] Trial Judgment, para. 1982.

Annex F to his Appeal, selected parts of TF1-334's testimony, and a list of testimonies allegedly supporting that the crimes in RUF camps fell outside the JCE.[1196] He makes no mention in his Appeal of why or how no reasonable trier of fact could have relied on the evidence the Trial Chamber referenced for its findings regarding the AFRC/RUF split, let alone how any such error occasioned a miscarriage of justice.[1197] The Appeals Chamber recalls that it is for an appellant, not the Appeals Chamber, to clearly articulate the errors alleged to have been committed by the Trial Chamber. Undeveloped assertions such the one now at issue, which merely requests the Appeals Chamber to assess selected parts of the evidence *de novo*, will be summarily dismissed by the Appeals Chamber.

465. This part of Sesay's Ground 33 is rejected.

4. Conclusion

466. For the foregoing reasons, and recalling its prior conclusions with respect to other arguments raised in Sesay's Ground 33,[1198] the Appeals Chamber dismisses Sesay's Ground 33 in its entirety. The Appeals Chamber dismisses Kallon's Ground 11 in part.

E. Alleged errors regarding the category of the JCE (Kallon Ground 2 (in part) and Gbao Grounds 8(j), (k))

1. Trial Chamber's findings

467. The Trial Chamber found that "the crimes charged under Counts 1 to 14 were within the [JCE] and intended by the participants to further the common purpose."[1199] As previously noted, the Common Criminal Purpose found by the Trial Chamber consisted of the non-criminal objective to gain and exercise political power and control over the territory of Sierra Leone, in particular the diamond mining areas, and the crimes as charged under Counts 1 to 14 as means of achieving that objective.[1200] It further held that mid- and low-level RUF and AFRC Commanders and rank-and-file fighters were used by JCE members to commit crimes that "were either intended by the

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[1195] Trial Judgment, para. 2102.
[1196] Sesay Appeal, para. 194.
[1197] Trial Judgment, paras 817-820, 2073.
[1198] *See supra*, para. 455. The Appeals Chamber also rejects the submissions in paragraphs 225-230 of Sesay's Appeal because they are outside the scope of Ground 33 in his Notice of Appeal.
[1199] Trial Judgment, paras 1982, 1985.
[1200] Trial Judgment, paras 1979-1985.

person who attacked Salahuedin and abducted Jaganathan."[1323] Second, Kallon contests his identification in the abduction of Mendy and Gjellesdad.[1324] Third, Kallon submits that the Trial Chamber erred in finding him involved in the abduction of Kasoma and 10 ZAMBATT peacekeepers at Moria.[1325] Kallon argues that a reasonable trier of fact would have concluded that the RUF commander in question was someone other than Kallon.[1326] Fourth, Kallon submits that the Trial Chamber erred in "failing to exercise caution in the assessment of the uncorroborated identification of the Appellant under uncertain and difficult circumstances provided by a lone witness."[1327] Kallon submits that the Trial Chamber failed to apply the relevant standards on identification evidence.[1328]

517. In response, the Prosecution points to the Trial Chamber's discussion on "Identification Evidence", and submits that Kallon fails to show an error in the Trial Chamber's evaluation of the evidence.[1329] It also contends that Kallon's submission on hearsay is unsubstantiated and that any difficulties Jaganathan had with his recollections on other matters were immaterial to the issue at hand.[1330]

3. Discussion

518. The Appeals Chamber will consider each of the purported errors in turn. First, regarding the identification of Kallon as being involved in the attacks on Salahuedin and Jaganathan, the Trial Chamber found that Jaganathan identified Kallon as being involved in the attack upon him. Jaganathan indicated in his testimony that, prior to the attack, he had not seen Kallon but that Major Maroa of the Kenyan Battalion informed him that it was he.[1331] The Appeals Chamber sees no error in this finding. It is well accepted that hearsay evidence may be admitted.[1332] Care needs to be taken when relying upon such evidence; however, the Trial Chamber was well aware of this.[1333] The Appeals Chamber also finds Kallon's argument misplaced. The testimony of Ngondi indicates that

[1322] Trial Judgment, paras 2251-2253, 2254-2255, 2256-2258.
[1323] Kallon Appeal, para. 258.
[1324] Kallon Appeal, para. 261.
[1325] Kallon Appeal, para. 265.
[1326] Kallon Appeal, para. 265, *citing* Trial Judgment, para. 1840.
[1327] Kallon Appeal, para. 267.
[1328] Kallon Appeal, para. 269, *citing Kupreškić et al.* Appeal Judgment, paras 32-41.
[1329] Prosecution Response, para. 7.195, *citing* Trial Judgment, paras 492-494.
[1330] Prosecution Response, para. 7.196.
[1331] Trial Judgment, fn. 3429; Transcript, Ganese Jaganathan, 20 June 2006, pp 24-25.
[1332] *Fofana* Appeal Decision Refusing Bail, para. 29.
[1333] *See* Trial Judgment, paras 495-496.

Maroa told him that Kallon assaulted Jaganathan; the testimony of Jaganathan indicates that both he and Salahuedin were assaulted by Kallon.[1334] Accordingly, no material inconsistency arises.

519. Turning to the second alleged error, Kallon seeks to impugn Mendy's testimony as to the identification of Kallon by noting his failure to recall other events in the same period.[1335] This line of reasoning is unconvincing since a witness may well recollect certain events while not recalling others; such inability to recall does not make those recollections inherently unreliable.[1336] Moreover, Kallon does not seek to challenge other evidence – including documentary evidence – that puts him at the scene.[1337] Instead, he simply asserts that the Trial Chamber failed to consider the testimony of other witnesses without explaining why their testimony is to be preferred over that which was cited by the Trial Chamber. The Appeals Chamber will normally uphold a Trial Chamber's findings on issues of credibility, including its resolution of inconsistent evidence and will only find that an error of fact occurred when it determines that no reasonable tribunal could have made the impugned finding.[1338]

520. As to Kallon's third alleged error, he fails to show that no reasonable trier of fact could have reached the conclusion of the Trial Chamber. The Appeals Chamber notes that Kallon's argument rests on two bases. First, he argues that the finding of the Trial Chamber that "[t]he RUF Commander took Kasoma and the ZAMBATT soldiers to the MP Office in Makeni, where he introduced Kasoma as the Commander of ZAMBATT to Sesay. Kallon was present at this time" reveals that Kallon was not the RUF Commander.[1339] Second, he submits that this is supported by the testimony of Sesay, DMK-161 and DMK-087.[1340]

521. The Appeals Chamber is of the view that the relevant part of the Trial Judgment reveals no error. The phrase "RUF Commander" is used in different places, by different witnesses, to refer to different individuals. For example, paragraph 1835 of the Trial Judgment, referring to the testimony of Edwin Kasoma, notes that "Kasoma was taken by several officers, including one man with a

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[1334] Transcript, Leonard Ngondi, 29 March 2006, p. 29; Transcript Transcript, Ganese Jaganathan, 20 June 2006, pp 25-26.
[1335] Kallon Appeal, para. 261.
[1336] *See e.g. Kupreškić et al.* Appeal Judgment, para. 332 ("It is of course open to a Trial Chamber, and indeed any tribunal of fact, to reject part of a witness' testimony and accept the rest. It is clearly possible for a witness to be correct in her assessment of certain facts and incorrect about others.")
[1337] Transcript, Mohammed Abdulahi Garbah, 19 May 2008, pp 124-125 (closed session); Exhibit 109, Report on the RUF Rebel Attack on UNAMSIL Officers in Makeni Team Site, dated 27 November 2000.
[1338] *Brima et al.* Appeal Judgment, para. 120.
[1339] Kallon Appeal, para. 265, *citing* Trial Judgment, para. 1840.
[1340] Kallon Appeal, para. 266, fn. 595.

limp, to a small shelter to meet the RUF Commander." Paragraph 1838 of the Trial Judgment, referring to the testimony of DIS-310, reads "[t]he RUF Commander giving orders at the scene was a short person with a limp." That different witnesses refer to different individuals as the "RUF Commander" explains why the Trial Chamber sometimes refers to the RUF Commander and sometimes Kallon. It does not follow that because Kallon was not the individual described as the "RUF Commander" at one point in time, he was not the individual described as the "RUF Commander" at another point in time. Furthermore, the Appeals Chamber notes that the testimony of Kasoma was relied upon extensively by the Trial Chamber and it is unambiguous on point.[1341] The Appeals Chamber further notes that Kallon proffers no real reasons for why the evidence of the witnesses he cites is to be preferred over that used by the Trial Chamber, including that of Kasoma.

522. The Appeals Chamber finds that the arguments related to the fourth alleged error remain at the level of mere assertion. That the Trial Chamber exercised caution in relying on identification evidence of a lone witness is abundantly clear from the Trial Judgment, which notes the practice of the Trial Chamber "to examine evidence from a lone witness very carefully, in light of the overall evidence adduced, and to guard against the exercise of an underlying motive on the part of the witness, before placing any reliance on it."[1342] Kallon's argument that the Trial Chamber failed to apply the requisite standards on identification evidence is not backed by any reasoning and is unsupported on the facts. In any event, the Appeals Chamber has itself held that "there is no bar to the Trial Chamber relying on a limited number of witnesses or even a single witness, provided it took into consideration all the evidence on the record."[1343] Accordingly, Kallon has not demonstrated any error on the part of the Trial Chamber.

4. Conclusion

523. For these reasons, the Appeals Chamber dismisses Kallon's Ground 26 in its entirety.

[1341] Transcript, Edwin Kasoma, 22 March 2006, pp. 17-40; *see* Trial Judgment, fns 3539-3545.
[1342] *See e.g.*, Trial Judgment, para. 500.
[1343] *Brima et al.* Appeal Judgment, para. 147.

544. The Appeals Chamber notes that all that remains is Gbao's argument that the actions on which the Trial Chamber based its findings as to his *actus reus* and *mens rea* took place after the crimes were committed. It is helpful to reproduce, at the outset, the key findings of the Trial Chamber:

> 2263. ... the Chamber finds that Gbao deliberately fomented an atmosphere of hostility and orchestrated an armed confrontation at the Makump DDR camp and that Gbao's actions in arming himself with an AK-47 amounted to tacit approval of Kallon's conduct. We therefore find that Gbao's conduct before and during the attacks on Salahuedin and Jaganathan had a substantial effect on their perpetration.
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> 2264. The Chamber further finds that the only reasonable inference to be drawn from the evidence is that Gbao possessed the requisite *mens rea* as he took up arms and stood by while the attacks were carried out and in so doing he intended to assist Kallon in their commission.[1392]

545. In relation to both the *actus reus* and the *mens rea*, the actions of Gbao considered crucial by the Trial Chamber are his taking up of arms and his standing passively by. The taking up of arms took place at some point during the period in which Kallon was inside the camp, as did the start of Gbao's passive behaviour; the exact moment has not been determined. Given that Kallon proceeded to enter the camp after an exchange with Gbao, Kallon would have been aware of Gbao's presence outside the camp. However, there is no indication that Kallon was aware of Gbao having taken up arms until after he left the camp. The question is, then, whether Gbao's presence outside the camp can be said to have had a substantial effect on the perpetration of the crime. The Appeals Chamber takes the view that it is within the discretion of a reasonable trier of fact to hold that such presence did have a substantial effect on the perpetration of the offence.

546. The Appeals Chamber recalls that the *mens rea* for aiding and abetting is that:

> the accused knew that his acts would assist the commission of the crime by the perpetrator or that he was aware of the substantial likelihood that his acts would assist the commission of a crime by the perpetrator. However, it is not necessary that the aider and abettor had knowledge of the precise crime that was intended and which was actually committed, as long as he was aware that one of a number of crimes would probably be committed, including the one actually committed.[1393]

547. The Appeals Chamber notes that there is no indication in the Trial Judgment that, prior to Kallon's entry into the camp, Gbao knew that any attacks might take place or any crimes might be committed by Kallon or Kallon's forces. It does not follow from Gbao's knowledge of Kallon's

[1392] Trial Judgment, paras 2263, 2264.

629. Sesay further argues that the Trial Chamber failed to explain why it accepted TF1-334's testimony in spite of the fact that the witness was an accomplice, was released from prison during his involvement with the Prosecution, sought relocation, obtained unexplained payments from the Prosecution, and gave evidence in court which differed from a previous interview.[1569] This is not true. The Trial Chamber noted TF1-334 among the "insider" witnesses who may be considered accomplices, and "cautioned itself on the risk and danger of accepting uncorroborated evidence from an insider witness as credible."[1570] The Trial Chamber also considered that "[t]he Defence has alleged that some of the Prosecution evidence is unreliable because the witnesses were provided with financial incentives to testify, or were aided in some other way such as their relocation to another country."[1571] It noted the forms of remuneration to which individuals testifying before the Special Court may be entitled, and that the payments received by certain witnesses were disclosed and admitted as evidence.[1572] Further, Sesay neither provides any reference to the alleged earlier interview of TF1-334, nor does he explain why it was unreasonable for the Trial Chamber to prefer the witness's *viva voce* evidence instead of the interview.[1573] Sesay's challenges to the quality of TF1-334's testimony are accordingly dismissed.

630. Third, Sesay disputes that he was involved in the forced mining in Kono before December 1998, and argues that his involvement with the Yengema training base could not constitute participation in the JCE because the base did not start operating until late 1998 or early 1999.[1574] Both arguments are based on the Trial Chamber's findings. The Appeals Chamber notes that the Trial Chamber found that Sesay participated in the forced labour in diamond mines in Kono "between 14 February and May 1998" in order to further the Common Criminal Purpose.[1575] While the Trial Chamber provided more detailed findings on Sesay's involvement in the mining in Kono after December 1998[1576]—and appears to have erroneously relied on some of this later involvement for its finding on Sesay's participation in the JCE[1577]—the Appeals Chamber is satisfied it was

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[1569] Sesay Appeal, paras 242-244.
[1570] Trial Judgment, para. 539.
[1571] Trial Judgment, paras 523-525.
[1572] Trial Judgment, paras 524, 525. *See supra*, paras 196-201.
[1573] *See* also Appeal transcript, 2 September 2009, p. 34.
[1574] Sesay Appeal, paras 245, 246.
[1575] Trial Judgment, para. 2086.
[1576] *See* Trial Judgment, paras 1249, 1252, 1254, 1255, 1257, 1259.
[1577] *Compare* Trial Judgment, para. 2086 (considering that Sesay "visited the mines to collect diamonds, signed-off on the mining log-books and transported diamonds to Bockarie" as a basis for concluding that Sesay participated in the forced mining in Kono between 14 February and May 1998) *with* Trial Judgment, paras 1252, 1254 (holding that Sesay "would at times visit the mining site" and "came to collect diamonds" at Tombodu Bridge in Kono after around

In this regard, Sesay alleges an error of fact, arguing that TF1-367 testified that some of the 200 to 300 civilians captured and forced to work at Kaisambo volunteered and that the civilians were not forced to return, but fails to avert to the evidence supporting the finding that civilians who refused to mine were beaten.[1800] Further relevant indicia of enslavement is found in the holdings that the "conditions for the hundreds of civilians forced to mine were poor; they were neither paid nor given adequate housing, food or medical treatment" and "they were constantly supervised by armed men."[1801]

697. Except for the error of law found above, the Appeals Chamber finds that the Trial Chamber did not fail to provide a reasoned opinion.

(d) Did the Trial Chamber err in relying on Witness TF1-367?

698. The Appeals Chamber notes that Sesay's claims regarding TF1-367's "lies" are in effect submissions that TF1-367's testimony contradicts other evidence.[1802] Sesay does not explain how, or in what respects, these contradictions caused the Trial Chamber to err. As to TF1-367's alleged motives to implicate Sesay, the Appeals Chamber is not satisfied that the evidence Sesay invokes[1803] precluded a reasonable trier of fact from finding, as the Trial Chamber did, that the witness was "generally credible."[1804] Sesay's submission is dismissed.

(e) Did the Trial Chamber err in finding that Sesay was involved in the design and execution phases of the enslavement?

699. The Appeals Chamber recalls that "[w]hile there must be a sufficient link between the planning of a crime both at the preparatory and the execution phases, it is sufficient to demonstrate that the planning was a factor substantially contributing to such criminal conduct."[1805] The Appeals Chamber considers that Sesay's actions both before and after December 1998 are relevant in this regard. In particular, contrary to the Prosecution's argument,[1806] Sesay's conduct pre-December 1998 is relevant to whether a reasonable trier of fact could have found that he planned the enslavement which ensued thereafter.

[1800] Trial Judgment, para. 1248; Sesay Appeal, para. 265.
[1801] Trial Judgment, paras 1247, 1248.
[1802] Sesay Appeal, paras 262, 279.
[1803] Transcript, TF1-367, 22 June 2006, pp. 45-46, 88 (closed session). Sesay also invokes Exhibit 105, but without explaining whether the Trial Chamber erred in its consideration of that exhibit. Trial Judgment, paras 525, 526.
[1804] Trial Judgment, para. 552.

700. As to his conduct before December 1998, Sesay essentially relies on the findings underlying the conclusion that he was not in a superior-subordinate relationship with RUF fighters in Kono from May to the end of November 1998.[1807] The Appeals Chamber is not satisfied that these findings alone show that it was unreasonable for the Trial Chamber to find that he planned the enslavement from December 1998 onward. The following findings provided a basis for a reasonable trier of fact to find that Sesay was involved in the preparatory phase of planning the enslavement: (i) the RUF continued conducting mining operations in parts of Kono District after having been forced to retreat from Koidu Town in early April 1998;[1808] (ii) he led and commanded the RUF troops who re-captured Koidu Town on 16 December 1998, although the Trial Chamber could not specifically determine Sesay's involvement in Kono District between August and November 1998;[1809] and (iii) after Koidu Town was retaken, RUF mining in Kono District "intensified significantly,"[1810] and "mining operations expanded" to different areas in Kono District, in particular Tombodu.[1811] These findings must be read together with those on Sesay's involvement in mining in Kono after December 1998. In particular, the Trial Chamber found that the Mining Commander reported to Sesay,[1812] that Sesay visited the mining site at Tombodu and collected diamonds (for which purpose he maintained a house in Koidu),[1813] and that he ordered that civilians be captured from other Districts and arranged for transportation of the captured civilians to the mines in Kono.[1814]

701. Sesay's reference to evidence that Bockarie was in control of the mining,[1815] or other evidence allegedly showing that Sesay "had nothing to do with the mining,"[1816] fails to address the evidence on which the Trial Chamber based its findings. Moreover, the Trial Chamber recognised that Sesay was "subordinate to Bockarie at the time," but that since the illicit sale of diamonds was the RUF's primary means of financing its operations, "the mining system in Kono District was designed and supervised at the highest levels" and "Sesay, as the BFC ... was actively and

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[1805] *Brima et al.* Appeal Judgment, para. 301 (internal quotation omitted).
[1806] Prosecution Response, para. 7.111.
[1807] Trial Judgment, paras 2124, 2125; Sesay Appeal, para. 268.
[1808] Trial Judgment, paras 813, 1241.
[1809] Trial Judgment, para. 2124.
[1810] Trial Judgment, paras 1240-1242.
[1811] Trial Judgment, para. 1246.
[1812] Trial Judgment, paras 1252, 2113.
[1813] Trial Judgment, paras 1252, 1254, 1255, 2113.
[1814] Trial Judgment, paras 1249, 2113.
[1815] Sesay Appeal, paras 268, 271, 273, 274, 275.
[1816] Sesay Appeal, paras 271, 280.

Trial Chamber's exercise of its discretion to assess the witness's credibility or determine the weight it attached to his testimony, this part of Sesay's argument fails.

761. Sesay further submits that the Trial Chamber unreasonably relied upon Witnesses TF1-114 and TF1-108[1984] to support its finding that children were forcibly trained,[1985] but disregarded their testimony that, Sesay contends, "contradicted TF1-362's account of Sesay's involvement in the training base." However, Sesay fails to demonstrate how the testimony of TF1-114 and TF1-108 contradicts the testimony relied upon by the Trial Chamber, and the Appeals Chamber is unable to infer his argument. The Appeals Chamber recalls that "[w]hile it is preferable for the Trial Chamber to state its reasons for accepting the evidence of one witness over that of another when they are contradictory, the Trial Chamber is not obliged to refer to every piece of evidence on the trial record."[1986] Sesay fails to show error in the Trial Chamber's finding.

(c) Whether receipt of reports substantially contributed to crimes

762. The Trial Chamber found that Sesay, as one of the most senior RUF commanders, made a substantial contribution to the planning of the RUF system of child use by, *inter alia*, receiving reports on training at Bunumbu and subsequently at Yengema.[1987] Specifically, the Trial Chamber found that the adjutant at the base drew up a list of recruits including their names, ages and other personal data.[1988] Sesay submits that the Trial Chamber erred in finding that receipt of reports substantially contributed to the crime of child conscription or use.[1989] He posits that the alleged planning must be found to have actually led to the commission of specific crimes.[1990]

763. Reports on the trainees were compiled by the adjutant and sent to the deputy at the training base and then to the training commandant who would forward the reports to an advisor.[1991] Next, the reports were either delivered by hand or communicated via radio to Sesay and finally to Bockarie;[1992] and Sesay would confirm delivery of the report back to the base.[1993] The Trial Chamber found that "[e]very such report was either hand-delivered or communicated via radio to

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[1984] Sesay Appeal, fn. 1040.
[1985] Sesay Appeal, para. 328, *citing* Trial Judgment, fn. 2723-2729 (Witnesses TF1-114 and TF1-108).
[1986] *Brima et al.* Appeal Judgment, para. 268.
[1987] Trial Judgment, para. 2226.
[1988] Trial Judgment, para. 1639 *citing* Transcript, TF1-362, 22 April 2005, pp. 6-12 (closed session).
[1989] Sesay Appeal, para. 330.
[1990] Sesay Appeal, para. 330, *citing Brđanin* Trial Judgment, para. 358.
[1991] Trial Judgment, para. 1639 *citing* Transcript, TF1-362, 22 April 2005, pp. 6-12 (closed session).
[1992] Trial Judgment, para. 1639 *citing* Transcript, TF1-362, 22 April 2005, pp. 6-12 (closed session).
[1993] Trial Judgment, para. 1639 *citing* Transcript, TF1-362, 22 April 2005, pp. 6-12 (closed session).

the Joint Security Board of Investigations.[2907] More importantly, Gbao does not challenge the Trial Chamber's finding that "in RUF controlled territory, the OSC was responsible for the enforcement of discipline and law and order."[2908] Similarly, Gbao neither challenges the Trial Chamber's finding that he was a Vanguard,[2909] nor the findings regarding the status and authority Vanguards held.[2910] In particular, he does not challenge the Trial Chamber's finding that assignment and status could be more important in terms of authority and influence than rank in the RUF.[2911] Accordingly, Gbao's citation to testimonial evidence of his rank by Witness DAG-048 and the testimony of Witness TF1-371 does not establish that the Trial Chamber unreasonably found that he had considerable prestige and power in Kailahun District.

1057. Gbao further claims that the Trial Chamber erred in finding that he gained additional prestige and power within the RUF as a result of a personal connection with Foday Sankoh.[2912] However, Gbao fails to articulate how this error rendered unreasonable the Trial Chamber's finding that "Gbao had considerable prestige and power within the RUF in Kailahun District,"[2913] particularly as he does not contest his assignment as OSC and Overall IDU Commander and his status as a Vanguard, as noted above.

(v) Beating of TF1-113

1058. Gbao misrepresents the Trial Chamber's findings regarding the general credibility of TF1-113. Contrary to his assertion, the Trial Chamber did not consider that this witness required corroboration when testifying about Gbao's acts and conduct.[2914] Rather, the Trial Chamber was not convinced that the whole of the witness's testimony was not credible, and found that it was only necessary to exercise extreme caution and often seek corroborative evidence.[2915] Furthermore, Gbao fails to support his assertion that the testimonies of witnesses who lie under oath should, as a rule, be disregarded,[2916] as none of the authorities he cites supports such a proposition.[2917] In that regard,

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[2907] Trial Judgment, para. 701.
[2908] Trial Judgment, para. 700.
[2909] Trial Judgment, para. 668.
[2910] Trial Judgment, paras 667-669
[2911] Trial Judgment, paras 672, 673.
[2912] Gbao Appeal, paras 138, 139.
[2913] Trial Judgment, para. 2033.
[2914] Gbao Appeal para. 141.
[2915] Trial Judgment, para. 600.
[2916] Gbao Appeal, para. 142.
[2917] *See Seromba* Trial Judgment, para. 92; *Nahimana et. al* Trial Judgment, para. 551; *Nahimana et. al* Appeal Judgment, para. 820. *See supra*, paras 259-265.

the Appeals Chamber notes that Rules 77 and 91 of the Rules allow a Chamber to hold in contempt a witness who wilfully gives false testimony under oath, but nothing in the Rules obligates a Chamber to discard the testimony of such witnesses for that reason alone. Rather, Rule 89 permits a Chamber to admit any evidence it deems relevant. The Appeals Chamber will not lightly disturb the Trial Chamber's exercise of its discretion in this respect. Indeed, "it is primarily for the Trial Chamber to determine whether a witness is credible and to decide which witness' testimony to prefer, without necessarily articulating every step of the reasoning in reaching a decision on these points."[2918] Accordingly, Gbao's claim that the Trial Chamber erred in finding TF1-113's testimony credible on this issue is rejected.[2919]

(vi) The Trial Chamber's finding that Gbao significantly contributed to the JCE

1059. In addition to the claims previously addressed, Gbao submits four grounds in support of his argument that the Trial Chamber erred in finding that he significantly contributed to the JCE.

1060. Gbao first argues that the Trial Chamber erred in finding that he significantly contributed as the OSC, submitting that the RUF security apparatus had a nominal role during the Junta period,[2920] and that he had limited authority over the RUF security units.[2921] Gbao further submits that the security apparatus did not deal with most disciplinary issues in fact, which "were instead handled by the local Area Commander where the crime was alleged to have taken place."[2922] The Appeals Chamber has previously dismissed Gbao's first submission,[2923] and has noted that the Trial Chamber found that Gbao, whatever his *de jure* authority, exercised "considerable influence" and "practical authority" over the RUF security apparatus.[2924] The Appeals Chamber further notes with respect to the last submission that the Trial Chamber specifically distinguished between discipline in combat areas and RUF-controlled territory, finding that although "Gbao may have possessed only limited authority in respect to combat operations," "the OSC was responsible for the enforcement of discipline and law and order" in RUF-controlled territory.[2925] In this regard, the Appeals Chamber recalls the Trial Chamber's findings regarding the role of the RUF security

[2918] *Kupreškić et al.* Appeal Judgment, para. 32.
[2919] *See supra*, para. 265.
[2920] Gbao Appeal, paras 117-119.
[2921] Gbao Appeal, paras 120-122.
[2922] Gbao Appeal, para. 120.
[2923] *See supra*, paras 1052, 1053.
[2924] *See supra*, para. 1053.
[2925] Trial Judgment, para. 700.

to Kailahun was Gbao.[3264] This evidence is insufficient to eliminate all doubt as to whether Gbao "participated in the execution, administration and running of a plan" encompassing child conscription, as argued by the Prosecution.[3265]

1173. The Trial Chamber's scant findings on Gbao's involvement in the child conscription stand in stark contrast to its detailed findings on his involvement in the other types of forced labour in Kailahun District administered by the G5, in particular forced farming,[3266] and also on his co-accused's substantial contribution to the crimes under Count 12.[3267] This disparity in findings reflects a corresponding difference in the amount of reliable evidence. The Prosecution argues no error in the Trial Chamber's assessment of the available evidence.

1174. In this regard, the Appeals Chamber is not persuaded by the Prosecution's attempt to link child conscription and use with the enslavement in Kailahun District. While both were within the JCE, it does not follow that Gbao, simply by contributing to the latter crime also significantly contributed to the former, as the two crimes are distinct both in law and in fact. The Trial Chamber found no evidence that Gbao's participation in the JCE was such that it contributed to both.[3268] By merely reiterating the Trial Chamber's findings, without proffering any evidence that might have been disregarded by the Trial Chamber, the Prosecution's submission is but a bare request that the Appeals Chamber substitute its own conclusion for that of the Trial Chamber. Such a submission fails to meet the Prosecution's burden to eliminate all reasonable doubt as to Gbao's guilt.

1175. The Prosecution makes two additional submissions as to Gbao's alleged responsibility for aiding and abetting child conscription and use outside Kailahun District. The first is that his alleged contribution to planning the execution of the crime in Kailahun District, coupled with his purported failure to interfere in the recruitment of civilians including persons under the age of 15 being sent to training and then used for military purposes, amounted to tacit approval and encouragement of the crime.[3269] The Appeals Chamber recalls that it has rejected the Prosecution's contention that Gbao significantly or substantially contributed to the child conscription and use in Kailahun District. Moreover, assuming *arguendo* that Gbao did so contribute, the Prosecution fails to point to findings or evidence establishing Gbao's alleged failure to interfere beyond Kailahun, or suggest what

[3264] Prosecution Appeal, para. 3.66.
[3265] Prosecution Appeal, para. 3.70.
[3266] Trial Judgment, paras 1420. 1425, 1427, 2037.
[3267] Trial Judgment, paras 2226-2228, 2231, 2232.
[3268] *See* Trial Judgment, para. 2235.

measures he could have taken in that respect and what effect his failure to do so would have had on the perpetrators. To the contrary, the Prosecution itself refers to evidence that Gbao granted permission for the re-opening of the Interim Care Centre in Makeni in February 2000.[3270]

1176. The Prosecution's second submission is that Gbao aided and abetted "re-recruitment" and use of the children he removed from the Interim Care Centre in May 2000.[3271] The Trial Chamber found that the fact that Gbao loaded former child fighters onto a truck and removed them from the Interim Care Centre in May 2000 was "insufficient to constitute a substantial contribution to the widespread system of child conscription or the consistent pattern of using children to participate actively in hostilities."[3272] The Prosecution challenges this finding,[3273] essentially arguing that some of the removed children were used in combat in the Lunsar area during the RUF attack on the ZAMBATT peacekeepers.[3274]

1177. The Appeals Chamber is not satisfied that the Prosecution succeeds in eliminating all reasonable doubt as to Gbao's guilt in this regard. First, it remains unclear if the persons Gbao removed were under the age of 15 years. The Prosecution seeks to infer from the finding that between 1998 and 2002 "the mean average" of children "in most Centres" was 14 years[3275] that "some of" the children removed by Gbao were under the age of 15.[3276] This submission does not eliminate all reasonable doubt as to the children's age.

1178. Second, the Prosecution also fails to eliminate all reasonable doubt as to whether they were used to participate actively in hostilities. Here, the Prosecution relies on the testimony of TF1-174.[3277] It says the witness testified that he left Makeni on 6 May 2000 and that when he returned to the Interim Care Centre at Makeni the number of children there had decreased drastically.[3278] A day after Gbao removed the children from the Interim Care Centre, "one of the boys" returned to the Interim Care Centre crying and saying that "a good number of his companions were killed in the attack at Lunsar."[3279] The Prosecution posits that this leads to the only reasonable inference that the

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[3269] Prosecution Appeal, paras 3.80, 3.81.
[3270] Prosecution Appeal, para. 3.89.
[3271] Prosecution Appeal, para. 3.96; Trial Judgment, paras 1690, 2235.
[3272] Trial Judgment, para. 2235.
[3273] Prosecution Appeal, para. 3.86.
[3274] Prosecution Appeal, paras 3.91-3.94.
[3275] Trial Judgment, para. 1626.
[3276] Prosecution Appeal, para. 3.90.
[3277] Prosecution Appeal, paras 3.91, 3.93, 3.94; Prosecution Appeal, para. 3.92.
[3278] Prosecution Appeal, para. 3.92.
[3279] Prosecution Appeal, para. 3.92.

collective punishment and terrorism; therefore, the Prosecution argues "it is not possible to hold that any of the other war crimes are 'lesser included offences' of collective punishment and terrorism."[3299]

1189. Kallon and Gbao made no additional submissions in reply.

3. Discussion

(a) Applicable law

1190. The jurisprudence on cumulative convictions has been thoroughly addressed at the international tribunals. The test to determine the permissibility of cumulative convictions was set out in the *Čelebići* Appeal Judgment, which stated:

> Having considered the different approaches expressed on this issue both within this Tribunal and other jurisdictions, this Appeals Chamber holds that reasons of fairness to the accused and the consideration that only distinct crimes may justify multiple convictions, lead to the conclusion that multiple criminal convictions entered under different statutory provisions but based on the same conduct are permissible only if each statutory provision involved has a materially distinct element not contained in the other. An element is materially distinct from another if it requires proof of a fact not required by the other.
>
> Where this test is not met, the Chamber must decide in relation to which offence it will enter a conviction. This should be done on the basis of the principle that the conviction under the more specific provision should be upheld. Thus, if a set of facts is regulated by two provisions, one of which contains an additional materially distinct element, then a conviction should be entered only under that provision.[3300]

1191. The test applied is therefore two-part: first, it is permissible to enter cumulative convictions under different statutory provisions for the same criminal act if each statutory provision has a "materially distinct element" that is not contained in the other statutory provision.[3301] Second, if this is not the case then the conviction for the criminal act should be upheld under the "more specific provision."[3302] It is the legal elements of each statutory provision, and not the acts themselves that

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[3298] Prosecution Response, para. 8.15 [emphasis omitted].
[3299] Prosecution Response, paras 8.17-8.18.
[3300] *Čelebići* Appeal Judgment, paras 412-413.
[3301] *Čelebići* Appeal Judgment, para. 412. *See Ntakirutimana* Appeal Judgment, para. 542; *Musema* Appeal Judgment, paras 358-370.
[3302] *Čelebići* Appeal Judgment, para. 413.

must be considered when applying this test.[3303] The issue of whether the same act can lead to a conviction under multiple statutory provisions is a question of law.[3304]

(b) Cumulative convictions for extermination as a crime against humanity (Count 3) and murder as a crime against humanity (Count 4)

1192. The Appeals Chamber notes that the Trial Chamber correctly stated the law on cumulative convictions with respect to Counts 3 and 4 when it held that "[it] is impermissible to convict for both murder [as a crime against humanity] and extermination [as a crime against humanity] under Count 4 and Count 3 based on the same conduct. What makes a statutory provision materially distinct is whether "it requires proof of a fact not required by the other."[3305] Murder as a crime against humanity does not contain a materially distinct element from extermination as a crime against humanity; they are only distinguished by the fact that extermination requires killings "on a massive scale."[3306] The crime of murder is therefore subsumed in the crime of extermination and consequently convictions under Counts 3 and 4 for the same underlying acts are impermissibly cumulative.

1193. Turning to the second prong of the test, since the first part of the *Čelebići* test was not met, we now turn to the issue under which count the convictions should be upheld. Following the principle in *Čelebići* the statutory provision that is more specific, that is, "contains an additional materially distinct element" should stand.[3307] Extermination as a crime against humanity contains the additional element that the crime must be committed on a massive scale, which murder as a crime against humanity does not contain. Therefore, extermination as a crime against humanity is the more specific statutory provision and convictions for the above noted criminal conduct[3308] should stand under Count 3, but not under Count 4.

[3303] *Strugar* Appeal Judgment, para. 322, *quoting Stakić* Appeal Judgment, para. 356. *See Kordić & Čerkez* Appeal Judgment, paras 1033, 1040; *Čelebići* Appeal Judgment, para. 322.
[3304] *Strugar* Appeal Judgment, para. 322. *See* also *Kunarac et al.* Appeal Judgment, para. 174; *Kordić & Čerkez* Appeal Judgment, para. 1032; *Stakić* Appeal Judgment, para. 356.
[3305] *Ntakirutimana* Appeal Judgment, para. 542. *See Čelebići* Appeal Judgment, para. 412. The standard was clarified in the *Kunarac et al.* Appeal Judgment, para. 168. *See* also *Vasiljević* Appeal Judgment, paras 135, 146; *Krstić* Appeal Judgment, para. 218.
[3306] *Ntakirutimana* Appeal Judgment, para. 542.
[3307] *Čelebići* Appeal Judgment, para. 413.
[3308] *See supra*, para. 1184.

circumstances found to exist then, [and therefore] it should not be given undue weight in mitigation."[3443] Sesay fails to show error in this regard.

(e) Alleged coercive treatment by the Prosecution

1244. The Appeals Chamber is of the view that, contrary to Sesay's argument, the Trial Chamber took into account Sesay's argument that the Prosecution's "coercive conduct" during his arrest and "interview process" denied him of the real possibility of cooperation with the Prosecution. These circumstances were the subject of the "lengthy voir dire process," and Sesay's submissions were noted in paragraph 72 of the Sentencing Judgment.[3444] In the context of considering "Substantial cooperation" with the Prosecution, the Trial Chamber found that Sesay's treatment by the Prosecution during the six day period after his arrest did not preclude him from cooperating with the Prosecution at any point since that episode, and thus it did not warrant additional relief beyond that already afforded to Sesay, namely, that the Trial Chamber expunged from the record the statements obtained by the Prosecution during this six day period.[3445] On appeal, Sesay has not shown any error and, therefore, his submission is untenable.

(f) Likelihood of serving sentence abroad

1245. The Trial Chamber found that:

> [W]hilst it seems more likely than not at this stage that the convicted persons in this trial will serve sentences outside Sierra Leone, this is a decision that ultimately lies within the discretion of the President of the Court, based upon agreements concluded by the Registrar. The Chamber is unable to speculate on the result of these negotiations and decision-making processes, upon which it has no conclusive information, which lie outside of its control. It therefore notes for purposes of record that it has not given any weight to this factor in the consideration of the sentences of any of the convicted persons in this case.
>
> The Chamber, however, wishes to recognize that, in general terms, sentences served abroad, where family visits are likely to be few, may be harder to bear. Such circumstances would normally amount to a factor in mitigation.[3446]

1246. The Appeals Chamber finds no error in the Trial Chamber's decision not to mitigate the Appellants sentences as a consequence of the fact that they will likely be served outside of Sierra

[3442] Sesay Appeal, paras 390, 391, 392.
[3443] Sentencing Judgment, para. 224.
[3444] Sentencing Judgment, para. 72.
[3445] Sentencing Judgment, para. 222.
[3446] Sentencing Judgment, paras 205, 206.

Leone. As discussed in the *Mrđa* case, which is relied upon by Sesay, it is common practice that convicted persons from international criminal tribunals serve their sentences in foreign countries.[3447] Sesay does not refer to any case in which serving the sentence in a foreign country has been considered as a mitigating factor for sentencing purposes.[3448]

(g) Statement of remorse

1247. Although the Trial Chamber found Sesay's statements of remorse were generally "not sincere," it accepted that his expression of empathy toward the victims of the conflict were in fact sincere.[3449]

1248. With regard to any further mitigating weight, Trial Chamber exercised its discretion to find that Sesay's statements, apart from his empathy toward victims of the conflict, did not show any real remorse.[3450] Sesay, however, relies on the ICTY Trial Chamber case of *Brđanin* to assert that in order to constitute a mitigating circumstance "it is sufficient for the accused to extend his sympathy for victims of the conflict."[3451] The Appeals Chamber finds that this is a mischaracterisation of the law. In *Fofana and Kondewa*, the Appeals Chamber observed that only in a minority of cases have Trial Chambers found that an accused's expressions of regret or empathy for victims, without acknowledgement of responsibility for the crimes, constituted a mitigating factor. The Appeals Chamber acknowledged that it is:

> aware of only two cases at the *ad hoc* Tribunals in which the Chamber considered whether an accused's expressions of regret or empathy for victims without acknowledgement of responsibility for the crimes could constitute a mitigating factor. In *Vasiljević*, the ICTY Appeals Chamber opined that an accused can express sincere regrets without admitting his participation in a crime, and that this could be a factor taken into account by the Trial Chamber.[3452] However, in *Vasiljević*, the Appeals Chamber declined to consider Vasiljević's expressions of regret to be a mitigating circumstance.[3453]
>
> The ICTY Trial Judgment in *Orić* is the only case in which a convicted person received credit for expressions of empathy for the victims without acknowledging responsibility.[3454] In *Blaškić*, the accused attempted to express remorse while denying

[3447] *Mrđa* Trial Judgment, para. 109.
[3448] The Trial Chamber in *Mrđa* considered only that service of sentence in a foreign country could be taken into consideration for purposes of parole or early release. *See Mrđa* Trial Judgment, para. 109.
[3449] *M.Nikolić* Sentencing Appeal Judgment, para. 117.
[3450] Trial Judgment, para. 231.
[3451] Sesay Appeal, para. 401.
[3452] *Fofana and Kondewa* Appeal Judgment para. 487, *citing Vasiljević* Appeal Judgment, para. 177.
[3453] *Fofana and Kondewa* Appeal Judgment para. 487, *citing Vasiljević* Appeal Judgment, para. 177.
[3454] *Fofana and Kondewa* Appeal Judgment para. 488, *citing Orić* Trial Judgment, para. 752.

cannot be held responsible for an act unless something he himself has done or failed to do justifies holding him responsible."[3521]

1277. In this case, the first attack on civilians at the Sunna Mosque in which Kallon did not participate could not be an aggravating factor for purposes of Kallon's sentence. The Trial Chamber rightly noted, however, that "the same site was further used by the rebels, including Kallon, in voting on TF1-015's life, constitutes an aggravating factor."[3522]

1278. Although we find error in the holding that Rocky's conduct at the Sunna Mosque constituted an aggravating factor for Kallon, the Appeals Chamber finds no reason to interfere in the sentence. The Appeals Chamber recalls that the weight to be attached to an aggravating circumstance is within the discretion of the Trial Chamber,[3523] and an Appellant bears "the burden of demonstrating that the Trial Chamber abused its discretion" in the weight it attached.[3524] In view of the Trial Chamber's proper consideration of Kallon's use of the Sunna Mosque as an aggravating circumstance, the Appeals Chamber considers that Kallon has not shown that the Trial Chamber abused its discretion in determining the weight to be given to this aggravating circumstance. Kallon's submission is therefore rejected.

(d) Duress and superior orders

1279. In regard to factors of duress and acting under superior orders, Kallon argues that the Trial Chamber erred in considering these two separate arguments as one mitigating factor.[3525] The Appeals Chamber notes, however, that the Trial Chamber acknowledged that Kallon submitted at trial that these factors were separate mitigating factors and it explained that even though it was considering these factors under the heading "Executing Orders" it did not imply that these factors are the same.[3526] The Trial Chamber committed no error in this regard.

1280. Kallon argues that the Trial Chamber erred in finding that he had failed to establish that with respect to the UNAMSIL events his life was under threat if he failed to obey Sankoh's orders.

[3521] *Deronjić* Appeal Judgment, para. 124.
[3522] Sentencing Judgment, para. 247.
[3523] *Musema* Appeal Judgment, para. 396.
[3524] *Babić* Appeal Judgment, para. 44 citing *Kayishema and Ruzindana* Appeal Judgment, para. 366; *Niyitegeka* Appeal Judgment, para. 266. A Trial Chamber's decision may be disturbed on appeal "if an appellant shows that the Trial Chamber either took into account what it ought not to have, or failed to take into account what it ought to have taken into account, in the weighing process involved in this exercise of the discretion." *Celebići* Appeal Judgment, para. 780.
[3525] Kallon Appeal, para. 317.
[3526] Sentencing Judgment, para. 257.

1251)

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SPECIAL COURT FOR SIERRA LEONE

TRIAL CHAMBER I

Before: Hon. Justice Pierre Boutet, Presiding Judge
Hon. Justice Benjamin Mutanga Itoe
Hon. Justice Bankole Thompson

Registrar: Herman von Hebel

Date: 8th of April 2009

PROSECUTOR Against ISSA HASSAN SESAY
MORRIS KALLON
AUGUSTINE GBAO
(Case No. SCSL-04-15-T)

SENTENCING JUDGEMENT

Office of the Prosecutor:
Stephen Rapp
Joseph Kamara
James C. Johnson
Peter Harrison
Vincent Wagona
Reginald Fynn
Elisabeth Baumgartner
Nina Jørgensen
Régine Gachoud
Amira Hudroge
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Defence for Issa Hassan Sesay:
Wayne Jordash
Sareta Ashraph
Jared Kneitel

Defence for Morris Kallon:
Charles Taku
Kennedy Ogeto
Momoh Fofanah
Kingsley Belle

Defence for Augustine Gbao:
John Cammegh
Scott Martin
Lea Kulinowski

SPECIAL COURT FOR SIERRA LEONE
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23. The Chamber is cognisant of the impermissibility of "double-counting", meaning that the factors considered in assessing the gravity of the offence, cannot be used or considered as aggravating circumstances.[27] The Appeals Chamber has however endorsed the view that there is no double-counting merely because a Trial Chamber considers the impact of the crimes on the victim in one section and the vulnerability of the victims in the other section.[28] In this regard, this Chamber takes the view that factors which it considers and accepts as lessening the gravity of the offence, cannot be taken into account as mitigating circumstances.

3.2. Aggravating Factors

24. The Chamber opines that it is an accepted practice that aggravating factors should be established by the Prosecution beyond a reasonable doubt[29] and that only circumstances directly related to the commission of the offence charged, and for which the Accused has been convicted, can be considered to be aggravating.[30] Hence, when a particular circumstance is an element of the underlying offence, it cannot be taken into account as an aggravating factor.[31]

25. The Chamber acknowledges that the Statute and the Rules do not provide an exhaustive enumeration of the circumstances that the Trial Chamber may consider to be aggravating. Based on the established jurisprudence, factors considered as aggravating in other international criminal jurisdictions, however, include the leadership role of the Accused,[32] premeditation and motive,[33] a willing and enthusiastic participation in the crime,[34] the length of time during which the crime was committed,[35] the location of the attacks – attacks committed in traditional places of civilian sanctuary such as churches, mosques, schools and hospitals being generally considered as more serious,[36] sadism and a desire for revenge,[37] abuse

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[27] AFRC Appeals Judgement, para. 317.
[28] AFRC Appeals Judgement, para. 318.
[29] *Celibici* Appeals Judgement, para. 763.
[30] *Kunarac et al* Trial Judgement, para. 850; *Hadsahasanovic* Trial Judgement, para. 2069.
[31] *Blaskic* Appeals Judgement, para. 693; *Vasiljevic* Appeals Judgement, paras 172-173; *Ndindabahizi* Appeals Judgement, para. 137.
[32] *Jokic* Appeals Judgement, paras 28-29; *Obrenovic* Sentencing Judgement, para. 99; *Babic* Appeals Judgement, para. 80.
[33] *Blaskic* Appeals Judgement, para. 686.
[34] *Ibid.*
[35] *Blaskic* Appeal Judgement, para. 686. As noted, the Chamber has considered certain factors, such as the vulnerability and age of victims, and the humiliating or degrading nature of the acts, that are sometimes considered as aggravating factors, as part of the gravity of the offence (see n. 51).
[36] AFRC Trial Judgement, para. 22; *Muhimana* Trial Judgement, para. 605.

of trust or official capacity,[38] "total disregard for the sanctity of human life and dignity." The Chamber takes the view that deceptive behaviour such as luring others into a false sense of security through fraudulent offers to discuss or negotiate and subsequently taking advantage of the others revealed weakness may also amount to aggravating circumstances. The Prosecution submitted that bad behaviour of an accused during trial might constitute and aggravating factor, however the Chamber does not accept that argument.

26. Furthermore, the Chamber opines that the position of leadership of an Accused held criminally responsible for a crime under Article 6(1) of the Statute, may constitute an aggravating circumstance.[39] However, it has been held that if an Accused has been found liable under Article 6(3), his leadership position cannot be considered by the Chamber as an aggravating factor as it is in itself a constitutive element of the offence.[40] It has also been held that where the Accused has actively abused his position of command or participated in the crimes of his subordinates, however, such conduct can be considered to be aggravating.[41]

3.3. Mitigating Factors

27. The Chamber recalls that neither the Statute nor the Rules exhaustively define the factors that may be considered to be mitigating. As a consequence, we opine that the category of mitigating circumstances is not closed. Accordingly, "what constitutes a mitigating factor is a matter for the Trial Chamber to determine in the exercise of its discretion."[42]

28. It has been held that the burden of proof on the Accused with regard to mitigating circumstances is that of a balance of probabilities, meaning that it is more probable than not that the circumstances in question did exist. Therefore, it is a much lower burden of proof

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[37] *CDF* Appeals Judgement, para. 524.
[38] *Seromba* Appeals Judgement, para. 230; *Ndindabahizi* Appeals Judgement, para. 136.
[39] *Jokic* Sentencing Appeal, paras 28-29; *Obrenovic* Trial Judgement, para. 99; *Babic* Appeals Judgement, para. 80. *See* Prosecution Sentencing Brief, para. 27.
[40] *Obrenovic* Trial Judgement, para. 99, *Deronjic* Appeals Judgement, para. 67; *Jokic* Sentencing Appeal, para. 28, *Babic* Sentencing Judgement, para. 60.
[41] *Celibici* Appeals Judgement, para. 736, *Aleksovski* Appeal Judgement, para. 183.
[42] *Musema* Appeals Chamber, para. 395.

Chamber to be meritorious, undermines the purposes of sentencing rather than promotes them".[53]

4. Sentencing Practice of Other Tribunals and Courts

31. Article 19(1) empowers the Chamber to consider as appropriate the practice regarding sentencing at the International Criminal Tribunal for Rwanda ("ICTR"). The Chamber also considers as appropriate the jurisprudence of the International Criminal Tribunal for the Former Yugoslavia ("ICTY"), which shares a common Appeals Chamber with the ICTR, to be instructive, and has also considered this as appropriate. The Chamber has also considered the sentencing practice of this court, to the limited extent possible.

32. Article 19(1) authorises the Chamber to consider, where appropriate, the sentencing practices of Sierra Leonean domestic courts. However, as none of the Accused was charged for offences under Sierra Leonean law, the Chamber deems it unnecessary to make this enquiry.[54]

IV. SUBMISSION OF THE PARTIES

33. In issuing this Judgement, the Chamber has taken into consideration both the written and oral submissions of the Parties.[55]

1. Prosecution

1.1. Sentencing Principles

34. The Prosecution submits that in determining the appropriate sentences the Chamber must consider certain fundamental sentencing principles, the objectives and purposes of sentencing and the factors specified in Articles 19 of the Statute and Rule 100(B).

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[53] *Ibid.* para. 534.

[54] See CDF Appeals Judgement, para. 476.

[55] SCSL-04-15-T-1239, Prosecution Sentencing Brief (public version), 10 March 2009 ("Prosecution Brief"); A copy of the Prosecution Sentencing brief was also filed containing some additional confidential information as SCSL-04-15-T-1238; SCSL-04-15-T-1242, Sesay Defence Sentencing Brief, 17 March 2009 ("Sesay brief"); SCSL-04-15-T-1244, Kallon Sentencing Brief, 17 March 2009 ("Kallon Brief"); SCSL-04-15-T-1243, Public With Confidential Annexes Sentencing Brief for Augustine Gbao, 17 March 2009 ("Gbao Brief"); Sentencing Hearing, Transcript of 23 March 2009.

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facilitate disarmament and rehabilitation of former child soldiers."[180] Similarly, the Gbao Defence highlights Gbao's role in relation to the release of 45 suspected Kamajors in Kailahun, before the second group of 64 was killed, and requests that this be considered as a mitigating factor.[181]

96. Other mitigating factors adduced by the Gbao Defence include Gbao's personal and family circumstances, his advanced age, his health condition, good character and lack of prior convictions.[182] In particular, the Gbao Defence would like the Chamber to refrain from imposing a long sentence on Gbao because, given his age, this would functionally amount to a life sentence. Additionally, it was submitted that serving his sentence in a foreign country would result in undue hardship on Gbao and on his family and should, consequently, be taken into account when determining the length of Gbao's imprisonment.[183]

97. The Chamber recalls that during oral submissions, Counsel for Gbao stated that:

> Mr. Gbao does not wish to address the Chamber. This is not because he is feeling any form of disrespect towards this Chamber. It is not because he is feeling surly. It is because he prefers not to. He prefers to speak through me.[184]

98. Counsel for Gbao made further submissions to the effect that: (i) Mr. Gbao does not hold a grudge against his former opponents, indeed he made his peace with the CDF and others a while ago, and even became close with the late Chief Hinga Norman whilst in detention;[185] (ii) he has genuinely forgiven his former enemies, even those who testified against him;[186] and, (iii) "Although [Gbao] accepts that certain members of the RUF committed crimes during the war, Mr. Gbao's conscience forbids him to apologise for those events of which he had no knowledge, let alone control, but one must not assume from that that he doesn't feel deep profound and lasting regret at what happened in this country during the war".[187]

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[179] Gbao Sentencing Brief, paras 72-74.
[180] Gbao Sentencing Brief, paras 80-81.
[181] Gbao Sentencing Brief, para. 82.
[182] Gbao Sentencing Brief, paras 47-65 and Confidential Annexes I, II and III.
[183] Gbao Sentencing Brief, paras 66-71.
[184] Sentencing Hearing, Transcript of 23 March 2009, p. 128.
[185] Sentencing Hearing, Transcript of 23 March 2009, p. 128.
[186] Sentencing Hearing, Transcript of 23 March 2009, pp. 128-129.
[187] Sentencing Hearing, Transcript of 23 March 2009, p. 130.

representatives from Ghana, Guinea, Libya, Sierra Leone, Canada, UK, USA, the then Organisation of African Unity (now African Union) and UNAMSIL.[305]

202. It was of utmost international interest that all the UNAMSIL peacekeepers were safely returned, those detained, wounded or injured, death or alive and all the missing peacekeepers.[306] The political effort to assist the Sierra Leonean people should be supplemented by a credible military force. The UK decided to deploy their spearhead battalion to restore relative calm in Freetown, Lungi and the Peninsula areas.

203. The objective of the international community was to assist in creating conditions for the establishment of lasting peace. At the 4139th meeting of the Security Council on 11 May 2000, many member states advocated that UNAMSIL should be given a strong peace enforcement mandate under Chapter VII of the Charter.[307] The Under-Secretary-General deemed it essential for the international community to show the necessary will and resolve to sustain such a commitment to impose peace in Sierra Leone and called on member states with ready capacity and necessary resources to assist.

1.8.6. Conclusion

204. Having carefully considered the instances of crimes against UNAMSIL personnel as we have found in the Judgement (Counts 15 and 17 of the Indictment) the Chamber concludes that the inherent gravity of the criminal acts in question is exceptionally high.

2. Individual Circumstances of the Accused

2.1. Applicable to all accused

2.1.1. Sentence possibly to be served outside of Sierra Leone

205. Having considered the submissions of the Parties in relation to serving a sentence in a foreign country,[308] as well as the submissions of the Registrar in this regard,[309] the Chamber

[305] *Ibid.* para. 78.
[306] *Ibid.* para. 94.
[307] *Ibid.* para. 100.
[308] Sentencing Hearing, Transcript of 23 March 2009, pp. 33, 126-127.
[309] SCSL-04-15-T-1248, Submission of the Registrar Pursuant to Rule 33(B) Regarding the Conclusion of Agreements for the Enforcement of Sentences, 25 March 2009 ("Registrar's Submission")

notes that whilst it seems more likely than not at this stage that the convicted persons in this trial will serve sentences outside of Sierra Leone,[310] this is a decision that ultimately lies within the discretion of the President of the Court, based upon agreements concluded by the Registrar.[311] The Chamber is unable to speculate on the result of these negotiations and decision making processes, upon which it has no conclusive information, and which lie outside of its control. It therefore notes for purposes of record that it has not given any weight to this factor in the consideration of the sentences of any of the convicted persons in this case.

206. The Chamber however wishes to recognise that, in general terms, sentences served abroad, where family visits are likely to be few, may be harder to bear. Such circumstances would normally amount to a factor in mitigation of sentence.

2.1.2. References in submissions to evidence adduced during trial

207. Although both the Prosecution and the Defence teams referred to evidence adduced at trial in support of their arguments on sentencing, the Chamber has not given this evidence substantial consideration unless such evidence resulted in a finding of fact in the Judgement. The Chamber had determined that some of the evidence adduced at trial was found to be not credible and therefore attached no probative value to it. In making its findings on the individual circumstances of the Accused for the purposes of sentencing, the Chamber has relied upon the findings in the Judgement, the arguments of the parties including any information adduced specifically in support thereof and the procedural history of the case.

2.2. Sesay

2.2.1. Convictions and form of liability

208. The Chamber recalls the crimes for which Sesay has been convicted, and the form of liability for each crime, as set out above in Section II of this Sentencing Judgement.

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[310] Registrar's Submission, Annex B, Letter to the Special Court from the Republic of Sierra Leone.
[311] Rule 103(B) of the Rules of Procedure and Evidence.

SPECIAL COURT FOR SIERRA LEONE

TRIAL CHAMBER I

Before:	Hon. Justice Pierre Boutet, Presiding Judge Hon. Justice Benjamin Mutanga Itoe Hon. Justice Bankole Thompson
Registrar:	Herman von Hebel
Date:	2 March 2009

PROSECUTOR	Against	ISSA HASSAN SESAY MORRIS KALLON AUGUSTINE GBAO (Case No. SCSL-04-15-T)

Public Document

JUDGEMENT

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Reginald Fynn
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Régine Gachoud
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Defence Counsel for Issa Hassan Sesay:
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Defence Counsel for Morris Kallon:
Charles Taku
Kennedy Ogeto

Court Appointed Counsel for Augustine Gbao:
John Cammegh
Scott Martin

certain key information allegedly arising out of the relationship between General Tarnue, Dr. White and the United States Government as set out in paragraph 6 herein.

(A) *Alleged Breach of Article 15(1)*

40. The Chamber notes that both the Defence and the Prosecution agree that within the proper context and interpretation of the Statute and the Rules, Article 15(1) does vest on the Prosecution, the autonomy and independence in the discharge of its functions, and that the Office of the Prosecutor must act as an independent body that does not take ***instructions*** from any other entity.

41. It seems clear to the Chamber that the arguments and submissions of the Defence as regards the alleged breach of Article 15(1) are predicated upon the assumption that the Office of the Prosecutor has taken ***instructions*** from another entity. The Prosecution submits that it has not. The crux of the matter, from the Chamber's perspective, is whether there is, at this point in time, any evidentiary basis or factual foundation for the allegation put forward by the Defence, to warrant a conclusive finding of fact that there has in law been a breach of Article 15(1). The Defence assert that the evidence from which such inference should be drawn is that of General Tarnue that Dr. White's actions were, according to Dr. White, to be based upon a decision of the State Department of the Government of the United States.

42. Does this piece of evidence irresistibly sustain the Defence contentions, even if given a liberal evaluation? In other words, does it necessarily follow that because General Tarnue stated that Dr. White told him that the latter's actions were to be based on a decision of the State Department of the U.S. Government, the Office of the Prosecutor was acting on the ***instructions*** 'received' from the U.S. Government? In the Chamber's opinion, an inference of this nature cannot lightly be drawn from such evidence, given its grave implications for the justice process.

43. The Chamber, likewise, emphasises that the suggestion of the Defence that General Tarnue's testimony revealed a relationship between the Office of the Prosecutor and the United States of America, even if it were true, could not in law justify, without more, the inference that the Prosecution was receiving ***instructions*** from the U.S Government in breach of Article 15(1). This is so even if the Office of the Prosecutor sought ***assistance*** from the U.S. Government as envisaged by Rule 8(C) of the Rules of Procedure and Evidence. Certainly, in the Chamber's view, it would do violence to the plain meaning and context of the Statute and the Rules if conceptually the words ***"instructions"*** and ***"assistance"*** were construed as being synonymous and interchangeable. The

contentions of the Defence on this issue, therefore, are legally unsustainable in that, on the whole, the Defence has failed to substantiate, by *prima facie* proof, the allegation of breach of Article 15(1), on the part of the Office of the Prosecutor. This Chamber does not find any, as the Defence contends, "master-servant" relationship between Dr. White, as FBI agent and the Prosecution which would occasion a breach of Article 15(1).

(B) Discretion to Seek Assistance

44. The Chamber recalls that both the Defence and Prosecution agree that within the framework of the Court's Statute and Rules, the Office of the Prosecutor is vested with some measure of discretionary latitude in seeking ***assistance*** from internal and external agencies for the purpose of the conduct of its investigations. We observe that, unlike Article 15(1) of the Statute which is an exclusionary clause designed to protect and preserve prosecutorial independence, there is no similar statutory prohibition for the Prosecution, in the exercise of its prosecutorial discretion, to seek, within the confines of the law, any ***assistance*** from other bodies and Institutions in fulfilling the duties conferred on it by the Statute. Clearly, Article 15(2) of the Statute is explicit in its purport and intendment that:

> "The Office of the Prosecutor shall have power to question suspects, victims, and witnesses, to collect evidence and evident on - site investigations. In carrying out these tasks, the Prosecutor shall, as appropriate, be assisted by the Sierra Leone authorities concerned."

45. By parity of reasoning, Rules 8(C), (D) and (E), 39, and 40 of the Court's Rules of Procedure and Evidence cumulatively establish a machinery for co-operation between the Office of the Prosecutor and external agencies or entities, be they States, Governments, Organisations, Bureaus, or related bodies.

46. In this regard, the Defence submissions do not really challenge the authority of the Office of the Prosecutor to seek ***assistance*** in the conduct of its investigations. Accordingly, the Chamber concludes that there is clear statutory authority for the Prosecution to seek ***assistance*** from both internal and external sources for the purposes of the conduct of its investigations in the course of fulfilling its mandate to bring to justice those who bear the greatest responsibility for crimes against humanity, war crimes and related offences during the hostilities that took place in Sierra Leone at the material times.

position to commit an offence.[485] It is the Chamber's opinion that no *formal* superior-subordinate relationship between the superior and the subordinate is required. It is sufficient that there is proof of some position of authority on the part of the Accused that would compel another to commit a crime in compliance with the Accused's order, command or direction.[486] Such authority can be *de jure* or *de facto* and can be reasonably implied.[487] The Chamber is of the view that a "causal link between the act of ordering and the physical perpetration of a crime [...] also needs to be demonstrated as part of the *actus reus* of ordering" but that this "link need not be such as to show that the offence would not have been perpetrated in the absence of the order."[488]

274. The Chamber finds that to establish the *mens rea* requirement for ordering a crime, the Prosecution must prove that the Accused either intended to bring about the commission of the crime or that the Accused gave an order with the awareness of the substantial likelihood that a crime would likely be committed as a consequence of the execution or implementation of that order, command or direction.[489]

4.1.6. Aiding and Abetting

275. The Chamber notes that the Prosecution charges the Accused pursuant to Article 6(1) of the Statute with aiding and abetting in the planning, preparation or execution of the crimes referred to in the Indictment.[490]

276. The Chamber considers that "aiding and abetting" consists of the act of rendering practical or material assistance, encouragement or moral support, which has a substantial effect on the perpetration of a certain crime.[491] Aiding and abetting may also consist of an omission,

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[485] *Kordic and Cerkez* Appeal Judgement, para. 28.
[486] *Prosecutor v. Semanza*, ICTR-97-20-A, Judgement (AC), 20 May 2005, para. 361 [*Semanza* Appeal Judgement], referring to *Kordic and Cerkez* Appeal Judgement, para. 28. *See also Gacumbitsi* Appeal Judgement, paras 181-182; *Prosecutor v. Kamuhanda*, ICTR-99-54A-A, Judgement (AC), 19 September 2005, para. 75 [*Kamuhanda* Appeal Judgement]: "To be held responsible under Article 6(1) of the Statute for ordering a crime, on the contrary, it is sufficient that the accused have authority over the perpetrator of the crime, and that his order have a direct and substantial effect on the commission of the illegal act." [original footnotes omitted].
[487] *Limaj et al.* Trial Judgement, para. 515 referring to *Brdjanin* Trial Judgement, para. 270.
[488] *Prosecutor v. Strugar*, IT-01-42-T, Judgement (TC), 31 January 2005, para. 332 [*Strugar* Trial Judgement].
[489] *Blaskic* Appeal Judgement, para. 42.
[490] Indictment, para. 38.
[491] *See*, amongst others, *Tadic* Appeals Judgement, para. 229; *Limaj et al.* Trial Judgement, para. 516; *Krstic* Trial Judgement, para. 601.

providing that the basic elements of aiding and abetting as set out below are satisfied.[492]

277. The *actus reus* of aiding and abetting requires that the Accused perpetrates an act or an omission specifically directed to assist, encourage or lend moral support to the perpetration of a certain specific crime and that this act or omission of the aider and abettor must have a substantial effect upon the perpetration of the crime.[493] The provision of material or physical assistance can also constitute the *actus reus* of aiding and abetting. "[P]roof of a cause-effect relationship between the conduct of the aider or abettor and the commission of the crime, or proof that such conduct served as a condition precedent to the commission of the crime, is not required."[494]

278. Further, taking into account the specific wording of Article 6(1) of the Statute that "[a] person who [...] aided and abetted *in the planning, preparation or execution* of a crime referred to in articles 2 to 4 of the present Statute shall be individually responsible for the crime", this Chamber is of the opinion that the *actus reus* of aiding and abetting a crime may occur before, during, or after the principal crime has been perpetrated and at a location geographically removed from the location of the principal crime.[495] If the aiding and abetting occurs after the crime, it must be established that a prior agreement existed between the principal and the person who subsequently aided and abetted in the commission of the crime.[496] The Appeals Chamber has confirmed that acts of aiding and abetting "can be made at a time and place removed from the actual crime."[497] The Chamber reiterates, however, that the act of the aider and abettor must have a substantial effect upon the perpetration of the crime.

279. Mere presence at the scene of a crime, without more, will not usually constitute aiding and abetting. There may be situations, however, in which the physical presence at the crime scene of the Accused, combined with his or her position of authority, "allowed the inference that non-interference by the accused actually amounted to tacit approval and encouragement"

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[492] *Prosecutor v. Oric*, IT-03-68-A, Judgement (AC), 3 July 2008, para. 43 [*Oric* Appeal Judgement].
[493] *See Gacumbitsi* Appeal Judgement, para. 140; *Vasiljevic* Appeal Judgement, para. 102; *Oric* Appeal Judgement, para. 43. *See also Blaskic* Appeal Judgement, para. 46 referring to *Furundzija* Trial Judgement, para. 249. *And see also CDF* Appeal Judgement, para. 72: "The Appeals Chamber agrees that 'encouragement' and 'moral support' may constitute the *actus reus*" of aiding and abetting.
[494] *Blaskic* Appeal Judgement, para. 48.
[495] *Blaskic* Appeal Judgement, para. 48.
[496] *Blagojevic and Jokic Trial Judgement*, para. 731.
[497] *CDF* Appeal Judgement, para. 72.

that could amount to aiding and abetting.[498] The Chamber also notes that, in some circumstances, a superior's failure to punish for past crimes might constitute instigation or aiding and abetting for *further* crimes.[499]

280. The Chamber recognises that the *mens rea* of aiding and abetting is the knowledge that the acts performed by the Accused assist the commission of the crime by the principal offender.[500] "Such knowledge may be inferred from all relevant circumstances."[501] The Accused need not share the *mens rea* of the principal offender, but he must be aware of the principal offender's intention.[502] In the case of specific intent offences, the aider and abettor need not possess the principal offender's intent, but must have knowledge that the principal offender possessed the specific intent required.[503] In other words, "it must be shown that the aider and abettor was aware of the essential elements of the crime which was ultimately committed by the principal."[504] The aider and abettor, however, need not know the precise crime that is intended by the principal offender. If he is aware that one of a number of crimes will probably be committed by the principal offender, and one of those crimes is in fact committed, then he has intended to assist or facilitate the commission of that crime, and may be guilty of aiding and abetting.[505]

4.2. Responsibility under Article 6(3) of the Statute

281. In addition or in the alternative, the Prosecution alleges that the Accused are responsible pursuant to Article 6(3) of the Statute for the crimes alleged in Counts 1 through 18 of the Indictment as these crimes were allegedly committed while the Accused were holding

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[498] *Brdjanin* Appeal Judgement, para. 273; *See also Oric* Appeal Judgement, para. 42; *Kayishema and Ruzindana* Appeal Judgement, paras. 201-202.
[499] *See Blaskic* Trial Judgement, para. 337.
[500] *See Vasiljevic* Appeal Judgement, para. 102; *Blaskic* Appeal Judgement, para. 49; *Tadic* Appeal Judgement, para. 229.
[501] *Limaj et al.* Trial Judgement, para. 518 referring to *Celebici* Trial Judgement, para. 328 and to *Tadic* Trial Judgement, para. 676.
[502] *See Aleksovski* Appeal Judgement, para. 162 referring to *Furundzija* Trial Judgement, para. 245. *See also Limaj et al.* Trial Judgement, para. 518; *Brdjanin* Trial Judgement, para. 273; *Kunarac et al.* Trial Judgement, para. 392.
[503] *CDF* Appeal Judgement, para. 367, citing *Ntakirutimana* Appeal Judgement, para. 501 and *Prosecutor v. Ndindabahizi*, ICTR-2001-71-T, Judgement and Sentence (TC), 15 July 2004, para. 457. *See also Prosecutor v. Krstic*, IT-98-33-A, Judgement (AC), 19 April 2004, para. 140 [*Krstic* Appeal Judgement]; *Vasiljevic* Appeal Judgement, para. 142; *Krnojelac* Appeal Judgement, para. 52.
[504] *Aleksovski* Appeal Judgement, para. 162.
[505] *AFRC* Appeal Judgement, para. 243, endorsing *Blaskic* Appeal Judgement, para. 50 and *Prosecutor v. Simic*, IT-95-9-A, Judgement (AC), 28 November 2006, para. 86 [*Simic* Appeal Judgement].

493. During the course of the trial, some witnesses have been asked to identify one or more of the Accused in the courtroom. The Chamber is aware that it may be possible for a witness to point out an Accused person due to their physical placement in the courtroom and, in a multi-Accused trial, to pick out the Accused person who most closely resembles an individual they previously saw.[931]

494. The Chamber considers identification by a witness of someone previously known to be more reliable than identification of someone previously unknown.[932]

2.4. Hearsay Evidence

495. The Chamber followed the operative principle in the sphere of international criminal adjudication that hearsay evidence is admissible.[933] The Chamber is aware that hearsay evidence has inherent deficiencies. It cannot be tested by cross-examination, its reliability may be affected by compounded errors of perception and memory, its source and content can neither be confirmed nor is it subject to solemn declaration.[934] We are conscious of the fact that where such evidence is admitted to prove the truth of its contents, a tribunal ought to be satisfied that it is reliable for that purpose, in the sense of its being voluntary, truthful, and trustworthy, and that both its context and the circumstances under which it arose should be considered.[935]

496. Consistent with the Statute, the Rules of Procedure and Evidence and established international criminal jurisprudence, we acknowledge the fact that evidence which is hearsay in character does not necessarily deprive it of its probative value. In general, however, the weight or the probative value to be attached to such evidence will usually be less than that attributed

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the witness, the time lapse between the original observation and the subsequent identification to the authorities, and any discrepancies between the original description given by the witness and the actual appearance of the Accused.

[931] *See Limaj et al.* Trial Judgement, para. 17; *Vasiljevic* Trial Judgement, para. 19. *See also Kunarac et al.* Trial Judgement, para. 562.

[932] *Kayishema and Ruzindana* Trial Judgement, paras 455-458.

[933] *Fofana* Appeal Decision Refusing Bail, para. 29. See also *Prosecutor v. Aleksovski*, IT-95-14/1-AR73, Decision on Prosecutor's Appeal on Admissibility of Evidence (AC), 16 February 1999, para. 14. [*Aleksovski* Appeal Decision on Admissibility of Evidence]

[934] *Krnojelac* Trial Judgement, para. 70. See also *Aleksovski* Appeal Decision on Admissibility of Evidence, para. 15.

[935] May and Wierda, *International Criminal Evidence*, p. 117.

to the testimony under oath of a witness who has been subjected to cross-examination.[936] Factors that influence the probative value of hearsay evidence include whether the evidence given was first-hand or further removed, the opportunity to cross-examine the person who made the statement, the potential for errors of perception and memory and the circumstantial guarantees of trustworthiness surrounding the statements.[937]

2.5. Accomplice Evidence

497. The Chamber has heard considerable evidence from "insider witnesses" - that is, persons who were former members of the RUF or the AFRC and who, even though they were not, could also have been indicted for these same offences whose commission they themselves openly and voluntarily admitted in the course of their testimony. These witnesses, as the Appeals Chamber has also observed, are, in law, considered as accomplices.[938]

498. The Chamber has approached the assessment of the reliability of the evidence of accomplice witnesses with caution and has always considered whether or not an accomplice has an ulterior motive to testify such as assurances of *a quid pro quo* from the Prosecution that they will not be prosecuted. Where possible, the Chamber has looked for corroboration of the evidence of accomplice witnesses.[939]

2.6. Circumstantial Evidence

499. Circumstantial evidence is evidence of circumstances surrounding an event or incident from which a fact at issue may be reasonably inferred.[940] Although the individual ingredients of circumstantial evidence may be insufficient to establish a fact, taken conjunctively and cumulatively their effect may be revealing and sometimes decisive.[941] As a matter of law, where

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[936] See *Prosecutor v. Blaskic*, IT-95-14-T, Decision on the Standing Objection of the Defence to the Admission of Hearsay with no Inquiry as to its Reliability (TC), 21 January 1998, para. 12.
[937] *See*, for example, *Prosecutor v. Delic*, IT-04-83-T, Judgement (TC), 15 September 2008, para. 27 [*Delic* Trial Judgement]; *Haradinaj et al.* Trial Judgement, para. 19.
[938] *AFRC* Appeal Judgement, para. 127.
[939] *AFRC* Appeal Judgement, paras 128-129. *See also Muvunyi* Appeal Judgement, para. 98 [*Niyitegeka* Appeal Judgement].
[940] *Halilovic* Trial Judgement, para. 15. *See also Limaj et al.* Trial Judgement, para. 10.
[941] *See R. v. Exall* (1866), 4 F. & F. 922 (England), p. 928: "Thus it may be in circumstantial evidence - there may be a combination of circumstances, no one of which would raise a reasonable conviction, or more than a mere suspicion; but the whole, taken together, may create a conclusion of guilt, that is, with as much certainty as human

the Prosecution's case is substantially based on circumstantial evidence, it must be such as to satisfy the Chamber that it is consistent only with the guilt of the Accused and that there is no reasonable innocent explanation.[942] Where it has been necessary for the Chamber to resort to circumstantial evidence in proof of a fact in issue, the Chamber has been careful to consider whether any conclusion other than the guilt of the Accused can reasonably be reached. If such a conclusion is possible, the Chamber has not relied on the evidence for the purpose of convicting the Accused.[943]

2.7. Corroboration

500. In some instances, only one witness has given evidence on a material fact. While the testimony of a single witness on a material fact does not, as a matter of law, require corroboration,[944] it has been the practice of the Chamber to examine evidence from a lone witness very carefully, in light of the overall evidence adduced, and to guard against the exercise of an underlying motive on the part of the witness, before placing any reliance upon it.[945]

501. The Chamber is mindful of the Appeals Chamber's opinion that the Trial Chamber may rely on "a limited number of witnesses or even a single witness provided that it took into consideration all the evidence on the record."[946]

2.8. Alibi

502. In the course of these proceedings, the Second Accused, Kallon, raised alibis and adduced evidence to support his claims in relation to certain events and allegations set out in the Indictment. In raising the special defence of alibi, an Accused not only denies that he committed the crimes charged, but also asserts that he was present in a different location than

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affairs can require or admit of." *See also* Peter Murphy, *Murphy on Evidence*, 10th ed., (Oxford: Oxford University Press, 2008), p. 20-21 [Murphy, *On Evidence*].

[942] *See McGreevy v. Director of Public Prosecutions* [1973] 1 All ER 503, 1 WLR 276; Murphy, *On Evidence*, p. 22-23.

[943] *CDF* Appeal Judgement, para. 200; *Celebici* Appeal Judgement, para. 458: "A circumstantial case consists of evidence of a number of different circumstances which, taken in combination, point to the guilt of the accused person because they would usually exist in combination only because the accused did what is alleged against him [...] Such a conclusion must be established beyond reasonable doubt. It is not sufficient that it is a reasonable conclusion available from that evidence. It must be the *only* reasonable conclusion available. If there is another conclusion which is also reasonably open from that evidence, and which is consistent with the innocence of the accused, he must be acquitted." [emphasis in original].

[944] *AFRC* Appeal Judgment, para. 129. *See also Aleksovski* Appeal Judgement, para. 62.

[945] *CDF* Appeal Judgement, para. 199. *See also Kordic and Cerkez* Appeal Judgement, para. 274.

The Chamber also accepted Johan Hederstadt as a *prima facie* expert on guerrilla warfare, and allowed his testimony within his specialization.[994] However, the Chamber only accepted the report to the extent that it fell within his knowledge as an expert, and excluded evidence from it with regard to many of his conclusions.[995] Generally speaking however, the Chamber views the evidence of these and other expert witnesses as credible and has accepted the evidence of such experts insofar as it relates to their areas of expertise, and does not make conclusions on the acts and conduct of the Accused Persons.

5.5. Insider Witnesses

539. Numerous "insider witnesses" were called by both the Prosecution and the Defence. The Chamber specifically recalls the testimony of TF1-371, TF1-366, TF1-361, TF1-367, TF1-362, TF1-360, TF1-071, George Johnson, TF1-334, TF1-036, TF1-045, DIS-069, DIS-188, DIS-157 and others. These insider witnesses were themselves high-ranking officers in the RUF or AFRC. Many of these witnesses were key participants in the crimes alleged in the Indictment, and may be considered to be co-perpetrators or accomplices. The Chamber reiterates that the Appeals Chamber has clarified that such persons may be considered accomplices even if they have not been charged with any criminal offence.[996]

540. The Chamber recalls its previous discussion about insider witnesses and the nature of their evidence, and emphasises that the trier of fact must exhibit extreme caution when examining the credibility of accomplice evidence. When possible, the Chamber has sought corroboration of the evidence of insider witnesses, and in particular, when this evidence related to a material issue. Being so aware, the Chamber has cautioned itself on the risk and danger of accepting uncorroborated evidence from an insider witness as credible, but at the same time, acknowledges its authority to accept such evidence. Without seeking to examine all of them, the following paragraphs provide a brief discussion on the credibility of a few of the insider witnesses for both the Prosecution and the Defence.

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[994] Transcript of 23 June 2008, pp. 11, 16.
[995] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Admissibility of Certain Parts of Expert Report of Johan Hederstadt, 29 July 2008, paras 26-39.
[996] *AFRC* Appeal Judgement, para. 127.

5.5.1. Prosecution Witnesses

5.5.1.1. TF1-371

541. TF1-371 was a high-ranking member of the RUF.[997] This witness testified extensively on training, the inner workings of the Junta Government, forced labour and serious crimes.

542. All three Defence Counsel have raised credibility concerns with respect to this witness. The Sesay Defence claimed TF1-371 changed his story several times, contradicted himself with respect to the diamond mining programme of the RUF and AFRC, and inaccurately implicated Sesay.[998] The Kallon Defence asserted that TF1-371 was a very high-ranking RUF officer by 1996 who has repeatedly minimized his own role and exaggerated that of the Accused. The Kallon Defence submitted that this witness was unreliable.[999] The Gbao Defence argued the testimony of TF1-371 had been significantly undermined due to the Prosecution's promise of immunity in exchange for testimony.[1000]

543. The Chamber has duly noted the credibility concerns surrounding the testimony of TF1-371 raised by all three Defence Counsel, and has approached the testimony of TF1-371 with utmost caution. The Chamber has observed that TF1-371 at times has a tendency to implicate the Accused in a way that does not accord with the rest of the evidence. For instance, the Chamber has serious concerns about the veracity of TF1-371's testimony as it relates to the command structure of the RUF and the AFRC, the role of the Accused within the RUF movement as well as evidence which relates to the acts and conduct of the Accused. The Chamber has required corroboration before accepting his evidence relating to these issues. However, where the evidence of TF1-371 was more general in nature, the Chamber has accepted his evidence without corroboration, as it has found it to be consistent with the overall evidence and reliable. We found this witness to be very articulate, and able to give his testimony in a clear-headed and coherent way.

5.5.1.2. TF1-366

544. TF1-366 testified that he was captured as a child by the RUF in Kailahun District in

[997] For reasons of Protective Measures, the Chamber will not elaborately get into the personal details of TF1-371.
[998] Sesay Final Trial Brief, para. 651.
[999] Kallon Final Trial Brief, para. 298.
[1000] Gbao Final Trial Brief, para. 279.

1991 and taken to Baiwala base camp to be trained.[1001] This witness remained in the RUF for the duration of the war, eventually reaching the rank of Colonel. TF1-366 fought for the RUF and personally participated in many attacks and missions.[1002]

545. The Sesay Defence objected to the testimony of TF1-366 in part, because it claimed the witness attempted to implicate Sesay at every opportunity, and was generally an unreliable witness.[1003] The Chamber notes that the Sesay Defence also filed a Motion to Direct the Prosecutor to Investigate the Matter of False Testimony of TF1-366.[1004] The Kallon Defence asserted that TF1-366 was unreliable, contradicted himself and exhibited a "solemn" disregard for the truth.[1005] The Gbao Defence had similar concerns, stating that much of the evidence of TF1-366 was "so utterly inconsistent it caused one to wonder whether he was making it up as he went along."[1006]

546. The Chamber shares the concerns of Defence Counsel for the Accused that the testimony of TF1-366 was often problematic. The testimony of this witness tended to over-implicate the Accused, particularly Sesay and Kallon, in a way that went beyond the general story as related by other witnesses. The Chamber has therefore been cautious, and has not accepted the testimony of TF1-366 as it relates to the acts and conduct of the Accused unless it was corroborated in some material aspect by a reliable witness. However, where TF1-366 has given more general evidence, or has testified about his own experiences, the Chamber has accepted his evidence without corroboration.

5.5.1.3. TF1-361

547. TF1-361 testified that he was captured by the RUF in 1991.[1007] TF1-361 was trained at Camp Zogoda.[1008] The witness testified comprehensively with regard to the RUF, including his functions in the RUF, its command structure and on specific crimes.

[1001] Transcript of 7 November 2005, TF1-366, pp. 55-56 (CS).
[1002] Transcript of 8 November 2005, TF1-366, p. 63 (CS).
[1003] Sesay Final Trial Brief, paras 336, 387.
[1004] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL 04-15-T, Defence Motion to Direct the Prosecutor to Investigate the Matter of False Testimony by Witness TF1-366, 12 January 2006; Decision on Sesay Defence Motion to Direct the Prosecutor to Investigate the Matter of False Testimony by Witness TF1-366, 22 July 2006.
[1005] Kallon Final Trial Brief, para. 316.
[1006] Gbao Final Trial Brief, para. 278.
[1007] Transcript of 11 July 2005, TF1-361, pp. 41-42 (CS).
[1008] Transcript of 11 July 2005, TF1-361, pp. 41-42 (CS).

548. The Sesay Defence objected to the testimony of TF1-361 on the grounds of his "verbal contortions".[1009] The Sesay Defence also raised concerns about TF1-361's loyalties, claiming his fierce loyalty to Superman, and the in-fighting that took place between Superman and Sesay, made it impossible for this witness to provide an unbiased account.[1010] The Kallon Defence found TF1-361's testimony unreliable because the witness attempted to over-implicate the Accused, as well as contradict himself regarding material events.[1011]

549. The Chamber has considered the concerns of the Defence Counsel, but concludes that, on the whole, TF1-361 was a reliable witness and has generally believed his evidence. The witness' testimony was internally consistent as well as consistent with the evidence of other credible witnesses. Although TF1-361 was an insider witness, he testified in a forthright and compelling manner and as one who was genuinely committed to assisting the Chamber. Accordingly, the Chamber has largely accepted his evidence. Exceptionally, where there could have been doubts as to his testimony given his status as an insider witness, the Chamber admonished itself accordingly.

5.5.1.4. TF1-367

550. TF1-367 joined the RUF voluntarily in 1990 and trained at Camp Naama.[1012] He remained with the RUF for the duration of the war. TF1-367 testified about diamond mining at Tongo Field, forced labour and logistics during the Junta.[1013]

551. The Sesay Defence raised concerns about TF1-367's testimony on the basis that the witness had occasionally lied and was generally unreliable.[1014] The Kallon Defence submitted that TF1-367's rampant dishonesty undermined his testimony.[1015]

552. The Chamber is of the view that the testimony of TF1-367 was generally credible. The witness recounted events confidently and showed a genuine interest in assisting the Chamber. The Chamber is of the view that any inconsistencies in his testimony were minor, and has

[1009] Sesay Final Trial Brief, para. 786.
[1010] Sesay Final Trial Brief, para. 843.
[1011] Kallon Final Trial Brief, paras 348, 353.
[1012] Transcript of 21 June 2006, TF1-367, p. 46 (CS).
[1013] Transcript of 21 June 2006, TF1-367, pp. 55, 58-59 (CS).
[1014] Sesay Final Trial Brief, paras 450, 595, 660.
[1015] Kallon Final Trial Brief, paras 360-362.

largely accepted his evidence as being trustworthy.

5.5.1.5. TF1-362

553. TF1-362 voluntarily joined the RUF in Liberia in 1990.[1016] TF1-362 remained with the RUF throughout the war up until disarmament.[1017] Most of this witness' testimony centred on RUF training and recruiting.

554. The Sesay Defence expressed concerns about the testimony of TF1-362 because of the hostility harboured by the witness towards Sesay, and that the testimony was patterned to implicate him.[1018]

555. The Chamber considers that even if these allegations were well-founded, we have approached the testimony of TF1-362 concerning Sesay with caution. Generally, however, the Chamber has found the testimony of TF1-362 to be credible and has largely accepted this witness' evidence.

5.5.1.6. George "Junior Lion" Johnson

556. George Johnson joined the Sierra Leone military in 1993 in Kenema, and fought against the RUF.[1019] Following the coup, the witness was released from Pademba Road Prison in Freetown and joined the AFRC Junta.[1020] Eventually, Johnson separated from the main AFRC faction and became an Operation Commander with the West Side Boys.[1021] He testified extensively about the operations of the West Side Boys until the Lomé Peace Accord, as well as the 6 January 1999 invasion and events during the Junta.

557. The Kallon Defence submits that George Johnson is not a credible witness because he over-implicated Kallon, and testified that Kallon had a higher rank than he actually held.[1022] The Kallon Defence also argued that Johnson's testimony was unreliable because it was inconsistent with his previous statements, and because he minimized his own role in the

[1016] Transcript of 20 April 2005, TF1-362, p. 5 (CS).
[1017] Transcript of 20 April 2005, TF1-362, p. 6 (CS).
[1018] Sesay Final Trial Brief, paras 8, 362, 376.
[1019] Transcript of 19 October 2004, George Johnson, pp. 100-101.
[1020] Transcript of 19 October 2004, George Johnson, p. 102.
[1021] Transcript of 14 October 2004, George Johnson, p. 102.
[1022] Kallon Final Trial Brief, para. 366.

conflict.[1023]

558. The Chamber finds that George Johnson is a credible witness whose testimony was forthright and compelling in that he exhibited a convincing grasp of the events and did not testify about events beyond his knowledge. In the Chamber's considered view, his demeanour in Court also indicated that he was genuinely assisting the Court to arrive at the truth. Moreover, none of the substantive aspects of Johnson's testimony were impeached in cross-examination. As such, his testimony is generally accepted as reliable and trustworthy.

5.5.1.7. TF1-045

559. TF1-045 testified that he and his family were captured by the RUF in Pujehun District in 1991.[1024] In 1996 Sankoh assigned the witness to work as a bodyguard in the RUF.[1025] Eventually, the witness rose to a high rank within the RUF.[1026] TF1-045 testified about diamond mining at Tongo Field, as well as about rape and looting and the command structure during the AFRC/RUF Junta.

560. The Sesay Defence raised concerns about the testimony of TF1-045 because it asserted that he harboured hostility toward Sesay, was unreliable with respect to his evidence about civilian diamond mining, and attempted to over-implicate the Accused.[1027] The Kallon Defence stated that TF1-045 was entirely unreliable and untruthful as he had attempted to implicate Kallon and to unnecessarily shift blame for the war to Kallon.[1028] The Kallon Defence argued that the whole of TF1-045's testimony should be disregarded.[1029] The Gbao Defence asserted that the Chamber should approach TF1-045's testimony with caution, especially as it related to the Kamajor killings in Kailahun because the witness' testimony that he was there was unrealistic and unreliable.[1030] The Gbao Defence asserted TF1-045's testimony contained "inconsistencies, exaggerations and omissions of material facts" and that every detail of his

[1023] Kallon Final Trial Brief, paras 369-376.
[1024] Transcript of 18 November 2005, TF1-045, p. 47 (CS).
[1025] Transcript of 18 November 2005, TF1-045, p. 49 (CS).
[1026] Transcript of 18 November 2005, TF1-045, pp. 50-51 (CS).
[1027] Sesay Final Trial Brief, paras 8, 276, 329, 447.
[1028] Kallon Final Trial Brief, paras 384-388.
[1029] Kallon Final Trial Brief, para. 315.
[1030] Gbao Final Trial Brief, paras 862, 872-873.

testimony should be disregarded.[1031]

561. The Chamber has duly considered the concerns of all three Defence teams and is of the view that TF1-045 provided helpful evidence, including useful information regarding the command structure and the functioning of the RUF as a movement. The Chamber opines that TF1-045 appeared confident and truthful while testifying, and that the overall purpose of his appearance in Court was to assist the Chamber in its search for the truth. Due to the fact that TF1-045 is a protected witness, the Chamber has, however, exercised caution when using his evidence. When the witness gave testimony that related directly to the acts and conduct of the Accused, the Chamber has required corroboration of that evidence. Generally speaking, however, the Chamber is of the considered view that TF1-045's testimony is credible.

5.5.1.8. TF1-360

562. TF1-360 testified that he was captured by the RUF in Pujehun District in April 1991.[1032] He was trained in the RUF, and remained in the movement, performing a specific role, until the end of the war.[1033]

563. While the Sesay Defence often accepted TF1-360's testimony, it raised concerns about internal contradictions in this witness' testimony.[1034] The Kallon Defence voiced stronger problems with the credibility of this witness, noting that he had a tendency to exaggerate the role of Kallon and gave materially inconsistent statements.[1035] The Kallon Defence argued that all of TF1-360's testimony should be ignored.[1036]

564. The Chamber notes that the testimony of TF1-360 was not always clear. While there were some discrepancies in this witness' testimony about dates, times and locations, the Chamber does not consider these to be material. The witness impressed the Chamber as a substantively truthful and forthright witness. In fact, the core of his testimony was consistent with the overall evidence adduced and accepted. On the whole, the Chamber is of the considered view that the evidence of TF1-360 is to be generally accepted as being credible.

[1031] Gbao Final Trial Brief, para. 875.
[1032] Transcript of 19 July 2005, TF1-360, p. 92 (CS).
[1033] Transcript of 19 July 2005, TF1-360, p. 94 (CS).
[1034] Sesay Final Trial Brief, para. 779.
[1035] Kallon Final Trial Brief, paras 331, 336.
[1036] Kallon Final Trial Brief, para. 315.

5.5.2. Defence Witnesses

5.5.2.1. DIS-069

565. DIS-069 testified that in 1991 he voluntarily joined the RUF and trained at Pendembu.[1037] DIS-069 stayed with the RUF until disarmament, when he joined the ceasefire monitoring committee in Kenema.[1038]

566. The Chamber has evaluated the evidence given by DIS-069 and finds that it is generally implausible and unreliable. The Chamber considers that this witness did not testify in order to assist the Chamber in its search for the truth, but to assist the Accused. This witness' evidence runs counter to the entirety of evidence adduced by witnesses which this Chamber has found to be more reliable. In particular, where TF1-362 and DIS-069 have testified about the same events, the Chamber has found the testimony of TF1-362 to be more coherent, consistent and reliable. As such, the Chamber has generally rejected DIS-069's version of events unless corroborated by other credible evidence.

5.5.2.2. DIS-188

567. DIS-188 joined the RUF in Kangama in 1991, working as a mediator between the fighters and the civilian population.[1039] He has testified that he was an adherent of the RUF ideology.[1040] The witness was a member of the RUF for the entirety of the war, and his testimony covered everything from command structure, to RUF farming, to the alleged use of child soldiers.

568. The Chamber has serious concerns about the veracity of this witness' testimony. Much of DIS-188's evidence was inconsistent, and the Chamber is reluctant to accept it. On the whole, the Chamber opines that DIS-188's testimony was influenced in part by his support for the RUF movement and its ideology, and that he was not genuinely assisting the Court to arrive at the truth. However, where DIS-188's testimony has been corroborated and confirmed by the evidence of reliable witnesses, the Chamber has relied upon his evidence for that limited purpose.

[1037] Transcript of 19 October 2007, DIS-069, pp. 22-23 (CS).
[1038] Transcript of 19 October 2007, DIS-069, pp. 46-47 (CS).
[1039] Transcript of 19 October 2007, DIS-069, pp. 66-67 (CS).
[1040] Transcript of 19 October 2007, DIS-069, p. 50 (CS).

5.5.2.3. DIS-157

569. DIS-157 voluntarily joined the RUF prior to the invasion on Sierra Leone in 1991.[1041] He testified about military operations of the RUF, how the RUF was supposed to treat civilians, as well as the relationship between the RUF and the AFRC.

570. After an analysis of the evidence of DIS-157, the Chamber finds that he is generally an unreliable witness. His testimony was inconsistent with that of other witnesses that the Chamber found to be credible, and some versions of the events given by this witness are completely implausible. For instance, DIS-157 testified that there was no forced farming in Kailahun between 1997 and 2000. The Chamber is unwilling to accept a claim that is so heavily refuted and contradicted by the overwhelming weight of reliable testimony. However, the Chamber found that some aspects of DIS-157's testimony could be accepted as credible where that testimony is supported by the general evidence or is corroborated by some other reliable evidence.

5.5.2.4. DAG-048

571. DAG-048 testified that he was approached by the RUF in Pendembu in 1991, and was forced to join the RUF in 1992.[1042] Although the witness was compelled to join the RUF, he grew to embrace and to adopt the RUF ideology and served in the RUF until the end of the war.[1043]

572. The Chamber has examined DAG-048's testimony and has found that it is generally unreliable. This witness' version of events was inconsistent with the version told by many other witnesses that the Chamber has accepted as being trustworthy. When compared with the general thrust of the evidence adduced at trial, DAG-048's account differs to the extent that the Chamber regards the essence of his testimony as inconsistent, unreliable and untrustworthy and unacceptable. However, where this witness's evidence is corroborated by accepted, reliable witnesses, the Chamber will accept his testimony for that limited purpose.

5.5.2.5. DAG-111

[1041] Transcript of 24 January 2008, DIS-157, pp. 17-18, 20-21 (CS); Transcript of 28 January 2008, DIS-157, pp. 3-5.
[1042] Transcript of 3 June 2008, DAG-048, pp. 5, 8.
[1043] Transcript of 3 June 2008, DAG-048, p. 10; Transcript of 5 June 2008, DAG-048, p. 24.

573. DAG-111 was employed by Gbao as his driver and mechanic for a year and a half, first in Kailahun Town and then in Makeni.[1044] DAG-111 gave detailed testimony in relation to the attacks on UNAMSIL peacekeepers in May 2000 and the movements and conduct of Gbao at this time.

574. In particular, DAG-111 testified that he accompanied Gbao to Makump DDR camp on 1 May 2000 with two other RUF members in order to investigate reports that RUF fighters had been forcibly disarmed. Upon arrival, Gbao was vexed and angry.[1045] However, Gbao spoke to several peacekeepers outside the camp and calmed down when he was informed that the MILOBs had effected disarmament. Gbao remained at the camp while DAG-111 returned to Makeni at Gbao's request and informed Kailondo that the situation was under control.[1046]

575. When DAG-111 returned to the camp, Gbao was calmly talking to the peacekeepers outside. However, shortly thereafter Kailondo arrived in a vehicle with ten men. Kailondo was angry and fired his AK-47 in the air. Gbao attempted to pacify him but to no avail.[1047] A second car then arrived from Makeni and Kallon descended with seven men. Kallon was armed and joined Kailondo.[1048] Gbao spoke to them both, attempting to calm them, as more armed men arrived, bringing the number of those present to around 50 fighters.[1049] According to DAG-111, at this point Gbao became afraid and departed the camp.[1050]

576. The Chamber notes that former UNAMSIL peacekeepers Major Ganase Jaganathan and Brigadier Leonard Ngondi also testified in relation to these events.[1051] Jaganathan, who had met Gbao on approximately three previous occasions, attended Makump DDR Camp to speak to Gbao and Ngondi was in radio communication with one of his subordinates, Major Maroa, who was also at the scene. The Chamber is satisfied that these witnesses were genuinely attempting to assist the Court and their testimony in relation to the events of 1 May 2000 at Makump DDR camp was detailed and consistent.

[1044] Transcript of 17 June 2008, DAG-111, pp. 50-58.
[1045] Transcript of 17 June 2008, DAG-011, pp. 68-69, 71, 74; Transcript of 19 June 2008, DAG-011, pp. 25, 29.
[1046] Transcript of 17 June 2008, DAG-011, pp. 75-78.
[1047] Transcript of 17 June 2008, DAG-011, pp. 94-98
[1048] Transcript of 17 June 2008, DAG-011, pp. 98-99, 134-136; *See* Transcript of 19 June 2008, DAG-111, pp, 29-32, 34 for identification of Kallon as the second Commander to arrive.
[1049] Transcript of 17 June 2008, DAG-011, pp. 98-99, 134-136.
[1050] Transcript of 17 June 2008, DAG-111, pp. 137-138.

577. Jaganathan and Ngondi testified that Gbao was present at the Makump DDR camp with around 30 to 40 armed fighters. Gbao appeared drunk and angry and was threatening that he would not leave the camp unless his disarmed fighters were returned to him.[1052] Kallon subsequently arrived and abducted Jaganathan. No other Commander arrived at the scene, and Gbao stood at Kallon's vehicle armed with an AK-47 while Jaganathan was forced inside and driven away.[1053]

578. Having carefully examined the entirety of the evidence pertaining to Gbao's conduct at Makump DDR camp, the Chamber finds the discrepancies between the testimony of DAG-111 and the evidence of Jaganathan and Ngondi to be so significant as to render the testimony of DAG-111 in relation to the events of 1 May 2000 unreliable. The Chamber is unwilling to accept evidence that is contradicted by the corroborated testimony of two reliable witnesses. The Chamber has therefore not relied on the testimony of DAG-111 in its findings on this incident.

5.6. Former Child Soldiers

579. Several of the witnesses who testified were former child combatants who had been captured by the RUF at ages as young as ten. Many of these child witnesses experienced serious physical and mental trauma both during and after the war. Many were forced to consume or use drugs throughout their time in the RUF. Due to the fact that the events they attempt to recount took place largely during their childhood, their ability to recall such events is compounded by the passage of time. This means that such witnesses generally experienced difficulty in remembering specific details about such events, and various minor discrepancies are identifiable in their evidence. However, the Chamber has generally accepted the evidence of former child soldiers, especially as it relates to their own experiences. The following is a credibility evaluation of some of the key former child soldier witnesses.

[1051] *See* Transcript of 20 June 2006, Ganase Jaganathan, pp. 20-28; Transcript of 29 March 2006, Leonard Ngondi, pp. 29-34.
[1052] Transcript of 20 June 2006, Ganese Jaganathan, p. 22; Transcript of 29 March 2006, Leonard Ngondi, p. 28.
[1053] Transcript of 20 June 2006, Ganese Jaganathan, p. 26; Transcript of 21 June 2006, Ganese Jaganathan, p. 24; Transcript of 22 July2005, TF1-360, pp. 5-6 (CS).

5.6.1. TF1-141

580. The RUF captured TF1-141 in Koidu Town in 1998 during the Junta period.[1054] TF1-141 testified that he was taken to the Guinea Highway by the RUF, where he went on food-finding missions with other small boy units (SBUs), and that he also worked as a bodyguard.[1055] The witness remained with the RUF until 2000, when he was disarmed at a demobilisation, disarmament and reintegration ("DDR") camp.[1056]

581. The Sesay Defence asserted that TF1-141 was unreliable because he contradicted himself on several issues and attempted to over-implicate Sesay.[1057] The Kallon Defence stated that TF1-141's testimony contained many internal inconsistencies and contradictions, and was too rehearsed to be believed.[1058] The Gbao Defence expressed concern with the numerous contradictions throughout this witness' testimony.[1059]

582. The Chamber has evaluated TF1-141's credibility and shares some of the concerns raised by the Defence. In particular, the Chamber is uneasy with portions of TF1-141's testimony that appear to be fanciful and thus implausible.

583. The Chamber notes, however, that although the witness was diagnosed with Post-Traumatic Stress Disorder ("PTSD") originating from his experiences as a child soldier with the RUF,[1060] a psychologist's report submitted prior to his testimony indicated that he was able to testify in court proceedings.[1061] The Chamber is thus reassured that the witness was able to give truthful testimony. In addition, TF1-141 came across as a candid witness and the Chamber has generally accepted his testimony, especially as it relates to his own experiences as a child combatant. However, where the witness has testified about the acts and conduct of the Accused, the Chamber has required corroboration of his testimony.

[1054] Transcript of 11 April 2005, TF1-141, pp. 80, 82.
[1055] Transcript of 11 April 2005, TF1-141, p. 89.
[1056] Transcript of 11 April 2005, TF1-141, p. 79.
[1057] Sesay Final Trial Brief, paras 341, 352, 448, 791.
[1058] Kallon Final Trial Brief, paras 467-472.
[1059] Gbao Final Trial Brief, paras 1244-1245.
[1060] Exhibit 15, Declaration of An Michels Regarding Prosecution Witness TF1-141, SCSL Registry p. 10160, 16 December 2004.
[1061] Exhibit 15, Declaration of An Michels Regarding Prosecution Witness TF1-141, SCSL Registry p. 10160, 16 December 2004.

5.6.2. TF1-263

584. TF1-263 testified that he was living in Koidu Town in 1998 when the rebels attacked his village.[1062] The witness was eventually captured by the RUF and forced to train and fight with other civilians of both his age and older.[1063] The witness testified extensively, and provided direct evidence regarding abductions, looting, murder by Sesay, mistreatment of civilians, the command structure of the RUF, widespread and mass killings, kidnapping of UNAMSIL personnel, and the direct orders of Sesay and Kallon on missions.

585. The Sesay Defence claims the testimony of TF1-263 is "inherently unreliable", in part due to inconsistencies between his testimony and his prior statements to the Prosecution.[1064]

586. The Chamber recognizes that TF1-263's testimony was problematic in some respects, as there were occasions where the witness implicated one of the Accused in a way that the evidence does not support. As a result of these concerns, the Chamber has required corroboration of any evidence of this witness that relates to the acts and conduct of any of the three Accused.

587. While the Chamber observes that there were minor inconsistencies in his testimony, it notes that the witness was very young at the time the offences were committed, which may explain the slight discrepancies in his evidence. On the whole, the Chamber finds the witness generally credible, as the alleged inconsistencies are mostly minor. As such, the Chamber largely accepts this witness' testimony, particularly as it relates to his own experiences.

5.6.3. TF1-117

588. TF1-117 testified that he was living in Gboajibu village in 1992 when the RUF, led by Gbao, attacked his village.[1065] TF1-117 stated that he was taken to Kono where he was given drugs and where the RUF trained him in combat.[1066] The witness testified extensively regarding amputations, the command structure of the RUF, attacks on civilians and peacekeepers, as well as his general movements across Sierra Leone during the time he spent with the RUF.

[1062] Transcript of 6 April 2005, TF1-263, p. 7.
[1063] Transcript of 6 April 2005, TF1-263, pp. 28-29.
[1064] Sesay Final Trial Brief, paras 351, 443, 1145.
[1065] Transcript of 29 June 2006, TF1-117, p. 89.
[1066] Transcript of 29 June 2006, TF1-117, p. 91.

589. The Sesay Defence states that TF1-117 is highly unreliable and in the Chamber's view, his evidence alone is not sufficient to sustain a conviction on any count.[1067] Specifically, the Sesay Defence claims that the witness describes events that no other witnesses recount, and tended to over-implicate Sesay.[1068] The Gbao Defence considered the witness TF1-117 to be one of the five most problematic and unreliable witnesses in the RUF trial.[1069] The Gbao Defence took issue with this witness' testimony because he implicates Gbao in the use of child soldiers; states that Gbao participated in RUF attacks; and generally provided exaggerated, contradictory and unrealistic accounts of events.[1070]

590. The Chamber has evaluated the arguments of Defence Counsel for Sesay and Gbao, and shares their concerns in some respects. The Chamber finds that portions of TF1-117's testimony are inconsistent. Specifically, TF1-117's testimony regarding the command structure of the RUF was often vague and contradictory, which made it difficult to assess or accept. Insofar as his evidence relates to the RUF command structure or relates directly to the acts and conduct of the Accused, the Chamber has required corroboration of this witness' testimony. There were, however, some instances when this witness provided useful and compelling evidence to the Court. In these instances, and when the evidence directly reflected TF1-117's personal experiences, the Chamber has accepted his evidence.

5.6.4. TF1-314

591. TF1-314 testified that in 1994 at the age of 10, she was captured and raped by the RUF in Masingbi, Tonkolili District.[1071] Following this violation, she was given the choice by an RUF fighter of being killed or accompanying the RUF. She chose to follow the RUF.[1072] She testified that she was eventually trained as part of a small girls unit ("SGU"); went on food-finding missions for the RUF; and married a rebel named Scorpion.[1073]

592. The Sesay Defence claims the testimony of TF1-314 lacks credibility, specifically with regard to her alleged military training. The Sesay Defence states that her inability to recall how

[1067] Sesay Final Trial Brief, paras 670-671, 676.
[1068] Sesay Final Trial Brief, paras 676, 1339.
[1069] Gbao Final Trial Brief, para. 283.
[1070] Gbao Final Trial Brief, paras 348-349, 357-358, 360.
[1071] Transcript of 2 November 2005, TF1-314, p. 25 (CS).
[1072] Transcript of 2 November 2005, TF1-314, p. 26 (CS).
[1073] Transcript of 2 November 2005, TF1-314, pp. 31, 33, 56 (CS).

to dismantle a gun or participate in an ambush shows that she is unreliable and that doubts can be cast on whether she was actually given military training by the RUF.[1074] The Gbao Defence asserts that this witness is not credible because there are significant inconsistencies in her evidence, as well as retractions of material aspects of her testimony.[1075]

593. The Chamber has evaluated the concerns of the Defence and has decided that most of TF1-314's testimony is credible and will be accepted. The Chamber notes that the witness may have been confused at times regarding times, locations and troop movement. The witness provided unsubstantiated evidence concerning certain events which will not be accepted by the Chamber.[1076]

594. Overall, the Chamber opines that the evidence of TF1-314 is largely credible. The Chamber is of the considered view that slight variations between TF1-314's prior statements and those made at trial are immaterial to a credibility determination of this witness' overall evidence. However, the Chamber will require corroboration of any evidence which relates to the acts and conduct of any of the three Accused.

5.7. Other witnesses

5.7.1. TF1-108

595. TF1-108 held a position of authority within the RUF.[1077] TF1-108 stated that the RUF entered his village in 1991 and appointed him[1078] to be in charge of organising and coordinating food shipments to the RUF fighters from the civilian population.[1079] TF1-108 held this position for the duration of the war.[1080]

596. The Sesay Defence argued that the testimony of TF1-108 is patently unreliable due in part to the fact that the witness' account of his wife's gruesome rape and death was a

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[1074] Sesay Final Trial Brief, para. 437.
[1075] Gbao Final Trial Brief, paras 436-440.
[1076] Transcript of 7 November 2005, TF1-314, pp. 13-14 (CS).
[1077] Transcript of 7 March 2006, TF1-108, p. 81 (CS).
[1078] Transcript of 7 March 2006, TF1-108, p. 84 (CS), in 1996, TF1-108's title was changed but his duties did not change in any way.
[1079] Transcript of 7 March 2006, TF1-108, p. 84 (CS).
[1080] Transcript of 7 March 2006, TF1-108, p. 83 (CS).

fabrication exposed when the Sesay Defence called his wife as a witness.[1081] The Gbao Defence states that this witness is unreliable and that the credibility of important aspects of his testimony had been exposed as incorrect by the Defence.[1082] The Gbao Defence specifically took issue with TF1-108's testimony concerning forced labour, stating that he was the "first significant witness against Gbao" after nearly two years of trial proceedings who directly implicated Gbao in allegations of forced labour.[1083]

597. In assessing the veracity of TF1-108's testimony, the Chamber shares the concerns of the Defence, and doubts the credibility of this witness, particularly in light of his misleading evidence concerning the death of his wife. The Chamber, while exercising caution with regard to the evidence given by TF1-108, has accepted portions of his testimony that are corroborated by a reliable source when such evidence dealt with the acts and conduct of the Accused, as well as his general descriptions of events. The Chamber has accordingly rejected his testimony on the raping to death of his wife as fallacious. We however, have found and accepted his testimony on matters within his personal knowledge and touching on his activities and involvement in the conflict within his locality as credible where corroborated by other credible and reliable evidence particularly on issues of forced labour, 'forced marriages' and inhumane treatement of civilians.

5.7.2. TF1-113

598. TF1-113 testified that she was captured by the RUF in Pendembu in 1991,[1084] and provided information on abductions; forced labour; the murders of suspected Kamajors; and "government" farming.

599. The Sesay Defence raised credibility concerns with regard to this witness due to significant inconsistencies in her testimony.[1085] The Gbao Defence submitted that as the witness had avoided answering certain questions and had provided contradictory answers to questions concerning material events, her testimony with regard to the killings of suspected

[1081] Sesay Final Trial Brief, para. 256.
[1082] Gbao Final Trial Brief, para. 286
[1083] Gbao Final Trial Brief, para. 284.
[1084] Transcript of 2 March 2006, TF1-113, p. 37 (CS).
[1085] Sesay Final Trial Brief, para. 330.

Kamajors in Kailahun was not truthful.[1086]

600. The Chamber has examined the concerns raised by the Sesay and Gbao Defence. The Chamber notes that while TF1-113 tended to misstate the facts during certain portions of her testimony, it remains unconvinced that this is sufficient reason to consider the whole of her evidence unreliable. The Chamber has, however, before considering the use of TF1-113's evidence, exercised extreme caution and often found it necessary to seek other corroborative evidence.

5.7.3. TF1-093

601. TF1-093 testified that she was captured by the RUF in Njala, Moyamba District, in 1996.[1087] She stated that, on the day of her captured she was raped, stabbed and forced into marriage with an RUF Commander.[1088] TF1-093 said that she was also trained in the use of firearms and RPG, and in guerrilla warfare.[1089] The witness provided direct evidence on amputations, forced labour, child soldiers, lootings, burnings, unlawful killings and rapes.

602. The Sesay Defence found TF1-093's testimony problematic because her testimony was replete with "contradiction, confusion and inconsistencies" and was fundamentally unreliable.[1090]

603. The Chamber shares the concerns of the Sesay Defence, and finds the testimony of TF1-093 generally unreliable. The Chamber is of the considered view that this witness is often inconsistent and prone to exaggeration. Although much of her testimony has been rejected, the Chamber accepts the core of her testimony, particularly as it relates to her own experiences, such as the time she spent as a "bush" wife. The Chamber has otherwise relied upon her evidence to the extent that it was corroborated by reliable witnesses and is consistent with the general story adduced by other evidence.

[1086] Gbao Final Trial Brief, paras 472, 480, 482.
[1087] Transcript of 29 November 2005, TF1-093, pp. 73-74 (CS).
[1088] Transcript of 29 November 2005, TF1-093, p. 76 (CS).
[1089] Transcript of 29 November 2005, TF1-093, p. 88 (CS).
[1090] Sesay Final Trial Brief, paras 238, 297.

5.8. Testimony of the Accused

604. The Chamber refers to its previous discussion regarding the right of the accused persons to testify in their own defence,[1091] and recalls that no adverse inferences were drawn from Gbao's decision not to testify. It has made the following credibility findings about Sesay and Kallon.

5.8.1. Issa Sesay

605. The Chamber has concerns regarding both the veracity and accuracy of Sesay's testimony. Portions of Sesay's recounting of events are simply implausible, and do not correspond with the rest of the evidence as a whole. For instance, Sesay testified that he was scared to punish Komba Gbundema, who was acting on Sankoh's orders, as he was afraid of Sankoh's reaction. This would seem unlikely when compared to the overwhelming weight of evidence to the contrary,[1092] and is especially problematic given that Sesay was the interim leader of the RUF at the time.[1093] In addition, Sesay's testimony that children were only trained for defensive purposes and that there were no child combatants in Kono[1094] is entirely unrealistic, and in any event immaterial to the elements of the crime. Ngondi testified that at a meeting to discuss how the RUF had impeded the operation of Caritas, which was identifying child combatants abducted by the RUF in an effort to reunite them with their families, Sesay was concerned that Caritas was removing "their" combatants from the territory.[1095] Moreover, the Chamber does not accept Sesay's *ex post facto* rationalisations for why he acted in certain ways.

606. The Chamber has accepted Sesay's testimony on matters relating to some aspects of the nature and scope of the command structure of the RUF, given his position in the hierarchy of the RUF High Command.

607. The Chamber, acknowledges that Sesay's knowledge of the RUF command structure was irregular with regard to certain organisational and operational matters, including the diverse activities created by the war situation, and accepted such testimony as credible. For

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[1091] *Supra* paras. 476 and 477.
[1092] Transcript of 25 May 2007, Issa Sesay, pp. 65, 67, 73.
[1093] Transcript of 22 April 2005, TF1-362, pp. 75-76 (CS).
[1094] Transcript of 3 May 2007, Issa Sesay, pp. 78, 80; Transcript of 25 May 2007, Issa Sesay, p. 93.

instance, Sesay testified that soon after the AFRC seized power, Johnny Paul Koroma invited the RUF to form an alliance with the AFRC. Sankoh accepted the invitation and ordered the RUF to join the AFRC. We also accepted other parts of Sesay's evidence when we deemed it to be relevant and credible and where the Chamber was certain that such evidence was not a deliberate manipulation by Sesay to distort the truth or mislead the Chamber with regard to the issue of his liability or that of Kallon and Gbao.

608. It is the considered view of the Chamber that Sesay's credibility is at issue and his version of events has not generally been accepted, particularly the evidence which deals with his conduct or the conduct of his co-Accused. Given the rank he held in the RUF from its inception until disarmament, at which time he was the acting leader of an insurgent movement in which there was continuous infighting, suspicion, mistrust and rivalry, it is simply unacceptable to believe that the Accused played the meaningless and at times peaceful role he attempts to portray. It is highly improbable, given the totality of the evidence, that a high-ranking officer of the RUF hierarchy would adopt the role of a pacifist essentially concerned with the well-being of the civilian population throughout the entire conflict, which is the position Sesay would have the Chamber believe. We disbelieve him in this posturing.

5.8.2. Morris Kallon

609. Kallon failed to impress the Chamber as a truthful witness and the Chamber repudiates his testimony. We are of the opinion that most of the responses and explanations given by Kallon throughout the trial proceedings, particularly those concerned with his alibi were implausible afterthoughts and to an extent, recent fabrications. As an example, TF1-122 testified during the Prosecution case that he had intervened to prevent soldiers taking the property of a woman who had failed to stand still during a flag raising ceremony held in Kenema.[1096] Kallon testified to an almost identical incident, but does not mention TF1-122, stating rather that he had thwarted the attempt of the soldiers to steal the woman's property.[1097] In the Chamber's view, this suggests a conscious attempt by Kallon to allign his testimony to the evidence presented during the Prosecution case, including attempting to put himself in a favourable light by downplaying or accentuating his role in incidents described by Prosecution

[1095] Transcript of 29 March 2006, Leonard Ngondi, pp. 12-13.
[1096] Transcript of 7 July 2005, TF1-122, pp. 65, 67.

witnesses. In many instances, the evidence that Kallon gives contradicts the weight of credible evidence presented by other reliable witnesses. In some instances, when compared with evidence accepted by the Chamber as credible, Kallon's dubious recounting of events is made implausible. For instance, Kallon testified that in May 2000, he was afraid to arrest Kailondo who was acting on Sankoh's orders. This is highly unlikely as Kallon was Battle Ground Commander at the time.[1098] As such, the Chamber rejects most of Kallon's testimony, except in instances where that testimony is corroborated by reliable witnesses. We believe the evidence of DAG-111 that he was there and that he perpetrated the acts alleged against him in the Indictment in Count 15 and that he was not present at the Makump Camp on 1 May 2000 when UNAMSIL personnel were besieged and being mistreated.

610. In the Chamber's opinion Kallon patterned his testimony to suit his defence of alibi. His alibi is in the Chamber's view fabricated, unreliable and implausible.

5.9. Kallon's Alibi

5.9.1. Procedural History

611. In its Pre-Trial Brief, the Kallon Defence did not raise any alibi claims, although it did explicitly reserve "the right to enter a Special Defence on behalf of Morris Kallon".[1099] On 27 October 2006, at the Defence Status Conference, the Kallon Defence repeated its pre-trial position regarding the use of a special defence.[1100] The Kallon Defence stated that it was reserving its right to use a Special Defence under Rule 67, and undertook to inform the Chamber when a decision was made on the issue.[1101] At the Pre-Defence conference of 20 March 2007, the Kallon Defence "authoritatively" stated that it would not rely upon an alibi or any other special defence.[1102]

612. On 28 March 2007, however, the Kallon Defence retracted its prior undertaking and

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[1097] Transcript of 14 April 2008, Morris Kallon, p. 108.
[1098] Transcript of 17 April 2008, Morris Kallon, pp. 4-5.
[1099] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-2004-15-T, Kallon Pre-Trial Brief, 1 July 2004, para. 37 [Kallon Pre-Trial Brief].
[1100] Status Conference on Defence, Transcript of 27 October 2006, p. 20.
[1101] Status Conference on Defence, Transcript of 27 October 2006, p. 20.
[1102] Pre-Defence Conference, Transcript of 20 March 2007, p. 84.

2234. On the basis of the foregoing, the Chamber finds Kallon liable under Article 6(1) of the Statute for planning the use of children under the age of 15 by the RUF to actively participate in hostilities in Kailahun, Kono and Bombali Districts between 1997 and September 2000.

10.2.2.3. Gbao

2235. The Chamber has found that Gbao loaded former child fighters onto a truck and removed them from the Interim Care Centre in Makeni in May 2000.[3906] We find this insufficient to constitute a substantial contribution to the widespread system of child conscription or the consistent pattern of using children to actively participate in hostilities. We further find that there is no other evidence that Gbao participated in the design of these crimes.

2236. The Chamber therefore finds Gbao not liable under Article 6(1) of the Statute for the conscription of persons under the age of 15 into the RUF or the use of children under the age of 15 by the RUF to actively participate in hostilities.

2237. The Chamber further concludes that the Prosecution has failed to establish that Gbao was in a superior-subordinate relationship with the perpetrators of these crimes. We accordingly find that Gbao is not liable under Article 6(3) of the Statute for the conscription of persons under the age of 15 into the RUF or the use of children under the age of 15 by the RUF to actively participate in hostilities.

11. Attacks on UNAMSIL personnel (Counts 15 to 18)

11.1. Crimes Committed under Counts 15 to 18

2238. The Chamber has found that the following crimes were committed in Bombali, Port Loko and Tonkolili Districts[3907] in relation to Counts 15 and 17:

(i) One UNAMSIL peacekeeper was assaulted and one UNAMSIL peacekeeper was abducted at Makump DDR camp on 1 May 2000 (Count 15);

[3906] *Supra* para. 1690.

[3907] We recall that the attacks on those peacekeepers abducted by RUF fighters continued in Kono District until their release.

(ii) Three groups of UNAMSIL peacekeepers were abducted in Makeni and one group of UNAMSIL peacekeepers was abducted in Magburaka on 1 May 2000 (Count 15);

(iii) Three UNAMSIL camps in Makump and Magburaka were attacked on 2 May 2000, resulting in the death of four peacekeepers (Counts 15 and 17);

(iv) Two groups of UNAMSIL peacekeepers were abducted near Moria village on 3 May 2000 (Count 15);

(v) UNAMSIL peacekeepers in Lunsar were attacked on 4 May 2000 (Count 15);

(vi) UNAMSIL personnel in Makeni were attacked on 7 May 2000 (Count 15); and

(vii) UNAMSIL personnel were attacked between Mile 91 and Magburaka on 9 May 2000 (Count 15).

11.2. Responsibility under Article 6(1) of the Statute

11.2.1. Sesay

2239. We recall that Rono and three other UNAMSIL peacekeepers were abducted by RUF fighters on 2 May 2000. This abduction was precipitated by a note to Rono purportedly from Sesay and Rono observed Sesay's car, which he recognised, outside his camp.[3908] We further recall that Rono and eight other detained peacekeepers were in the custody of RUF fighters at Matotoka, which is located between Makeni and Kono, with Sesay in the early hours of 3 May 2000.[3909]

2240. We have found that on 1 May 2000, Sesay was in Kono District and we have found that the Prosecution has not established that Sesay arrived in Makeni from Kono on 2 May 2000.[3910] Notwithstanding Sesay's subsequent involvement in the attack on Rono and three other peacekeepers, the Chamber finds the evidence insufficient to prove that Sesay was present at Rono's abduction or that he was aware of this crime prior to its occurrence.

2241. We therefore find that the Prosecution has not established beyond reasonable doubt that Sesay ordered, planned, instigated or otherwise aided and abetted the attack directed

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[3908] *Supra* para. 1809.
[3909] *Supra* paras 1816-1822.
[3910] The Chamber recalls that it is been proven only that Sesay was present in Makeni on 3 May 2000: *supra* para. 1815.

humanity and war crimes as set out in the Applicable Law section above clearly each contain a materially distinct element that does not exist in the other. As a result, the Chamber is satisfied that it is permissible to enter convictions for the same conduct under Article 2 (Crimes against humanity) and Article 3 (Violations of Article 3 common to the Geneva Conventions and of Additional Protocol II).[3986]

2303. Therefore, it is permissible to enter convictions in relation to the same conduct as found under Counts 6, 7 and 8. Similarly, it is permissible to enter convictions in relation to the same conduct under Count 5, 10, 15 and under Counts 4, 11, 16 respectively.

2.2. Cumulative Convictions on separate Crimes Against Humanity

2.2.1. Murder and Extermination

2304. The Chamber considers that is impermissible to convict for both murder and extermination under Count 4 and 3 based on the same conduct.[3987] However, the Chamber finds that it is permissible to convict on both counts if each count is based on *distinct* conduct.[3988]

2.2.2. Rape and Sexual Slavery

2305. The Chamber considers that the crime charged under Count 7 (sexual slavery) requires a distinct element from the crime of rape (Count 6). The offence of rape requires sexual penetration, whereas sexual slavery requires the exercise of powers attaching to the right of ownership and acts of sexual nature. As the acts of a sexual nature do not necessarily require sexual penetration, and rape does not require that the right to ownership is exercised, the Chamber finds that sexual slavery is distinct from rape. Where the commission of sexual slavery, however, entails acts of rape, the Chamber finds that the act of rape is subsumed by the act of sexual slavery. In such a case, a conviction on the same conduct is not permissible for rape and sexual slavery.

[3986] *Kunarac et al.* Appeal Judgement, para. 176, citing *Kupreskic* Appeal Judgement, para. 288 and *Jelisic* Appeal Judgement, para. 82.
[3987] *Ntakirutimana* Appeal Judgement, para. 542.
[3988] AFRC Trial Judgement, para. 2109.

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TRIAL CHAMBER I

Before: Hon. Justice Benjamin Mutanga Itoe, Presiding Judge
Hon. Justice Bankole Thompson
Hon. Justice Pierre Boutet

Registrar: Robin Vincent

Date: 2nd of May 2005

PROSECUTOR Against ISSA HASSAN SESAY
MORRIS KALLON
AUGUSTINE GBAO
(Case No. SCSL-04-15-T)

DECISION ON SESAY - MOTION SEEKING DISCLOSURE OF THE RELATIONSHIP BETWEEN GOVERNMENTAL AGENCIES OF THE UNITED STATES OF AMERICA AND THE OFFICE OF THE PROSECUTOR

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Defence Counsel for Morris Kallon:
Shekou Touray
Melron Nicol-Wilson

Defence Counsel for Augustine Gbao
Andreas O'Shea
John Cammegh

SPECIAL COURT FOR SIERRA LEONE
RECEIVED
COURT MANAGEMENT
- 3 MAY 2005
NAME GEOFF WALKER
SIGN
TIME 09.00

TRIAL CHAMBER I ("The Chamber") of the Special Court for Sierra Leone ("The Court") composed of Hon. Justice Benjamin Mutanga Itoe, Presiding Judge, Hon. Justice Bankole Thompson, and Hon. Justice Pierre Boutet;

SEIZED of the *Motion Seeking Disclosure of the Relationship Between the United States of America's Government and/or Administration and/or Intelligence and/or Security Services and the Investigation Department of the Office of the Prosecutor*, filed on the 1st of November, 2004 ("Motion") on behalf of Issa Hassan Sesay ("Accused");

MINDFUL of the *Prosecution Response to this Motion* filed on the 16th of November 2004 ("Response") by the Office of the Prosecutor ("Prosecution" or "OTP");

NOTING the Defence Reply thereto, filed on the 19th of November 2004 ("Reply");

MINDFUL of the provisions of Article 15 of the Statute of the Court;

MINDFUL of the provisions of Rule 68 of the Rules of Procedure and Evidence of the Court;

NOW CONSIDERS the matter on the basis of the written submissions of the Parties pursuant to Rule 73(A) of the Rules;

I. SUBMISSIONS OF THE PARTIES

A) The Defence Motion

1. The Defence submits that during his testimony from the 4th to 11th of October 2004, Prosecution witness, General Tarnue, made assertions which revealed a relationship between the Office of the Prosecution and the United States Government[1] through the Agency of the FBI. The Defence avers that the evidence given by General Tarnue raises a "*prima facie* case that the Prosecutor, through the intermediary of Dr. White, [Chief of Investigations][2], has acted in breach of Article 15 insofar as he worked with and/or at the behest of and/or in conjunction with the FBI".

[1] Motion, para. 1.

[2] The Defence concerns are limited to the conduct of the specific investigator and any other aspect of the investigation that is tainted by him and do not concern the Prosecution generally.

2. The Defence submits that the evidence that Dr. White used Prosecution funds during "FBI vetting" discloses a symbiotic relationship between the OTP and the FBI which would be inconsistent with the Prosecution's obligation pursuant to Article 15 to maintain its independence.[3] The Defence also states that the evidence of General Tarnue suggests that Dr. White played an integral role in the relocation and in the granting of asylum to General Tarnue.[4] The Defence submits that the above evidence raises serious questions about the integrity of the investigations[5] in this matter in that the Prosecution has violated Article 15 of the Statute of the Court in that it has not acted independently.

3. The Defence further avers that a *prima facie* breach of Article 15 raises issues which relate to an evaluation of the evidence and to an assessment of whether the Prosecution has complied with its disclosure obligations pursuant to Rule 68 of the Rules.[6]

4. The Defence submits that the Chamber will not be able to properly evaluate the veracity and reliability of the evidence of General Tarnue and other witnesses without a clear indication from the Prosecution as to the extent of the relationship between Dr. White acting for the OTP on the one hand, and the American Government and the FBI on the other since the involvement of the latter may have affected the evidence obtained.[7] The Defence further asserts that Dr. White's involvement with the outside agencies in assisting in the relocation of General Tarnue and his family must be disclosed since this assistance is capable of being an inducement and might have influenced General Tarnue's willingness to implicate the Accused.[8]

5. The Defence submits that the Prosecution must disclose anything that reveals the untruthfulness of General Tarnue's evidence pursuant to its obligation to disclose exculpatory evidence under Rule 68.[9] The Defence also asserts that General Tarnue's evidence, and in particular a statement made during his interview with Dr. White in April 2003, suggest that there were previous interviews with Dr. White and the FBI that have not been disclosed.[10]

6. In conclusion, the Defence requests that the Prosecution be required to disclose:

[3] Motion, paras 5-6.
[4] *Id.*, para. 7.
[5] *Id.*, para. 8.
[6] *Id.*
[7] *Id.*, paras 10-11.
[8] *Id.*, para. 9.
[9] *Id.*, para. 12.
[10] *Id.*, para. 13.

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(i) The relationship between Dr. White and/or the investigation team and the United States government, administration, security services and/or FBI;

(ii) The extent to which General Tarnue's evidence in this regard is untrue or unreliable;

(iii) Whether any other investigatory work has been conducted with OTP investigators working alongside any outside agency;

(iv) Whether any fruits of joint investigation have been shared with any outside agency;

(v) What assistance was offered and given to General Tarnue by Dr White and/or any other investigator;

(vi) Any information in the possession of, or known to the OTP which discloses any activity which is *prima facie* either illegal or in breach of the Statute or Rules of the Special Court by any investigator working for the OTP including but not limited to Dr White and including but not limited to any involvement in an alleged attempt to arrest Benjamin Yeaten in Togo between 2000-2004.[11]

B) The Prosecution Response

7. The Prosecution submits that the Defence Motion should be dismissed in its entirety. It rejects the Defence's assertion that it is not acting independently and has taken instructions from another entity. The Prosecution argues that while it has, as permitted by the Statute and Rules, sought information and assistance from other entities in conducting its investigations, it has in no way acted improperly.[12]

8. The Prosecution submits that the Statute makes it clear in the wording of Article 15 that the Office of the Prosecutor is responsible for both investigating and prosecuting alleged crimes that fall within the jurisdiction of the Court, to be independent of other organs of the Special Court, and in so acting, not to take instructions from any entity. The Prosecution emphasizes, however, that the

[11] *Id.*, para. 14.
[12] Response, paras. 7-8.

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Statute, while prohibiting the Prosecution from taking instructions from any entity, does not prohibit it from seeking assistance or information from any other source.[13]

9. Indeed, Article 15(2) of the Statute specifically provides that the "Prosecutor shall, as appropriate, be assisted by the Sierra Leonean authorities concerned". However, the Prosecution submits that it should be implied that its ability to seek assistance and information from other entities extends to those entities outside of Sierra Leone. It submits further, that it must seek assistance from other entities in order to pursue thorough investigations in accordance with its mandate since accused persons, witnesses and physical evidence may be located in other countries and jurisdictions that are not within the authority and limited territorial jurisdiction of the Court.[14]

10. In support of its position, the Prosecution relies on Rules 8 (C) (D) and (E), 39 and 40 of the Rules which make reference to assistance from other States. The Prosecution also relies to the *Blaskic* decision of the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia ("ICTY") which noted that international tribunals "must rely on the cooperation of States".[15]

11. With regard to the Defence allegation that there is *prima facie* evidence that the Prosecution has breached Article 15 insofar as Dr. White "has worked with and/or at the behest of and/or in conjunction with the FBI", the Prosecution states that it has not engaged in any wrong doing and that the action complained of is permitted by the governing legislation. Submitting that Article 15(1) of the Statute prohibits "seeking or receiving instructions" and not "seeking assistance", the Prosecution contends that the Accused does not allege that the Prosecution sought or received instructions from another entity.[16]

12. The Prosecution further submits that cooperation between the Prosecution and foreign security agencies is necessary for the relocation of witnesses in order to ensure protective measures in the country of relocation.[17]

13. It asserts that the Motion shows no evidence whatsoever that the Prosecution has failed to comply with its disclosure obligations pursuant to Rule 68 and states that it has disclosed the evidence in its possession, while remarking that it cannot disclose evidence that is not in the

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[13] Article 15(1)(a)(b)(c) of the Statute and Response, paras 9-13.
[14] Response, para. 15.
[15] *Prosecutor v. Tihomir Blaskic*, IT-95-14, Judgement on the Request of the Republic of Croatia for Review of the Decision of Trial Chamber 11 of 18 July 1997, 29 October 1997, para. 29.
[16] Response, paras 20-22.
[17] *Id.*, para. 23.

possession of the Office of the Prosecutor because the Prosecution cannot compel other independent entities or Agencies to produce documents or evidence.[18]

14. In response to the specific requests for disclosure contained in the Motion, the Prosecution submits that:

(i) The word "relationship" is vague. There are no grounds to disclose calls and meetings and if something else is sought, it must be specified in a motion.[19]

(ii) The Prosecution has already disclosed the evidence in its possession relating to the untruthfulness or unreliability of General Tarnue's evidence. Defence may seek to compel evidence from other sources by means of court order.[20]

(iii) Disclosure of other investigations in which investigators of the Office of the Prosecutor are working alongside any outside agency is outside the scope of the conduct complained of without evidentiary basis and would compromise ongoing investigations.[21]

(iv) As above in (iii).[22]

(v) General Tarnue was examined on the issue of the assistance given to him by the Chief of Investigation and other investigators and this is sworn evidence. Defence could compel others to testify on this and related topics.[23]

(vi) The request for disclosure of any activity that is illegal or in breach of the Statute or Rules, including an alleged attempt to arrest Benjamin Yeaten in Togo between 2000 and 2004 is a "fishing expedition". An alleged arrest of Mr. Yeaten is irrelevant to the matters at hand.[24]

[18] *Id.*, paras 25-26.
[19] *Id.*, para. 27.
[20] *Id.*, para. 28.
[21] *Id.*, para. 29.
[22] *Id.*, para. 30.
[23] *Id.*, para. 31.
[24] *Id.*, para. 32.

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C) The Defence Reply

15. The Defence agrees that the Statute and the Rules permit the Prosecution to seek information and assistance from other entities while carrying out its mandate and that this may be necessary in order to provide protective measures to relocated witnesses.[25]

16. It asserts, however, that the evidence of General Tarnue that Dr. White's actions were based upon a decision of the U.S. State Department suggests that the Prosecution's actions were based upon instructions received from the State Department. The Defence argues that if the Prosecution was not taking instructions from the FBI but merely seeking information and assistance as they affirm, they ought therefore to disclose that assistance pursuant to Rule 68 since this may impact on the motivation and credibility of General Tarnue.[26]

17. The Defence clarifies that they are only seeking information regarding the relationship or ongoing investigations between the Prosecution and the U.S. administration in those cases where it breaches the Rules or results in assistance provided to General Tarnue or any other witness. The Defence reiterates that the evidence given by General Tarnue *prima facie* discloses a breach of Article 15 and/or assistance offered to him by the Prosecution.[27]

18. The Defence submits that it is General Tarnue's evidence that Dr. White assisted him in his attempt to obtain asylum and to escape to Ghana and that this assistance "may affect the credibility of prosecution evidence".[28] The Defence highlights that the Prosecution has suggested that the Defence can obtain further details of assistance by compelling others to testify. The Defence submits that this is an admission that further information exists and that the Prosecution has not fulfilled its duty to disclose that evidence pursuant to Rule 68. The Defence suggests that the information is within the custody, control and possession of the Prosecution.[29]

19. The Defence maintains that it is not on a "fishing expedition". It asserts that it simply seeks that the Prosecution put before the Chamber, all the evidence which might affect the motivation and the credibility of the evidence it relies upon.[30]

[25] Reply, paras 2 and 4.
[26] *Id.*, paras 2-5.
[27] *Id.*, para. 6.
[28] *Id.*, para. 9 and Rule 68.
[29] *Id.*, paras 10, 11 and 13.
[30] *Id.*, paras 14-15.

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II. APPLICABLE LAW

(A) *Authority, Autonomy and Independence of the Office of the Prosecutor*

20. The law applicable to the subject-matter of the instant Motion is embodied in five key statutory provisions of the Court, to wit, Article 15(1) of the Statute, Section 15 of the Special Court Agreement, 2002 Ratification Act, 2002 ("Special Court Agreement") and Rules 8, 39, and 68 of the Rules.

21. Underscoring the centrality of the prosecutorial role within the Special Court's adversarial system for the adjudication of criminal cases, Article 15(1) of the Statute of the Court sets up an autonomous and independent machinery for the prosecution of crimes against humanity and war crimes in these terms:

> The Prosecutor shall be responsible for the investigation and prosecution of persons who bear the greatest responsibility for serious violations of international humanitarian law and crimes under Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996. The **Prosecutor shall act independently as a separate organ of the Special Court. He or she shall not seek or receive instructions from any Government or from any other source.** (emphasis added)

22. In the Chamber's opinion, it is absolutely clear that Article 15(1) reinforces, in unambiguous terms, an internationally accepted norm governing the exercise of prosecutorial authority, in International Criminal Tribunals namely, autonomy and independence. To this end, the Chamber acknowledges that it is imperative not only in preserving the integrity of the administration of criminal justice in international law but also to ensure the confidence of the international community in mechanisms set up to ensure accountability for war crimes against humanity, that the Office of the Prosecutor enjoys an unfettered functional and investigative discretion, subject only to recognised and accepted judicial controls in respect of the functions conferred on it by the Statute of the Special Court.

(B) *Statutory Obligation on Sierra Leone to Provide Assistance to the Court.*

23. The Chamber acknowledges that it was in recognition of the need for co-operation between the Court, the relevant Sierra Leone authorities and other states to fulfil the Court's mandate that Article 15(1) of the Statute, Section 15 of the Special Court Agreement and Rule 39 of the Court's

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Rules, were enacted. The provisions of Article 15(1) of the Statute are already set out in paragraph 21 above. Section 15(1) of the Act enables the Court to request assistance from the State of Sierra Leone through the office of the Attorney-General. Rule 39 expressly vests the Prosecutor with certain clearly – defined powers, for the purpose of conducting an investigation, in these terms:

> In the conduct of an investigation, the Prosecutor may:
>
> i. Summon and question suspects, interview victims and witnesses and record their statements, collect evidence and conduct on-site investigations;
> ii. Take all measures deemed necessary for the purpose of the investigation, including the taking of any special measures to provide for the safety, the support and the assistance of potential witnesses and sources;
> iii. **Seek, to that end, the assistance of any State authority concerned, as well as of any relevant international body including the International Criminal Police Organization (INTERPOL);** and
> iv. Request such orders as may be necessary from a Trial Chamber or a Judge. (emphasis added)

24. Rule 8(C) is to this effect:

> The Special Court may invite third States not party to the Agreement to provide assistance on the basis of an ad hoc arrangement, an agreement with such State or any other appropriate basis.

25. The Chamber opines that the foregoing statutory provisions are quite explicit in their intent to ensure that the prosecuting arm of the Court is guaranteed the necessary investigative and prosecutorial logistics and support to enable the Court to function effectively and efficiently in the discharge of its duties within the mandate that has been conferred on it.

26. In addition to these provisions, this is clearly a case that comprises crimes with international components and connections in foreign countries like Liberia, where Prosecution Witness General Tarnue, who has already testified, hails from.

27. This being the case, it is within the discretion of the Prosecution, in the conduct of its investigations, to transcend, should this become necessary, the national frontiers of Sierra Leone with a view to co-operating and working with and alongside willing foreign bodies or agencies.

28. In this context, it is, in our view, legitimate for the Prosecution to seek the assistance of any State, Authority, or any relevant international body as stipulated in Rule 39 of the Rules of Procedure and Evidence of the Court, in order not only to properly fulfill the mandate conferred ***on*** it by Statute but also to discharge the heavy burden of proof it bears to establish the guilt of the accused beyond reasonable doubt.

29. Indeed and as was pertinently pointed out by the Appeals Chamber of the ICTY in the *Blaskic* case:

> "... It is self evident that the International Tribunal, in order to bring to trial persons living under the jurisdiction of Sovereign States not being endowed with enforcement agents of its own, must rely upon the cooperation of the States. The International Tribunal must turn to States if it is effectively to investigate crimes, collect evidence, summon witnesses and have indictees arrested and surrendered to the International Tribunal." [31]

(C) Disclosure Obligation of Prosecutor under Rule 68

30. Rule 68 provides that:

> (A) The Prosecutor shall, within 14 days of receipt of the Defence Case Statement, make a statement under this Rule disclosing to the defence the existence of evidence known to the Prosecutor which may be relevant to issues raised in the Defence Case Statement.
>
> (B) The Prosecutor shall, within 30 days of the initial appearance of the accused, make a statement under this Rule disclosing to the defence the existence of evidence known to the Prosecutor which in any way tends to suggest the innocence or mitigate the guilt of the accused or may affect the credibility of prosecution evidence. The Prosecutor shall be under a continuing obligation to disclose any such exculpatory material.

31. The provisions of Rule 68, as has been the case in the ICTY and the ICTR, have also come under scrutiny in Trial Chamber I of the Special Court for Sierra Leone.

32. On this issue and in the case of *Prosecutor v. Delalic*, the Trial Chamber of the ICTY had this to say:

[31] *Prosecutor v. Blaskic*, *supra* note 15.

> "... The rationale is that the law maker should be taken to mean what is plainly expressed. The underlying principle which is also consistent with common sense is that the meaning and intention of a statutory provision shall be discerned from the plain and unambiguous expression used therein rather than from any notions which may be entertained as just and expedient..."[32]

33. In the *Brima* decision relating to the Principal Defender of the 6th of May 2004, this Chamber had this to say:

> "In this regard, we would like to recall in order to emphasize, that in interpreting statutory or regulatory instruments, due regard should primarily be paid to their ordinary and natural meaning so as to avoid... importing extraneous interpretations to statutory provisions or regulations which are as clear as those we have just reproduced for purposes of scrutinous examination."[33]

34. In two of its recent Decisions, namely, *Prosecutor v. Issa Hassan Sesay et al.*,[34] where we cited this passage contained in the *Brima* decision, and *Prosecutor v. Allieu Kondewa*[35], the Chamber expounded on what we considered to be the true and proper meaning of Rule 68 in the light of its legislative intent and consistent with the basic canons of statutory interpretation, especially and in particular, the golden rule. In this regard, this Chamber in the *Kondewa* decision which was delivered soon after the Chamber's landmark *Brima* decision relating to the Principal Defender, had this to say:

> "In addressing this aspect, the Chamber wishes to observe, by way of first principles, that no rule, however formulated, should be applied in a way that contradicts its purpose. A kindred notion here is that a statute or rule must not be interpreted so as to produce an absurdity. In effect, it is rudimentary law that a statute or rule must be interpreted in the light of its purpose."[36]

35. For the purposes of the instant Motion and guided by the foregoing principles, we again, on this issue reiterate our stand that Rule 68 imposes on the Prosecution, a legal obligation to disclose "within 30 days of the initial appearance of the accused," and continuously thereafter, exculpatory

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[32] *Prosecutor v. Delalic et al.*, Case No. IT-96-21, *Decision on the Motion on Presentation of Evidence by the Accused, Esad Landzo*, 1 May 1999, para 17.

[33] *Prosecutor v. Brima*, Case No. SCSL-04-16-PT, *Decision on Applicant's Motion Against Denial by the Acting Principal Defender to Enter a Legal Service Contract for the Assignment of Counsel*, 6 May 2004, para. 90.

[34] *Prosecutor v. Sesay et al.*, Case No. SCSL-04-15-T, *Sesay – Decision on Defence Motion for Disclosure Pursuant to Rules 66 and 68 of the Rules*, 9 July 2004, paras 16-18.

[35] *Prosecuto r v. Kondewa*, Case No. SCSL-04-14-T, *Decision on Motion to Compel the Production of Exculpatory Witness Statements, Witness Summaries and Materials Pursuant to Rule 68*, 8 July 2004.

[36] *Id.*, para. 19.

evidence, meaning evidence that in anyway leads to suggest the innocence of the accused, or evidence that in anyway tends to mitigate the guilt of accused or evidence favourable to the accused that may affect the credibility of the prosecution evidence.

36. Having examined the legal nature and scope of the Prosecution's obligation under Rule 68 to disclose exculpatory evidence, we would like to restate here that in order to sustain an allegation by the Defence of a breach by the Prosecution of its disclosure obligations under Rule 68, the Defence must demonstrate, by *prima facie* proof: (1) that the targeted evidentiary material is exculpatory in nature, (2) the materiality of the said evidence, (3) that the Prosecution has, in its possession, custody, or control, the targeted exculpatory evidentiary material, and (4) that the Prosecution has, in fact, failed to disclose the targeted exculpatory evidentiary material.

III. EVALUATION OF MERITS OF APPLICATION

37. On the merits of this application, we observe that the Motion raises three key issues for our determination. The first is whether, as alleged by the Defence, there has been a breach on the part of the Prosecution of Article 15(1) of the Statute of the Court on the grounds, as alleged by the Defence, that General Tarnue's testimony revealed a relationship between the Office of the Prosecutor and the Government of the United States of America or the FBI. As already noted, Article 15(1) guarantees that Office prosecutorial autonomy and independence. Put slightly differently, the issue is whether the Office of the Prosecutor has, on that score, compromised its autonomy and independence by, as alleged, taking ***instructions*** from the United States Government, notably from the State Department or from its Agency, the FBI.

38. The second issue is whether, under the statutory framework of the Court which creates the Office of the Prosecutor, there is any provision precluding that Office from ***seeking assistance***, as distinct from ***receiving instructions*** which is what is prohibited by Article 15(1) of the Statute, from any entity or source in the discharge of both its investigatory and prosecutorial functions. In effect, does the Statute foreclose the benefit of ***assistance*** from any source whatever to the Office of the Prosecutor in the execution of its mandate?

39. The third key issue is whether, in the light of contentions by the Defence in respect of General Tarnue's testimony as to his dealings with Dr. White and the U.S. Government, Rule 68 is, in fact and in law, implicated here making it obligatory on the part of the Prosecution to disclose

certain key information allegedly arising out of the relationship between General Tarnue, Dr. White and the United States Government as set out in paragraph 6 herein.

(A) *Alleged Breach of Article 15(1)*

40. The Chamber notes that both the Defence and the Prosecution agree that within the proper context and interpretation of the Statute and the Rules, Article 15(1) does vest on the Prosecution, the autonomy and independence in the discharge of its functions, and that the Office of the Prosecutor must act as an independent body that does not take ***instructions*** from any other entity.

41. It seems clear to the Chamber that the arguments and submissions of the Defence as regards the alleged breach of Article 15(1) are predicated upon the assumption that the Office of the Prosecutor has taken ***instructions*** from another entity. The Prosecution submits that it has not. The crux of the matter, from the Chamber's perspective, is whether there is, at this point in time, any evidentiary basis or factual foundation for the allegation put forward by the Defence, to warrant a conclusive finding of fact that there has in law been a breach of Article 15(1). The Defence assert that the evidence from which such inference should be drawn is that of General Tarnue that Dr. White's actions were, according to Dr. White, to be based upon a decision of the State Department of the Government of the United States.

42. Does this piece of evidence irresistibly sustain the Defence contentions, even if given a liberal evaluation? In other words, does it necessarily follow that because General Tarnue stated that Dr. White told him that the latter's actions were to be based on a decision of the State Department of the U.S. Government, the Office of the Prosecutor was acting on the ***instructions*** 'received' from the U.S. Government? In the Chamber's opinion, an inference of this nature cannot lightly be drawn from such evidence, given its grave implications for the justice process.

43. The Chamber, likewise, emphasises that the suggestion of the Defence that General Tarnue's testimony revealed a relationship between the Office of the Prosecutor and the United States of America, even if it were true, could not in law justify, without more, the inference that the Prosecution was receiving ***instructions*** from the U.S Government in breach of Article 15(1). This is so even if the Office of the Prosecutor sought ***assistance*** from the U.S. Government as envisaged by Rule 8(C) of the Rules of Procedure and Evidence. Certainly, in the Chamber's view, it would do violence to the plain meaning and context of the Statute and the Rules if conceptually the words ***"instructions"*** and ***"assistance"*** were construed as being synonymous and interchangeable. The

contentions of the Defence on this issue, therefore, are legally unsustainable in that, on the whole, the Defence has failed to substantiate, by *prima facie* proof, the allegation of breach of Article 15(1), on the part of the Office of the Prosecutor. This Chamber does not find any, as the Defence contends, "master-servant" relationship between Dr. White, as FBI agent and the Prosecution which would occasion a breach of Article 15(1).

*(B) **Discretion to Seek Assistance***

44. The Chamber recalls that both the Defence and Prosecution agree that within the framework of the Court's Statute and Rules, the Office of the Prosecutor is vested with some measure of discretionary latitude in seeking ***assistance*** from internal and external agencies for the purpose of the conduct of its investigations. We observe that, unlike Article 15(1) of the Statute which is an exclusionary clause designed to protect and preserve prosecutorial independence, there is no similar statutory prohibition for the Prosecution, in the exercise of its prosecutorial discretion, to seek, within the confines of the law, any ***assistance*** from other bodies and Institutions in fulfilling the duties conferred on it by the Statute. Clearly, Article 15(2) of the Statute is explicit in its purport and intendment that:

> "The Office of the Prosecutor shall have power to question suspects, victims, and witnesses, to collect evidence and evident on - site investigations. In carrying out these tasks, the Prosecutor shall, as appropriate, be assisted by the Sierra Leone authorities concerned."

45. By parity of reasoning, Rules 8(C), (D) and (E), 39, and 40 of the Court's Rules of Procedure and Evidence cumulatively establish a machinery for co-operation between the Office of the Prosecutor and external agencies or entities, be they States, Governments, Organisations, Bureaus, or related bodies.

46. In this regard, the Defence submissions do not really challenge the authority of the Office of the Prosecutor to seek ***assistance*** in the conduct of its investigations. Accordingly, the Chamber concludes that there is clear statutory authority for the Prosecution to seek ***assistance*** from both internal and external sources for the purposes of the conduct of its investigations in the course of fulfilling its mandate to bring to justice those who bear the greatest responsibility for crimes against humanity, war crimes and related offences during the hostilities that took place in Sierra Leone at the material times.

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47. The complexity, roles, and functions of any such agencies or bodies cannot legally operate as limiting or restricting such authority in the absence of any express statutory provision to that effect.

(C) *Disclosure under Rule 68*

48. The third key issue relates to whether in the light of the contentions by the Defence about General Tarnue's testimony as to his dealings with Dr. White and the United States Government, Rule 68 is thereby implicated in fact and in law, requiring the Prosecution therefore to disclose certain key information as set out in the Defence Request (reproduced at paragraph 6 herein), the Chamber's findings are set out below in sub-paragraphs (iv) - (ix) of paragraph 64 herein.

49. In arriving at these conclusions, the Chamber notes that the requests made by the Defence in this application are either too broad, too vague, or indeed unspecific.

50. In seeking to establish a breach of Article 15(1) of the Statute, there has been a total lack of specificity on instructions received which the Defence alleges amounts to a breach by the Prosecution of its statutory obligations under Article 15(1). These same comments apply to the application where the Defence seeks to compel the Prosecution to disclose exculpatory evidence under Rule 68 as to the assistance offered by Dr. White to General Tarnue to obtain asylum and a relocation of himself and his family in the U.S.A.

51. In this regard, the Chamber would like to state here that for the Defence to succeed in this Motion, it is not enough to premise its application either on presumptions, on speculations, or on probabilities. If it does, as it seems, seek to establish the subservience of the Prosecutor to a foreign Government or Agency, it must provide concrete proof of those instructions and their contents and not just invite this Chamber, merely on the basis of speculation and without any legal or factual proof, to draw such a conclusion or even such an inference.

52. We are strongly of the opinion that mere evidence of the cooperation between the Prosecution and the FBI or the US Government, without proof that the former received instructions from the latter, including the nature and contents of such instructions, does not, per se, fulfill the test to establish a violation of Article 15(1) of the Statute.

(D) *Exculpatory Evidence Under Rule 68*

53. In the same vein, a mere speculative assertion without specifying or advancing concrete proof of the nature and content of the exculpatory evidence which the Defence is alleging to be in the

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possession of the Prosecution of General Tarnue and his family's relocation, to our mind, fails to meet the test required to warrant an Order by the Chamber for the Prosecution to disclose under Rule 68 of the Rules.

54. The Chamber recognizes that disclosure procedures are not only intended to ensure and protect the rights of the accused to a fair trial, but also and more importantly, for him to be informed of the nature and cause of the charge against him, and further, to enable him to have adequate time and facilities for the conduct of his or her defence.

55. We observe however, that where the request to disclose lacks specificity as to the details of facts sought to be disclosed, and proof that those facts are indeed in the possession of the Prosecution, the Chamber cannot, and should not be called upon to grant, a vaguely formulated request particularly so because even if it were conceded that such facts, unknown to the Prosecution, exist with the F.B.I. or the US Government, the Prosecution cannot be compelled to produce information that is in possession of a foreign Independent Agency or in that of the US Government represented by the Department of State.

56. In circumstances such as these where the Prosecution has declared that it has disclosed everything and that it has nothing more to disclose to the Defence under Rule 68, the Defence, in the absence of concrete elements to substantiate its claims, we contend, has the alternative weapon of cross-examination to establish such facts in evidence and thereafter, to base an application of this nature on the facts so established.

57. In this regard we observe that General Tarnue was in the witness box for slightly over 8 days, when these and other issues arose and were extensively highlighted, not only during examination- in-chief which lasted 7 hours 12 minutes but also, and even more fully highlighted and explored in the course of the extensive, lengthy, exhaustive cross examination of this witness by Learned Counsel for the 1st Accused, the Applicant in this Motion, Mr. Jordash, which lasted 15 hours 38 minutes, by counsel for 2nd Accused which lasted 4 hours 38 minutes, and by counsel for 3rd Accused which lasted 5 hours 27 minutes.

58. It would, in our opinion, be unfair, after such a lengthy, protracted, and extensive cross-examination, to compel a disclosure of evidence under Rule 68 when the Prosecution avers, and without any concrete evidence proffered by the Defence to contradict this assertion, that it has disclosed all it had to disclose and that it has nothing more to disclose following the vague and speculative application of the Defence for it to fulfill this obligation under Rule 68 of the Rules.

59. We consider it pertinent in this regard to refer to our decision in the case of the *Prosecutor v. Allieu Kondewa* of the 8th of July 2004[37] where the Defence, under Rule 68 of the Rules, sought an Order to compel the Prosecutor to disclose whether it has such exculpatory mitigating material in its possession and to disclose same to the Defence. The Prosecution argued that the Defence failed to present a *prima facie* case of the existence of such evidence and of the fact that it is in the custody of the Prosecution.

60. We had this to say in our Decision in this case:

> "This Chamber adopts this reasoning and takes the view that any request by the Defence for exculpatory material alleged to be in the Prosecutor's possession, custody or control must be specific as to such material....
>
> [T]he Chamber must be satisfied that the request by the Defence has been specific as to the targeted material alleged to be in the Prosecutor's possession, control or custody....
>
> The Chamber finds that nowhere in the said Motion does the request for the disclosure of the targeted exculpatory evidence or material clearly specify the material so desired.... In such matters, it is not sufficient merely to allege non-compliance, on the part of the Prosecution, with its disclosure obligation or merely to restate the law on the subject in the form of submissions. It is essential to set out with much particularity what the information is all about or what precisely it is, and the extent to which it is exculpatory..."[38]

61. We accordingly, took the view and ruled that "in the absence of specific identification of the material evidence that the Defence alleges the Prosecution has withheld, it is inappropriate for the Trial Chamber to intervene at this time."[39]

62. In yet another Chamber's Decision of the *Prosecutor v Issa Hassan Sesay et al.* dated the 9th of July 2004[40], the Defence sought disclosure under Rule 68. It averred that it had ascertained through its own investigations, that there were several Prosecution Witnesses whose evidence is wholly exculpatory of the Accused. It sought disclosure as to the evidence relating to inducements made to the witnesses to facilitate their cooperation in giving evidence. Furthermore and as regards the interviews of so called "insiders", those conducting the interviews are alleged to have offered rewards

[37] *Prosecutor v. Kondewa, supra* note 35.
[38] *Id.*, paras 24-26.
[39] *Id.*, para. 26.
[40] *Prosecutor v. Sesay et al., supra* note 34.

to them for continued cooperation. The Defence therefore sought all details of offers made and rewards, including relocation packages, amenities, and monies given or due.

63. The Prosecution argued that for the Defence to succeed in its application, the request must be for a specific material or materials. The Prosecution further asserts that the Defence did not request any specific material but made generic requests which the Prosecution considers as tantamount to a "fishing expedition" into the Prosecution's records.

64. In this case and as we had similarly held in the *Kondewa* case,[41] we had this to say:

> "...The Trial Chamber considers that the key question to be answered here is whether the Defence has made a *prima facie* showing of exculpatory material sought from the Prosecution. Furthermore in resolving this important question, the Chamber must be satisfied that the request by the Defence has been specific as to the targeted material alleged to be in the Prosecutor's possession, control or custody."[42]

65. The Chamber accordingly dismissed the application for a want of legal sustainability given the lack of specific identification of material evidence which the Defence alleges the Prosecution has withheld, and for which disclosure is sought.

66. Applying the aforementioned principles, the Chamber has reviewed the contentions of the Defence in respect of the alleged non-disclosure of the alleged specific information arising from General Tarnue's contact with Dr. White and the U.S. Government and finds specifically as follows:

i. that the Prosecution through Dr. Alan White, did seek and obtain assistance from the U.S. Government or the FBI;

ii. that the finding in (i) above does not imply that Dr. Alan White or other investigators of the Office of the Prosecutor received instructions from those outside agencies;

iii. that there is, by reason of our findings in (i) and (ii), no legal basis for issuing a disclosure order against the Prosecution in respect thereof;

iv. that the evidence of the relationship between Dr. Alan White or other investigators and the U.S. Government or its agencies cannot, without more, be regarded as

[41] *Prosecutor v. Kondewa, supra* note 35.
[42] *Prosecutor v. Sesay et al., supra* note 34, para. 43.

exculpatory merely by reason of the fact that it may have resulted in assisting in the relocation of General Tarnue and his family;

v. that it is premature, at this stage and without more, to reach any conclusive finding as to the alleged untruthfulness or unreliability of General Tarnue's evidence;

vi. that upon a full consideration of the evidence before it, the Chamber finds that the Defence has not established on a *prima facie* basis that there was an earlier interview between Dr. White and General Tarnue that has not been disclosed;

vii. that there is both in fact and in law no basis for a disclosure order in respect of other investigating work allegedly conducted jointly with Prosecution investigators and any outside agency because the Defence has not identified with certainty and precision, the fact or areas which would justify our issuing such an Order;

viii. that there is also no basis in fact and in law for a disclosure order in respect of any allegedly *prima facie* authority or violation of the Statute or the Rules of the Court by Dr. White or any other investigator including but not limited to any involvement in the alleged attempt to arrest Benjamin Yeaten in Togo during 2000-2004.

ix. that there is no legal basis for a disclosure order to be directed to the Prosecution to disclose any information relating to assistance given by the Prosecution or its agents to General Tarnue in respect of his asylum claim or relocation.

DISPOSITION

FOR ALL THE ABOVE REASONS,

67. The Trial Chamber finds no factual or legal merits or sufficient grounds to warrant the granting of this Defence Motion.

ACCORDINGLY IT IS DENIED AND DISMISSED.

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Hon. Justice Pierre Boutet appends a Partially Dissenting Opinion to this Decision with reference to the findings "that there is no legal basis for a disclosure order to be directed to the Prosecution to disclose any information relating to assistance given by the Prosecution or its agents to General Tarnue in respect of his asylum claim or relocation."

Done at Freetown, Sierra Leone, this 2nd day of May 2005

Hon. Justice Pierre Boutet

Hon. Justice Benjamin Mutanga Itoe
Presiding Judge
Trial Chamber I

Hon. Justice Bankole Thompson

[Seal of the Special Court for Sierra Leone]

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SPECIAL COURT FOR SIERRA LEONE

IN THE APPEALS CHAMBER

Before: Justice Shireen Avis Fisher, Presiding
Justice Emmanuel Ayoola
Justice George Gelaga King
Justice Renate Winter
Justice Jon M. Kamanda
Justice Philip Nyamu Waki, Alternate Judge

SPECIAL COURT FOR SIERRA LEONE
RECEIVED
COURT MANAGEMENT
THE HAGUE
13 SEP 2012
NAME SAMUEL J. FORNAH
SIGN
TIME 14:36

Registrar: Ms. Binta Mansaray

Date: 13 September 2012

PROSECUTOR **Against** **CHARLES GHANKAY TAYLOR**
(Case No. SCSL-03-01-A)

PUBLIC

DECISION ON CHARLES GHANKAY TAYLOR'S MOTION FOR PARTIAL VOLUNTARY WITHDRAWAL OR DISQUALIFICATION OF APPEALS CHAMBER JUDGES

Office of the Prosecutor:
Ms. Brenda J. Hollis
Mr. Nicholas Koumjian
Mr. Mohamed A. Bangura
Ms. Nina Tavakoli
Ms. Leigh Lawrie
Mr. Christopher Santora
Ms. Kathryn Howarth
Ms. Ruth Mary Hackler
Ms. Ula Nathai-Lutchman
Mr. James Pace
Mr. Cóman Kenny

Defence Counsel for the Accused:
Mr. Morris Anyah
Mr. Eugene O'Sullivan
Mr. Christopher Gosnell
Ms. Kate Gibson
Ms. Magda Karagiannakis

involving Charles Taylor's guilt or innocence. The Plenary was not seized of, did not pronounce on nor express any views concerning the guilt or innocence of Mr. Taylor. In the language of the Motion, the Plenary was not seized of, did not pronounce on nor express any views concerning the content of Justice Sow's statement. The Plenary Resolution concerned only "Justice Malick Sow's behaviour in court on the 26th of April 2012".[70] A reasonable observer would not consider these distinctions "artificial"[71] but intrinsically judicial, reflecting the professional skills and responsibilities of Judges.[72]

30. The Appeals Chamber further holds that sanctioning judicial misconduct in a trial does not constitute nor give rise to the appearance of prejudgment of the guilt or innocence of the respective accused. In accordance with Article 17 of the Statute, the Plenary protects the fair trial rights of both parties and the integrity of the proceedings by considering serious allegations of judicial misconduct and taking appropriate action where misconduct is established.[73] The parties' rights would be severely violated were the Plenary to allow judicial misconduct only because sanctioning it could be falsely imagined as benefiting or harming a particular party. In deciding on allegations of judicial misconduct, the Plenary considers only whether such misconduct is established.[74] This Appeals Chamber firmly rejects any suggestion that the Plenary may or should do otherwise.

31. Many of the Defence's submissions do not address the impartiality of the Appeals Chamber, but the consequences of the Plenary Resolution. The Defence suggests that the Plenary Resolution "constitutes an adverse finding on the professional credibility of Justice Sow"[75] and that "the declaratory effect of the [decision] constitutes a particularly severe sanction because it seriously and publicly damages Justice Sow's professional reputation and standing."[76] The Defence proposes that "[i]t is no answer to assert that these findings were objectively correct because such an assertion reflects precisely the perception of pre-judgment claimed by the Defence."[77]

32. This is not pre-judgment nor the appearance of pre-judgment – the independence of judges would be fatally undermined if observers' perceptions of the consequences of judicial acts were considered indicia of bias.[78] Once seized of a complaint of misconduct, the Plenary considered it on

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[70] Transcript, 16 May 2012, p. 49682.
[71] Motion, para. 15; Reply, para. 7.
[72] *Supra* para. 17 ("A fair-minded observer would know that a Judge's role can differ from one judicial context to another.").
[73] Rule 15*bis*; Rule 24.
[74] Rule 15*bis*.
[75] Motion, para. 18
[76] Motion, para. 21.
[77] Reply, para. 6.
[78] *See El Sayed* Riachy Disqualification Decision, para. 57.

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its merits alone, without regard to extraneous considerations. Justice Sow's credibility, including as it may bear on any matters involving the guilt or innocence of Mr. Taylor, has not been judged by the Appeals Chamber. In any event, the Defence's characterizations of Justice Sow's credibility, professional reputation and standing are unwarranted and bordering on defamatory.

33. Likewise, the Defence's submissions with respect to the trial record are ill-founded.[79] The hearing of 26 April 2012 officially concluded when it was adjourned by the Presiding Judge of Trial Chamber II.[80] The official transcript accordingly ends with that adjournment, and could not have included further statements made after the hearing was officially closed.[81] On 16 May 2012, the Presiding Judge described for the record Justice Sow's behaviour following the adjournment.[82] The Plenary Resolution regarding Justice Sow's behaviour was further entered into the official record.[83] The Defence is fully aware of the content of Justice Sow's statement.[84] There is no basis to suggest that the official transcript is anything but accurate and transparent.

34. The Plenary did not consider any matters related to Charles Taylor's guilt or innocence nor the content of Justice Sow's statement. A reasonable observer would properly appreciate this fact, as both Parties do. The Appeals Chamber concludes that no reasonable observer, properly informed, would reasonably apprehend bias with respect to the Appeals Chamber's consideration of Defence Grounds 36 and 37. The Motion must therefore be dismissed.

35. In closing, the Appeals Chamber endorses the words of Judge Antonio Cassese, former President of the Special Tribunal for Lebanon, and draws the attention of the Parties and the public to them:

> I firmly believe that, while Judges must be absolutely free and appear to be free from any preconceived beliefs, it is also necessary for them to be sheltered from mere innuendoes as to their professional past or their current attitude. If they were not so safeguarded, they would be unable to discharge their difficult mission with equanimity. Charges of bias unsupported by compelling evidence can only sow confusion and uncertainty in the mind of all those who watch the unfolding of international justice, as well as trouble the conscience of Judges, thereby affecting their serenity. The Tribunal will firmly reject any attempt at guesswork or speculation intended to project onto the Tribunal political motivations that instead are, and shall always remain, extraneous to it, as is fitting and appropriate for any court of law.[85]

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[79] Motion, para. 11.
[80] Transcript, 26 April 2012, p. 49679.
[81] Transcript, 26 April 2012, p. 49679.
[82] Transcript, 16 May 2012, pp 49681, 49682.
[83] Transcript, 16 May 2012, pp 49682, 49683.
[84] Motion, Annex A.
[85] *El Sayed* Riachy Disqualification Decision, para. 72

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1265)

SCSL-03-01-T
(37680 - 37681)

37680

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:	Binta Mansaray
Case No.:	SCSL-03-1-T
Date:	1 March 2012

SPECIAL COURT FOR SIERRA LEONE
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COURT MANAGEMENT
THE HAGUE
01 MAR 2012
NAME ZAINAB TAMMAH
SIGN
TIME 09:14

PROSECUTOR

v.

Charles Ghankay TAYLOR

SCHEDULING ORDER FOR DELIVERY OF JUDGEMENT

Office of the Prosecutor:
Brenda J. Hollis
Nina Tavakoli
Ula Nathai-Lutchman
Nathan Quick
James Pace

Defence Counsel for Charles G. Taylor:
Courtenay Griffiths, Q.C.
Terry Munyard
Morris Anyah
Silas Chekera
Logan Hambrick

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

PURSUANT to Rule 88 of the Rules of Procedure and Evidence of the Special Court,

HEREBY ORDERS that a public hearing shall be held in The Hague to deliver the Judgement in these proceedings on Thursday, 26 April 2012 at 11:00 am.

Done at The Hague, The Netherlands, this 1st day of March 2012.

Justice Teresa Doherty

Justice Richard Lussick
Presiding Judge

Justice Julia Sebutinde

[Seal of the Special Court for Sierra Leone]

1174)

SCSL-03-01-T
(32384-32392)

32384

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:	Binta Mansaray
Case No.:	SCSL-03-1-T
Date:	28 January 2011

SPECIAL COURT FOR SIERRA LEONE
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THE HAGUE
28 JAN 2011
NAME ALIMASSAN FORWAH
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14:17

PROSECUTOR

v.

Charles Ghankay TAYLOR

DECISION ON URGENT AND PUBLIC WITH ANNEXES A-N
DEFENCE MOTION FOR DISCLOSURE AND/OR INVESTIGATION OF UNITED STATES GOVERNMENT SOURCES WITHIN THE TRIAL CHAMBER, THE PROSECUTION AND THE REGISTRY BASED ON LEAKED USG CABLES

Office of the Prosecutor:
Brenda J. Hollis
Nicholas Koumjian
Leigh Lawrie

Counsel for the Accused:
Courtenay Griffiths, Q.C.
Terry Munyard
Morris Anyah
Silas Chekera
James Supuwood

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TRIAL CHAMBER II ("Trial Chamber") of the Special Court for Sierra Leone ("Special Court");[1]

SEISED of the "Urgent and Public with Annexes A-N Defence Motion for Disclosure and/or Investigation of United States Government Sources Within the Trial Chamber, the Prosecution and the Registry Based on Leaked USG Cables", filed on 10 January 2011 ("Motion"),[2] wherein, in light of the publication of two leaked United States Government ("USG") cables and an article in the New Democrat, a Liberian Newspaper ("Newspaper Article"), the Defence seeks, pursuant to Rule 54 of the Rules of Procedure and Evidence ("Rules") immediate disclosure and/or an investigation into:

(i) the identity of the source(s) within the Trial Chamber, Prosecution and Registry who provided the USG with the information in the Cables;[3]

(ii) the full nature of the respective sources' relationship with the USG, specifically including an explanation of the context and circumstances in which each of the comments recorded in the Cables were made to representatives of the USG;[4]

(iii) information tending to suggest that the Prosecution has sought or received instructions from the USG regarding any aspect of the Taylor trial;[5] and

(iv) a full explanation of the money provided by the USG to the Prosecution, including the amounts of money given and when; the purpose of the funds; how the funds were used; and who the OTP was accountable to in the distribution and use of the funds;[6]

on the basis that the USG Cables and Newspaper Article clearly indicate 1) the USG's desire to ensure that Mr. Taylor does not return to Liberia; and 2) proof that there is and have been contacts

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[1] Noting that Justice Sebutinde has appended a declaration stating that she has voluntarily withdrawn herself from a decision on this Motion.
[2] SCSL-03-01-T-1143.
[3] Motion, paras 4-5, 22
[4] Motion, paras 4-5, 22.
[5] Motion, para. 22.
[6] Motion, para. 22.

between the Trial Chamber, the Office of the Prosecutor and the Registry, and agents of the USG outside the official lines of communication;[7] 3) the only way to remove any doubt about the independence and impartiality of the tribunal is to order the disclosure and/or the investigation into the identity of the sources within the Trial Chamber, Prosecution and Registry and the full nature of their relationship with the USG;[8]

NOTING the "Prosecution Response to Defence Motion for Disclosure and/or Investigation of United States Government Sources Within the Trial Chamber, the Prosecution and the Registry Based on Leaked USG Cables", filed on 20 January 2011 ("Response"),[9] wherein the Prosecution opposes the Motion and submits that it should be dismissed on the basis that;

(i) it is untimely and frivolous, appears to be a deliberate attempt to delay the proceedings, and rehearses the unfounded allegations made in the *Sesay et al.* case in relation to the Prosecution's link to the USG;[10]

(ii) the Cables do not provide any evidentiary basis or factual foundation for the allegations put forward by the Defence concerning any organ of the Court, and in fact clearly evidence the Court's impartiality and independence;[11]

NOTING ALSO the "Defence Reply to Prosecution Response to Defence Motion for Disclosure and/or Investigation of United States Government Sources within the Trial Chamber, the Prosecution and the Registry Based on Leaked USG Cables", filed on 25 January 2011 ("Reply");[12]

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[7] Motion, para. 19.
[8] Motion, para. 21.
[9] SCSL-03-01-T-1164.
[10] Response, paras 4-6, citing *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Sesay - Motion Seeking Disclosure of the Relationship Between Governmental Agencies of the United States of America and the Office of the Prosecutor, 2 May 2005 ("*Sesay* Decision").
[11] Response, paras 7-21.
[12] SCSL-03-01-T-1169.

COGNISANT of the provisions of Articles 13(1), 15(1) and 17 of the Statute of the Special Court for Sierra Leone ("Statute") and Rule 54 of the Rules of Procedure and Evidence ("Rules");

NOTING that two United States Government cables, one dated 10 March 2009 ("First USG Cable"),[13] and the other dated 15 April 2009 ("Second USG Cable"), were leaked through Wikileaks, an internet platform which allows anonymous disclosure of leaked information,[14] and published by the Guardian newspaper on 17 December 2010;[15]

NOTING that on 23 December 2010, an article was published in the New Democrat entitled "Sorry for the Leaks; Pres. Sirleaf Acknowledges US Ambassador's Apology";[16]

RECALLING that on 13 September 2010, the Trial Chamber ordered the Defence to file all remaining motions by 24 September 2010;[17]

CONSIDERING that, with respect to the Defence request for a full explanation of the funds provided by the USG to the Prosecution, the Defence relies on statements made by former Prosecutor David Crane in 2006 to the Subcommittee on Africa, Global Human Rights and International Operations of the United States House of Representatives' Committee on International Relations, a statement which is already in evidence in this case,[18] and which has already been used by the Defence in its opening statement and examination-in-chief of the Accused;[19]

HOLDING, therefore, that as the Defence has already had an opportunity to raise this issue prior to the deadline of 24 September 2010, and as this issue is unrelated to the recently leaked USG Cables,

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[13] Motion, Annex A.
[14] www.wikileaks.org.
[15] Motion, Annex B.
[16] Motion, Annex C.
[17] *Prosecutor v. Taylor*, SCSL-03-01-T, Transcript 13 September 2010, p. 48323 ; Response, para. 5.
[18] Exhibit D-404-, p. 77.
[19] *Prosecutor v. Taylor*, SCSL-03-01-T, Transcript 13 July 2009, p. 24290; Transcript 9 November 2009, pp. 31479- 31482.

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this aspect of the Motion is untimely, but that it is in the interests of justice to consider the remainder of the Motion at this time;

NOTING that Article 13(1) of the Statute provides that:

> The judges shall be persons of high moral character, impartiality and integrity [. . .] They shall be independent in the performance of their functions, and shall not accept or seek instructions from any Government or other source;

NOTING that Article 15(1) of the Statute provides *inter alia* that:

> The Prosecutor shall act independently as a separate organ of the Special Court. He or she shall not seek or receive instructions from any Government or any other source;

NOTING that Rule 54 of the Rules provides that:

> At the request of either party or of its own motion, a Judge or a Trial Chamber may issue such orders, summonses, subpoenas, warrants and transfer orders as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial;

RECALLING that this Trial Chamber has previously held, in relation to Rule 54, that the "test for whether the Trial Chamber should issue an order under the Rule is whether to do so is necessary (not simply useful or convenient) for the purposes of an investigation or for the preparation or conduct of the trial";[20]

RECALLING that Trial Chamber I has held that, in order for a disclosure order to be granted in relation to a breach of Article 15(1), a party must establish a *prima facie* case that there has been such a breach,[21] and in so doing must determine, whether there is, at this point in time, any evidentiary basis or factual foundation to warrant a conclusive finding of fact that there has in law been such a breach;[22]

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[20] *Prosecutor v. Taylor*, SCSL-03-01-T-355, Decision on *Ex Parte* and Confidential Prosecution Motion for an Order to Provide to the Prosecution Non-Privileged Documents Recently Obtained from the Accused's Personal Archive, 5 November 2007, para. 10. See also *Prosecutor v. Brima, Kamara and Kanu*, SCSL-04-16-T-, Decision on Joint Defence Motion for General Orders Pursuant to Rule 54, 28 July 2005, para. 20.

[21] *Sesay* Decision, para. 43.

[22] *Sesay* Decision, para. 41.

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CONSIDERING that with respect to a request for disclosure or an investigation in relation to a Judge or a member of the Trial Chamber, a party must specifically identify the information it seeks to have disclosed, and must make a *prima facie* showing that such information would demonstrate actual bias or the appearance of bias;[23]

CONSIDERING therefore that, in determining whether an order for disclosure and/or an investigation pursuant to Rule 54 is necessary, the Trial Chamber must determine whether a *prima facie* case has been established that there may have been interference with the independence and impartiality of the Court;

CONSIDERING that the First USG Cable does not indicate that the USG has any influence over any organs of the Court;

CONSIDERING moreover, that as the United States government raises concerns in this cable about the effect on the fragile peace in Liberia should Taylor be acquitted in The Hague or given a light sentence, it is clear that it does not have any influence over the final outcome of the trial;

CONSIDERING that while it is of concern to the Trial Chamber that the United States government may have received information from "contacts" in Chambers,[24] the Registry and the Prosecution, the Second USG Cable does not demonstrate whether these "contacts" have any relationship with the USG capable of interfering with the independence or impartiality of the Court or any organ of the Court;

CONSIDERING FURTHER that, as part of their official functions, the Registry and the Prosecution interact on a regular basis with government officials from a number of countries, and in

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[23] *Prosecutor v. Karemera, Ngirumpatse, and Nzirorera*, ICTR-98-44-AR73.15, Decision on Joseph Nzirorera's Appeal Against a Decision of Trial Chamber III Denying the Disclosure of a Copy of the Presiding Judge's Written Assessment of a Member of the Prosecution Team, 5 May 2009, para. 11.

[24] The Trial Chamber notes that the cable does not specify whether the "Chamber contact" is in the Appeals Chamber or Trial Chamber, nor does it specify whether this contact is a judge or a staff member.

particular, with member states of the management committee, including the United States of America, about the progress of the trial, including "questions of efficiency" as provided for by Article 7 of the Agreement between the United Nations and the Government between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone,[25] which states that:

> It is the understanding of the Parties that interested States will establish a management committee to assist the Secretary-General in obtaining adequate funding, and provide advice and policy direction on all non-judicial aspects of the operation of the Court, including questions of efficiency, and to perform other functions as agreed by interested States. The management committee shall consist of important contributors to the Special Court. The Government of Sierra Leone and the Secretary-General will also participate in the management committee.

RECALLING that Trial Chamber I has held that that "mere evidence of the cooperation between the Prosecution and the FBI or the US Government, without proof that the former received instructions from the latter, including the nature and contents of such instructions, does not, per se, fulfill the test to establish a violation of Article 15(1) of the Statute";[26]

SATISFIED that, while the statements attributed to the sources within the Prosecution Registry, and Chambers in the Second USG Cable indicate that information may have been provided to the USG government by employees within the Court, the statements do not demonstrate that such sources were receiving instructions from the USG;

FINDING therefore that the Defence it has not shown any *prima facie* evidence that there has been interference with the independence and impartiality of the Court, and therefore has shown no evidentiary basis for either disclosure by, or an investigation of, any organ of the Court;

HEREBY DISMISSES THE MOTION.

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[25] 16 January 2002.
[26] *Sesay* Decision, para. 52.

Justice Sebutinde appends a declaration.

Done at The Hague, The Netherlands, this 28th day of January 2011.

Justice Teresa Doherty
Presiding Judge

Justice Richard Lussick

[Seal of the Special Court for Sierra Leone]

DECLARATION OF JUSTICE JULIA SEBUTINDE

1. For the reasons set out below, it is my considered opinion that it would be in the interests of justice for me to voluntarily withdraw myself from a decision on this Motion. The USG Code Cable contained in Annex B of the Motion involves a statement that un-named "sources in the Prosecution, Chambers and the Registry" of the Special Court allegedly made certain specific allegations against me.

2. In the Motion, the Defence requests an investigation into the contacts or sources in the Court who made these allegations. Indeed, the Defence has observed that "[t]he only sign of how seriously some members of this Court have taken the matter is through the personal response of Justice Julia Sebutinde to the allegations in one of the cables which impinge on her integrity, as reported in the media".[1]

3. I declare that while I am completely innocent of the allegations contained in the USG Code Cable and consider myself to be impartial and free of bias in relation to the issues at stake in this Motion, it is my considered view that in order for justice to be seen to be done, I should not participate in the deliberations or decision relating to this Motion.

4. Accordingly, I voluntarily withdraw from participating in the deliberations and the Decision on this Motion.

Done at The Hague, The Netherlands, this 26th day of January 2011.

Justice Julia Sebutinde

[Seal of the Special Court for Sierra Leone]

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[1] *Prosecutor v. Taylor*, SCSL-03-01-T-1155, Public with Annex A Defence Motion Seeking Leave to Appeal the Decision on Defence Request for a Status Conference Pursuant to Rule 65*bis* and Defence Motion for Stay of Proceedings Pending Resolution of Outstanding Issues, 14 January 2011, para. 13.

1171)

SCSL-03-01-T
(32352-32358)

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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: Binta Mansaray

Case No.: SCSL-03-1-T

Date: 27 January 2011

SPECIAL COURT FOR SIERRA LEONE
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THE HAGUE
27 JAN 2011
NAME AL HASSAN FORWAH
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TIME 12:05

PROSECUTOR

v.

Charles Ghankay TAYLOR

DECISION ON THE URGENT AND PUBLIC WITH ANNEXES A-C DEFENCE MOTION TO RE-OPEN ITS CASE IN ORDER TO SEEK ADMISSION OF DOCUMENTS RELATING TO THE RELATIONSHIP BETWEEN THE UNITED STATES GOVERNMENT AND THE PROSECUTION OF CHARLES TAYLOR

<u>Office of the Prosecutor</u>:
Brenda J. Hollis
Kathryn Howarth
Nicholas Koumjian

<u>Counsel for the Accused</u>:
Courtenay Griffiths, Q.C.
Terry Munyard
Morris Anyah
Silas Chekera
James Supuwood

TRIAL CHAMBER II ("Trial Chamber") of the Special Court for Sierra Leone ("Special Court");[1]

SEISED of the "Urgent and Public with Annexes A-C Defence Motion to Re-Open its Case in Order to Seek Admission of Documents Relating to the Relationship Between the United States Government and the Prosecution of Charles Taylor", filed on 10 January 2011 ("Motion"),[2] wherein the Defence seeks permission to re-open its case for the limited purpose of seeking admission of the following documents ("Defence Documents") into evidence pursuant to Rule 92*bis*:[3]

(a) marked portions of a United States Government ("USG") cable, dated 10 March 2009, which was leaked through Wikileaks and published by the Guardian newspaper ("Guardian") on 17 December 2010 ("First USG Cable");[4]

(b) the entirety of a USG cable, dated 15 April 2009, which was leaked through Wikileaks and published by the Guardian on 17 December 2010 ("Second USG Cable");[5]

(c) the first paragraph of an article from the New Democrat, a Liberian newspaper, entitled "Sorry for the Leaks; Pres. Sirleaf Acknowledges US Ambassador's Apology", dated 23 December 2010 ("Newspaper Article");[6]

on the basis that the Defence should be entitled to re-open its case for this limited purpose as:

(i) the evidence could not, with reasonable diligence, have been obtained and presented during its case in chief, as the cables are confidential and classified documents which were obtained by Wikileaks and published in the Guardian on 17 December 2010, five weeks after it had closed its case, and the publication of the Newspaper Article was in consequence of the leak and publication of the cables;[7]

(ii) the probative value of the cables is significant as the cables raise grave doubts about the independence and impartiality of the Special Court's prosecution of Charles Taylor;[8]

(iii) there would be limited delays to the trial proceedings if these documents are admitted;[9]

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[1] Noting that Justice Sebutinde has appended a declaration stating that she has voluntarily withdrawn herself from a decision on this Motion
[2] SCSL-03-01-T-1146.
[3] Motion, paras 3, 23.
[4] Motion, Annex A.
[5] Motion, Annex B.
[6] Motion, Annex C.
[7] Motion, para. 12.
[8] Motion, para. 13.
[9] Motion, para. 14.

and submits that the documents are admissible pursuant to Rule 92*bis* on the basis that:

(i) the documents are relevant as they support the Defence position that the prosecution of Mr. Taylor is political and his indictment was deliberately selective;[10]

(ii) the documents are susceptible of corroboration in due course, in regard to each other, and the evidence on record;[11]

(iii) the portions of the USG Cables and Newspaper Article sought to be admitted do not go to the acts and conduct of the Accused and;[12]

(iv) the information contained in the USG Cables are facts as reported by United States diplomatic personnel, as is the apology from the U.S. Ambassador to the Liberian President contained in the newspaper article, and they therefore do not constitute opinion evidence;[13]

NOTING the "Prosecution Response to Defence Motion to Re-Open its Case to Seek Admission of Documents Relating to the Relationship between the United States Government and the Prosecution of Charles Taylor", filed on 20 January 2011 ("Response"),[14] wherein the Prosecution opposes the Motion and submits that the Defence has failed to demonstrate the relevance of the Defence Documents,[15] on the basis that:

(i) the USG Cables refute, rather than support, the Defence allegations that the independence and impartiality of the Special Court is compromised by the involvement of the United States or any other government;[16]

(ii) the Newspaper Article has no relevance to this trial;[17]

(iii) there is nothing in any of the documents that provides any evidentiary basis for an argument that the Prosecution is in breach of its duty of independence under Article 15(1), or has sought or received instructions from the USG in relation to these proceedings;[18]

[10] Motion, paras 16-18.
[11] Motion, para. 19.
[12] Motion, para. 20.
[13] Motion, para. 21.
[14] SCSL-03-01-T-1163.
[15] Response, para. 5.
[16] Response, paras 6-8.
[17] Response, para. 11.
[18] Response, paras 9-10.

(iv) the Defence argument that the documents are relevant to the Defence theory of selective prosecution has no merit, as the Prosecution acted squarely within the bounds of its discretion pursuant to Article 1(1) of the Statute in bringing an Indictment against Charles Taylor as one of those who bears the "greatest responsibility";[19]

NOTING that the Prosecution further submits that the documents contain matters of opinion rather than matters of fact, and that they are therefore inadmissible under Rule 92*bis*;[20]

NOTING FURTHER that the Prosecution requests that should the Trial Chamber permit the Defence to re-open its case in order to admit the documents, the entire March 2009 cable should be admitted;[21]

NOTING ALSO the "Defence Reply to Prosecution Response to Defence Motion to Re-Open its Case to Seek Admission of Documents Relating to the Relationship between the United States Government and the Prosecution of Charles Taylor", filed on 25 January 2011 ("Reply");[22]

COGNISANT of the provisions of Article 17 of the Statute of the Special Court for Sierra Leone ("Statute") and Rules 54, 92*bis* and 73(A) of the Rules of Procedure and Evidence ("Rules");

COGNISANT of the provisions of Rule 92*bis* which states:

> **Rule 92*bis*: Alternative Proof of Facts**
>
> (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 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 as evidence shall give 10 days notice to the opposing party. Objections, if any, must be submitted within 5 days.

NOTING that the Appeals Chamber has ruled that the effect of Rule 92*bis* "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 . It is for the trial chamber to decide whether the information comes in a form, or is of a kind, that is "susceptible of

[19] Response, paras 12-16.
[20] Response, para. 17.
[21] Response, para. 18.
[22] SCSL-03-01-T-1170.

confirmation". It follows, of course, from the fact that its reliability is "susceptible of confirmation", that it is also susceptible of being disproved, or so seriously called into question that the court will place no reliance upon it";[23]

RECALLING that the Trial Chamber has previously held that a party seeking to re-open a case must (i) meet the threshold test of establishing that the evidence could not, with reasonable diligence, have been obtained and presented during its case in chief, and (ii) if the first prong of the test is met, the party must demonstrate that the probative value of the evidence is not substantially outweighed by the need to ensure a fair trial;[24]

FINDING, given that (i) the Defence closed its case on 12 November 2010; (ii) the two USG Cables were published in the Guardian on 17 December 2010, and (iii) the Newspaper Article was published on 23 December 2010, that these documents could not, with reasonable diligence, have been obtained and presented by the Defence during its case-in-chief;

FINDING FURTHER that the admission of these documents will not have any bearing on the fairness of the trial since the Defence does not request the calling of any *viva voce* evidence and since either party may, if necessary, apply for leave to make supplementary submissions in relation to the documents;

FINDING ALSO, in relation to the admissibility of the documents, that:

(i) the two USG Code Cables can be related to submissions made by Defence Counsel as well as sworn evidence by the Accused and that they therefore meet the requirements of Rule 92*bis*(A) & (B) in that (i) they do not go to proof of the acts and conduct of the Accused, (ii) are relevant to the purpose for which they are submitted, and (iii) their reliability is susceptible of confirmation;

(ii) the First USG Code Cable should be admitted in its entirety in order to fully understand its context;

(iii) the Newspaper Article merely reports an apology by the US Ambassador to President Sirleaf and, as such, is not relevant to the present case and thus fails to satisfy the requirements of Rule 92*bis*;

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[23] *Prosecutor v. Norman, Fofana and Kondewa*, 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.

[24] *Prosecutor v. Taylor*, SCSL-03-01-T-993, Decision on Public with Confidential Annexes A and B Prosecution Motion to Call Three Additional Witnesses, 29 June 2010, para. 8. *See also Prosecutor v. Brima et al.*, SCSL-04-16-T, Decision on Confidential Prosecution Motion to Reopen the Prosecution Case to Present an Additional Prosecution Witness, 28 September 2006, para 17-18, 21.

HEREBY ALLOWS the Motion in part; and

GRANTS leave to the Defence to re-open its case for the limited purpose of admitting the following documents into evidence pursuant to Rule 92*bis*:

(a) The United States Government ("USG") cable dated 10 March 2009, contained in Annex A of the Motion, is admitted into evidence as Defence Exhibit D-481;

(b) The USG cable dated 15 April 2009, contained in Annex B of the Motion, is admitted into evidence as Defence Exhibit D-482; and

DISMISSES the remainder of the Motion.

Justice Sebutinde appends a declaration.

Done at The Hague, The Netherlands, this 27th of January 2011.

Justice Teresa Doherty
Presiding Judge

Justice Richard Lussick

[Seal of the Special Court for Sierra Leone]

DECLARATION OF JUSTICE JULIA SEBUTINDE

1. For the reasons set out below, it is my considered opinion that it would be in the interests of justice for me to voluntarily withdraw myself from a decision on this Motion. The USG Code Cable contained in Annex B of the Motion involves a statement that un-named "sources in the Prosecution, Chambers and the Registry" of the Special Court allegedly made certain specific allegations against me.

2. In the Motion, the Defence requests that this document be admitted into evidence pursuant to Rule 92bis of the Rules. Indeed, the Defence has observed that "[t]he only sign of how seriously some members of this Court have taken the matter is through the personal response of Justice Julia Sebutinde to the allegations in one of the cables which impinge on her integrity, as reported in the media".[1]

3. I declare that while I am completely innocent of the allegations contained in the USG Code Cable and consider myself to be impartial and free of bias in relation to the issues at stake in this Motion, it is my considered view that in order for justice to be seen to be done, I should not participate in the deliberations or decision relating to this Motion.

4. Accordingly, I voluntarily withdraw from participating in the deliberations and the Decision on this Motion.

Done at The Hague, The Netherlands, this 27th day of January 2011.

Julia Sebutinde

Justice Julia Sebutinde

[Seal of the Special Court for Sierra Leone]

[1] *Prosecutor v. Taylor*, SCSL-03-01-T-1155, Public with Annex A Defence Motion Seeking Leave to Appeal the Decision on Defence Request for a Status Conference Pursuant to Rule 65*bis* and Defence Motion for Stay of Proceedings Pending Resolution of Outstanding Issues, 14 January 2011, para. 13.

1118)

SCSL-03-01-T
(30904-30951)

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SPECIAL COURT FOR SIERRA LEONE

TRIAL CHAMBER II

Before:	Justice Julia Sebutinde, Presiding Judge Justice Richard Lussick Justice Teresa Doherty Justice El Hadji Malick Sow, Alternate Judge
Registrar:	Binta Mansaray
Case No.:	SCSL-03-1-T
Date:	11 November 2010

SPECIAL COURT FOR SIERRA LEONE
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PROSECUTOR

v.

Charles Ghankay TAYLOR

DECISION ON PUBLIC WITH CONFIDENTIAL ANNEXES A-J AND PUBLIC ANNEXES K-O DEFENCE MOTION REQUESTING AN INVESTIGATION INTO CONTEMPT OF COURT BY THE OFFICE OF THE PROSECUTOR AND ITS INVESTIGATORS

Office of the Prosecutor:
Brenda J. Hollis
Leigh Lawrie

Counsel for the Accused:
Courtenay Griffiths, Q.C.
Terry Munyard
Morris Anyah
Silas Chekera
James Supuwood

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evidence against Taylor and that they would grant him protection, including relocation. He stated that he gave the Prosecution information on diamond for arms transactions between Taylor and the RUF as well as the political climate in the region, but that he could not vouch for "its entire accuracy." He also stated that he recommended other persons for the Prosecution to speak to.

110. The Trial Chamber notes that the allegations date back to 2005 and 2006. The Trial Chamber therefore finds that there was undue delay in bringing the allegations to the Trial Chamber's attention. The Trial Chamber has already dismissed the Prosecution's submission that DCT-097 was not one of its witnesses, and found that the "evidence strongly suggests that for all intents and purposes [DCT-097] was a potential Prosecution witness."[164] The Trial Chamber notes that the documentation of payments indicates amounts including $ 4,700 provided to the witness for a reason that was redacted by the Prosecution; $ 6,180 for lodging and expenses for the witness and his family as well as smaller instalment amounts ranging from hundreds to thousands of dollars for communication, transportation, meals, subsistence and expenses relating to a trip to Ghana.[165] The Trial Chamber finds that the Defence has not demonstrated how these allegations relate to charges of contempt. There is no indication that the payments were not necessary; rather, both DCT-097 and the Prosecution have provided legitimate reasons for these payments and the Trial Chamber finds that such payments fall within the discretion of the Prosecution pursuant to Rule 39(ii).

111. Further, the Trial Chamber finds that the evidence presented by the Defence does not suggest that the payments were made in exchange for DCT-097's testimony. Rather, the Trial Chamber finds that DCT-097 was exploiting the Prosecution to the point of giving them false information. Given these facts, the Trial Chamber finds no reason to believe that the Prosecution may have knowingly and wilfully interfered with the administration of justice. The Trial Chamber notes that DCT-097 received a total amount of $ 40,441.37 from the Prosecution.[166] The Prosecution explained that these were discretionary payments pursuant to Rule 39(ii). The Trial Chamber finds that the Defence has not demonstrated how this discretion pursuant to Rule 39(ii) has been abused or in which way the payments can be considered as exorbitant. Further, the Trial Chamber finds that the Defence has not demonstrated how the conduct of the Prosecution prevents the Defence from calling DCT-097. The

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[164] See *Prosecutor v. Taylor*, SCSL-03-01-T-1084, Decision on Defence Motion for Disclosure of Statement and Prosecution Payments made to DCT-097, 23 September 2010, para. 10.
[165] Motion, Annex M.
[166] Motion, Annex N, which is based on Prosecution disclosure of payments made to DCT-097.

allegations, in particular his alleged "deals" with the Prosecution on relocation. The Defence cannot therefore claim prejudice in this regard. In any event, the Trial Chamber considers that even if the Prosecution had promised Abu Keita relocation (which the Prosecution denies), the Prosecution has a legitimate interest in securing the safety of its witnesses, and may arrange for any appropriate protective measures for them, including relocation. The Trial Chamber notes that Abu Keita testified openly,[185] an indication that he was in fact, not concerned about his security, an indication consistent with the Prosecution position that it did not promise him relocation. The information provided, even if believed, does not support an allegation of contemptuous conduct on the part of the Prosecution. The Trial Chamber accordingly finds that the allegation is not sufficiently credible to provide it with reason to believe that a member of the Prosecution knowingly and wilfully interfered with the administration of justice in the present case.

10) Payment of $10,000 to TF1-362 to testify

128. The Defence alleges that "it is 'common knowledge' amongst RUF ex-combatants that Prosecution witness TF1-362 testified and lied before the Special Court and in exchange made approximately $10,000."[186] It cites in support of this allegation the affidavit of DCT-102, testimony of Charles Taylor, and the testimony of Defence Witness DCT-215. It does not specify when TF1-362 allegedly received this amount of money.

129. The Prosecution submits that common knowledge cannot be relied upon to support an allegation of contempt of court.[187] Furthermore, the Prosecution disclosed all relevant information for TF1-362 prior to the witness' testimony to the Defence.[188]

130. In his affidavit, DCT-102 attests that he met TF1-362, who confirmed testifying in The Hague. He attests that he "heard a rumour" that TF1-362 received 10,000 USD but that he does "not have personal knowledge of that."[189] Witness DCT-215 and the Accused both provided evidence in relation to this alleged incident, but are not able to provide any information as to whether TF1-362 received this money from the Prosecution or the reasons for receiving such funds.

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[184] Reply para. 29.
[185] Transcript 22 January 2008, p. 1946.
[186] Motion, para. 28.
[187] Response, para. 24.
[188] Response, para. 24.
[189] Motion, Confidential Annex F, para. 22.

131. Witness DCT-215 testified that he met TF1-362 who told him that "someone" had asked him/her to "go and tell lies" and that he/she was given "a little thing" for this. He said that this was a reference to the Prosecution because TF1-362 explained that he/she was given a new name and money to build a house.[190] He testified that he did not know the exact amount, but that "it is alleged by some people" that TF1-362 was paid up to 10,000 USD.[191]

132. The Accused testified that he heard that TF1-362 boasted of getting a job and 10,000 USD to build a house as a result of testifying before the Special Court.[192]

133. The Trial Chamber also notes that DCT-062 testified that he went together with DCT-102 to visit TF1-362.[193] TF1-362 told them that he/she was going to build a house.[194] However, DCT-062 testified that TF1-362 did not tell them where the money to build the new house would come from.[195]

134. The Trial Chamber notes that the allegations made by DCT-102 are based only on rumour and speculation and that DCT-102 has no personal knowledge of the allegations. The Trial Chamber further notes that even the Accused in his testimony cited rumour and not personal knowledge in relation to this event. It is not explained where the information came from. Moreover, the Trial Chamber notes that although DCT-215 and DCT-062 were present at the same occasion, the account given by each of them is contradictory regarding the statement TFI-362 is alleged to have made in their presence. Further the Trial Chamber notes that DCT-215's testimony and the transcript reference provided by the Defence in support of the allegation does not specifically refer to an amount of 10,000 USD, but only to a "little thing".[196] Furthermore neither of the two individuals state that TFI-362 named the Prosecution as the organ that supplied the $10,000 or "little thing". At best, the Defence allegation seems to be based on mere suspicion. With regard to the testimony of the Accused and Defence Witness DCT-062, the Trial Chamber will consider their evidence when assessing the credibility of Witness TF1-362 in the final judgement. Furthermore, as the Defence was able to cross-examine TF1-362 in relation to this allegation there is no prejudice suffered by the

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[190] John Vincent, Transcript 30 March 2010, pp. 38248-38250.
[191] John Vincent, Transcript 30 March 2010, pp. 38252-38254.
[192] Charles G. Taylor, Transcript 16 September 2009, p. 29074.
[193] DCT-062, Transcript 26 April 2010, pp. 39900-39901.
[194] DCT-062, Transcript 26 April 2010, pp. 39903-39904.
[195] DCT-062, Transcript 26 April 2010, pp. 40255-40257.
[196] Witness DCT-215, Transcript 30 March 2009, p. 38249.

credibility of the Prosecution witnesses and the veracity of their accounts in its deliberations on the judgement.

149. Therefore, the Trial Chamber finds no reason to believe that members of the Prosecution wilfully interfered with the administration of justice or otherwise engaged in contemptuous conduct as identified in Rule 77.

14) Finding on the merits

150. The Trial Chamber is not satisfied that any of the allegations submitted by the Defence provide reason to believe that contempt may have been committed by members of the Prosecution.

FOR ALL THE ABOVE REASONS

THE TRIAL CHAMBER on 22 October 2010 dismissed the Motion in its entirety.

Done at The Hague, The Netherlands, this 11th day of November 2010.

Justice Richard Lussick

Justice Julia Sebutinde
Presiding Judge

Justice Teresa Doherty

[Seal of the Special Court for Sierra Leone]

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765) SCSL-03-01-T (24690 - 24718)

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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:	23 March 2009

SPECIAL COURT FOR SIERRA LEONE
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PROSECUTOR

v.

Charles Ghankay TAYLOR

DECISION ON DEFENCE APPLICATION FOR JUDICIAL NOTICE OF ADJUDICATED FACTS FROM THE AFRC TRIAL JUDGEMENT PURSUANT TO RULE 94(B)

Office of the Prosecutor:
Brenda J. Hollis
Nicholas Koumjian
Nina Jørgensen
Christopher Santora

Defence Counsel for Charles G. Taylor:
Courtenay Griffiths, Q.C.
Terry Munyard
Andrew Cayley
Morris Anyah

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26. Whereas Rule 94 does not define what constitutes an "adjudicated fact" this Court has previously held that when deciding whether or not to take judicial notice of a proposed fact as an adjudicated fact, the following criteria must be met:

a. The fact must be distinct, concrete and identifiable;

b. The fact must be relevant and pertinent to an issue in the current case;

c. The fact must not contain legal conclusions, nor may it constitute a legal finding;

d. The fact must not be based on a plea agreement or upon facts admitted voluntarily in an earlier case;

e. The fact clearly must not be subject to pending appeal, connected to a fact subject to pending appeal, or have been settled finally on appeal;

f. The fact must not go to proof of the acts, conduct, or mental state of the accused person;

g. The fact must not be sufficient, in itself, to establish the criminal responsibility of the Accused;

h. The fact must not have been re-formulated by the party making the application in a substantially different or misleading fashion; that is to say, the fact must not differ significantly from the way the fact was expressed when adjudicated in the previous proceedings, it must not have been abstracted from the context of the original judgement in an unclear or misleading manner, and it must not be unclear or misleading in the context in which it is placed in the application.[48]

27. Facts that the Trial Chamber has taken judicial notice of under Rule 94(A) need not be proven again at trial. In contrast, Rule 94(B) creates a

> "well-founded presumption of accuracy of [the proposed fact], which therefore does not have to be proven again at Trial, but which, subject to that presumption, may be challenged at [...] trial."[49]

Like all rebuttable evidence, judicially noticed adjudicated facts remain subject to challenge by the non-moving party during the course of the trial.[50] As a party may challenge, at trial, an

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[48] Sesay Decision on Adjudicated Facts, para. 19.

[49] Sesay Decision on Adjudicated Facts, para. 18; see also *Prosecutor v. Karemera* et al., ICTR-98-AR73(C), Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice (AC), 16 June 2006, para. 42, stating the "facts noticed under Rule 94(B) are merely presumptions that may be rebutted [...] with evidence at trial."

[50] *Prosecutor v. Popovic et. al.*, IT-05-88-T, Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts with Annex, 26 September 2006, para. 21.

adjudicated fact that has been judicially noticed, it follows that the Trial Chamber is not restricted to taking judicial notice of facts that are not subject of dispute between the parties.[51]

28. Pursuant to Rule 94(B), taking judicial notice of adjudicated facts is a matter for the exercise of the Trial Chamber's discretion. Therefore, even where a proposed adjudicated fact fulfils all of the aforementioned criteria, the Trial Chamber will retain its discretion not to take judicial notice of said fact if doing so will not best serve the interests of justice.[52] Factors to be considered in that regard are the rights of the accused and judicial economy.[53]

29. The Special Court has further established that

> "the overriding consideration is whether taking judicial notice of the said fact will promote judicial economy while ensuring that the trial is fair, public and expeditious. Other relevant factors in such a determination include: the stage of proceedings at the time the Application is brought; the volume of evidence already led by the parties in respect of the proposed adjudicated facts; whether the proposed adjudicated facts go to issues central to the present case; and the nature of the proposed adjudicated facts, including whether they are over-broad, tendentious, conclusory, too detailed, so numerous as to place a disproportionate burden on the opposing party to rebut the facts, or repetitive of evidence already heard in the case."[54]

30. Rule 94(B) has two purposes. The first is to promote judicial economy by dispensing with the need for the parties to lead evidence in order to prove supplementary facts or allegations already proven in past proceedings. The second is to harmonise judgements in relation to certain factual issues that arise in multiple cases before the Special Court.[55]

III. DELIBERATIONS

1. Timing of the Defence Application

31. The Defence filed the Motion after the Prosecution announced that it would be calling its last witness. The Prosecution objects to the timing of the Motion, submitting that it has

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[51] *Prosecutor v. Prlic et. al.*, IT-04-74-PT, Decision on Motion for Judicial Notice of Adjudicated Facts pursuant to Rule 94(B), 14 March 2006, para. 10.
[52] Sesay Decision on Adjudicated Facts, para. 20.
[53] Sesay Decision on Adjudicated Facts, para. 21.
[54] Sesay Decision on Adjudicated Facts, para. 21.

already closed its case and that trial fairness would require that it be given the opportunity to consider calling "rebuttal" evidence, either before the close of its case, or in a rebuttal case.[56] Therefore the granting of the Motion would be contrary to the interest of justice and would not achieve judicial economy.

32. The Trial Chamber finds that the timing of the Motion is not in itself of sufficient concern to justify dismissal of the Motion in its entirety.[57] The Chamber notes that the Motion was filed before the opening of the Defence case and is intended to streamline the Defence case.[58] Furthermore, the Prosecution submissions, if accepted would lead to an unacceptable limitation of the application of Rule 94(B) to the pre-trial stage or to the Prosecution case. The Trial Chamber notes that Rule 94(B) itself does not contain such a limitation and that in the event that the proposed adjudicated facts are judicially noticed, the Prosecution may have the option to challenge them by cross-examining Defence witnesses or by calling rebuttal evidence. The Trial Chamber accordingly rejects an objection based on this ground alone.

2. The Proposed facts go to issues central to the present case

33. The Prosecution submits that it would be inappropriate to take judicial notice of Facts 1, 2, 3, 5, 7, 8, 9, 12, 13, 14 and 15 as they relate to central issues in this case, specifically the relationship between AFRC and the RUF.[59] In support, the Prosecution refers to a decision in the *Popovic* case before the ICTY, which states:

> "[...] some of the proposed adjudicated facts go to issues which are at the core of this case. In balancing judicial economy with the Accused's right to a fair and public trial, the Trial Chamber is of the view that a number of these facts should be excluded in the interests of justice".[60]

34. The Prosecution argues that the issues in the AFRC case were different and not central issues in that case, but are central in the present case. Whether a proposed adjudicated fact

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[55] Sesay Decision on Adjudicated Facts, para. 17.
[56] Response, para. 10.
[57] *Prosecutor v. Hadzihasanovic and Kubura*, IT-01-47-T, Decision on Judicial Notice of Adjudicated Facts following the Motion submitted by Counsel for the Accused Hadzihasanovic and Kubura on 20 January 2005, 14 April 2005. The Trial Chamber also notes that the Motion in the Sesay Decision on Adjudicated Facts was filed much later than the Motion in the instant case.
[58] Motion, para. 2.
[59] Response, paras 7-9 and footnote 24.

		commanders agreed that the troops who had arrived from Kono District should act as an advance troop which would establish a base in north western area Sierra Leone in preparation for an attack on Freetown. The purpose was to "restore the Sierra Leone Army".
9	193, 384	From Colonel Eddie Town, in or around September 1998, AFRC troops staged a number of attacks on ECOMOG positions to supplement their dwindling stocks of arms and ammunition
10	197	In October 1998, following an armed clash with Dennis Mingo, SAJ Musa left Koinadugu District to join the advance team and prepare for an attack on Freetown. SAJ Musa did not follow the same route taken by the advance teams in his journey to the west
11	198	Upon his arrival in 'Colonel Eddie Town' in November 1998, SAJ Musa assumed command. He emphasised his disenchantment with the RUF and stressed that it was vital that his troops arrive in Freetown before the RUF. SAJ Musa reorganised the troops and began the advance towards Freetown. The troops passed through the villages of Mange, Lunsar, Masiaka and Newton before arriving in Benguema in the Western Area in December 1998. Throughout the advance, the troops withstood frequent attacks by ECOMOG.
12	200	On one occasion during the advance, SAJ Musa and the AFRC troops heard the British Broadcasting Corporation (BBC) interview Sam Bockarie over the radio. Bockarie revealed the position of the AFRC fighting forces and explained that it was RUF troops who were approaching Freetown. Soon after, ECOMOG bombarded the area. Musa immediately contacted Sam Bockarie, insulted him and told him that he had no right to claim that the troops approaching Freetown were RUF troops
13	201	On 23 December 1998, shortly after the arrival in Benguema, SAJ Musa was killed in an explosion during an attack on an ECOMOG weapons depot
14	202, 398	Following the death of SAJ Musa, the troops reorganised. On 5 January 1999, the Accused Brima gathered the troops in Allen Town and told them the time had come to attack Freetown. On 6 January 1999, they invaded Freetown
15	206	Following heavy assaults from ECOMOG, the troops were forced to retreat from Freetown. This failure marked the end of the AFRC offensive as the troops were running out of ammunition. While the AFRC managed a controlled retreat, engaging ECOMOG and Kamajor troops who were blocking their way, RUF reinforcements arrived in Waterloo. However, the RUF troops were either unwilling or unable to provide the necessary support to the AFRC troops.

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SCSL-03-01-T
(12595-12600)

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SPECIAL COURT FOR SIERRA LEONE

TRIAL CHAMBER II

Before:	Justice Julia Sebutinde, Presiding Judge Justice Richard Lussick Justice Teresa Doherty Justice El Hadji Malick Sow, Alternate Judge
Registrar:	Herman von Hebel
Case No.:	SCSL-03-1-T
Date:	5 November 2007

SPECIAL COURT FOR SIERRA LEONE
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PROSECUTOR

Against

CHARLES GHANKAY TAYLOR

DECISION ON EX PARTE AND CONFIDENTIAL PROSECUTION MOTION FOR AN ORDER TO PROVIDE TO THE PROSECUTION NON-PRIVILEGED DOCUMENTS RECENTLY OBTAINED FROM THE ACCUSED'S PERSONAL ARCHIVE

Office of the Prosecutor:
Brenda J. Hollis
Nicholas Koumjian

Defence Counsel for Charles G. Taylor:
Courtenay Griffiths, Q.C.
Terry Munyard
Andrew Cayley

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evidence of (a) the existence of a common plan, design or purpose and the nature of the Accused's participation; (b) the Accused's role in the conflict and the widespread or systematic attack against the civilian population of Sierra Leone; (c) the Accused's relationships, interactions and communications with those involved in the actual conduct of the armed conflict, the attack against the civilian population and the crimes charged; and (d) the Accused's intent, knowledge and/or awareness of the crimes with which he is charged.[6]

6. The Prosecution submits that by seeking such an order no lawyer-client privilege would be affected. They argue that from the statements made during the Status Conference a reasonable inference can be made that Documents "were not recently created and certainly [were] not created as work product by the Defence legal team" and that the Documents from the personal archive existed "before" the Accused was detained by the Special Court for Sierra Leone.[7]

7. The Prosecution recognizes that in seeking this remedy a proper balance must be struck between the rights of the Accused and the Prosecution's right to have access to all potentially relevant information. The Prosecution further understands that any order which it seeks must be proportionate.[8]

III. DELIBERATIONS

8. It is not possible for the Trial Chamber to decide from the available information whether or not any of the documents in the archive are privileged. In any event, no general right rests with the Prosecution to have access to all potentially relevant information, nor is there any general disclosure obligation upon the Defence. The disclosure obligations placed on the Defence under the Rules refer to very limited circumstances such as, for example, the Defence obligations in relation to the defence of alibi and any special defence.[9]

9. Rule 54 of the Rules provides:

> "At the request of either party or of its own motion, Judge or a Trial Chamber may issue such orders, summonses, subpoenas, warrants and transfer orders as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial."

10. The Rule is a general rule in unambiguous language. Clearly, the test for whether the Trial Chamber ought to issue an order under the Rule is whether to do so is necessary (not simply useful or convenient) for the purposes of an investigation or for the preparation or conduct of the trial.[10]

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[6] Motion, para. 11.
[7] Motion, para. 15.
[8] Motion, para. 20.
[9] See Rule 67(A)(ii)(a)(b); *see also Prosecutor v. Delalić, Mucić, Delić, Landžo*, Case No. IT-96-21-T, Decision on Motion to Specify the Documents Disclosed by the Prosecutor that Delalic's Defence intends to use as Evidence, 8 September 1997, para. 7.
[10] *See Prosecutor v. Brima, Kamara, Kanu*, Case No. SCSL-04-16-T, Decision on Joint Defence Motion for General Orders Pursuant to Rule 54, 28 July 2005, para. 20.

11. In the present case, in order to satisfy the requirements of Rule 54 of the Rules, the Prosecution has to

(i) identify the information sought or to describe it by its general nature; and

(ii) show a legitimate forensic purpose.[11]

12. It is not necessary for a party to identify "exactly what material he seeks".[12] It is sufficient for the party to identify as clearly as possible the documents or the nature of the documents to which he seeks access. However, this does not mean that a party may conduct a "fishing expedition" - that is, seek access to material in order to discover whether there is a case to make.

13. As to the second requirement, that the party must show a legitimate forensic purpose for seeking access, it must show that such access would be likely to assist the case *materially*, or that there is at least a "good chance" that it will give that assistance.[13]

14. In the instant case the Prosecution has not identified the information sought, nor even described it by its general nature. On the contrary, the Motion has the hallmarks of a fishing expedition. The Prosecution has only broadly stated that it believes that the material and documents in the personal archive generally relate to the issues in the current proceedings, i.e. material concerning the existence of a Joint Criminal Enterprise, the role of the Accused in the conflict, interactions between the Accused and persons involved in the conflict and his knowledge or intent of the crimes charged. The stated issues do not identify or describe any document, but are merely a restatement of the core elements of the charges against the Accused. Moreover, it follows that, in the absence of identification or description of any document, the Prosecution has not shown how the material in the archive would assist its case materially.

15. Accordingly, the Trial Chamber finds that the Prosecution has failed to establish any grounds for the orders sought under Rule 54.

FOR THE ABOVE REASONS, THE TRIAL CHAMBER

DISMISSES the Motion; and

ORDERS that the Motion and this Decision be served on the Defence.

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[11] *See also Prosecutor v.* Norman, Fofana, Kondewa, Case No. SCSL-04-14, Decision on Interlocutory Appeals against Trial Chamber decision Refusing to Subpoena the President of Sierra Leone, 11 September 2006, paras 9-10 confirming the standard applied by Trial Chamber I with regard to Rule 54, see Decision on Motions by Moinina Fofana and Sam Hinga Norman for the issuance of a Subpoena Ad Testificandum to H.E. Alhaji Dr. Ahmad Tejan Kabbah, President of the Republic of Sierra Leone, 13 June 2007, paras 26-31; *see also Prosecutor v. Delalić, Mucić, Delić, Landžo*, Separate Opinion of Judge Hunt on Motion by Esad *Landžo* to Preserve and Provide Evidence, 22 April 1999, para. 4.

[12] *Prosecutor v. Hadžihasanović, Alagić, Kubura*, Case. No. IT-01-47-PT, Decision on Motion by Maria Cerkez to Confidential Supporting Material, 10 October 2001, para. 11.

[13] *Prosecutor v. Brđanin and Talić*, Decision on Motion by Momir Talić for Disclosure of Evidence, 27 June 2000, para. 7; *Prosecutor v. Brđanin and Talić*, Decision on Motion by Momir Talić for Access to Confidential Documents, 31 July 2000, pars 5-8.

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SCSL-2003-01-I
(3014-3039)

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SPECIAL COURT FOR SIERRA LEONE
JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE
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IN THE APPEALS CHAMBER

Before: Justice Emmanuel Ayoola, Presiding
Justice George Gelaga King
Justice Renate Winter

Registrar: Robin Vincent

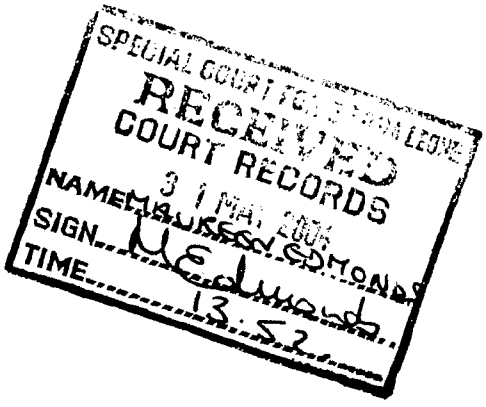
Date: 31 May 2004

PROSECUTOR **Against** **CHARLES GHANKAY TAYLOR**
Case Number SCSL-2003-01-I

DECISION ON IMMUNITY FROM JURISDICTION

Office of the Prosecutor:
Desmond de Silva QC
Luc Côté
Walter Marcus-Jones
Abdul Tejan-Cole

Defence Counsel:
Terence Terry



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THE APPEALS CHAMBER of the Special Court for Sierra Leone ("the Special Court");

SEIZED of the Applicant's motion made under protest and without waiving of immunity accorded to a Head of State requesting the Trial Chamber quash the indictment and declare null and void the warrant of arrest and order of transfer and detention filed on 23 July 2003 ("Applicant's Motion") on behalf of Charles Ghankay Taylor ("the Applicant");[1]

NOTING that the Prosecution filed its Response on 28 July 2003[2] and that the Defence filed its Reply on 30 July 2003;[3]

NOTING that the Applicant's Motion was referred to the Appeals Chamber under Rule 72(E) of the Rules of Procedure and Evidence of the Special Court for Sierra Leone ("the Rules") on 19 September 2003;[4]

NOTING that Defence Additional Submissions pursuant to Rule 72(G)(i) of the Rules were filed on 1 October 2003,[5] that the Prosecution Rule 72(G)(ii) Response was filed on 14 October 2003,[6] and that the Defence Rule 72(G)(iii) Reply was filed on 11 November 2003;[7]

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[1] 'Applicant's Motion made under Protest and without waiving of Immunity accorded to a Head of State President Charles Ghankay Taylor requesting that the Trial Chamber do quash the said approved indictment of 7th March 2003 of Judge Bankole Thompson and that the aforesaid purported Warrant of Arrest and Order for Transfer and detention of the same date issued by Judge Bankole Thompson of the Special Court for Sierra Leone, and all other consequential and related ORDER(S) granted thereafter by either the said Judge Bankole Thompson OR Judge Pierre Boutet on 12th June 2003 against the person of the said President Charles Ghankay Taylor be declared null and void, invalid at their inception and that they be accordingly cancelled and/OR set aside as a matter of Law.', 23 July 2003.

[2] 'Prosecution Response to Defence Motion to quash the indictment against Charles Ghankay Taylor', 28 July 2003.

[3] 'Applicant's Reply to Prosecution Response to Applicant's Motion made under Protest and without waiving immunity accorded to a Head of State President Charles Ghankay Taylor requesting that the Trial Chamber do quash the said approved indictment of 7th March 2003 of Judge Bankole Thompson and that the aforesaid purported Warrant of Arrest and Order for Transfer and detention of the same date issued by Judge Bankole Thompson of the Special Court for Sierra Leone, and all other consequential and related ORDER(S) granted thereafter by either the said Judge Bankole Thompson OR Judge Pierre Boutet on 12th June 2003 against the person of the said President Charles Ghankay Taylor be declared null and void, invalid at their inception and that they be accordingly cancelled and/OR set aside as a matter of Law.', 30 July 2003.

[4] 'Order Pursuant to Rule 72(E): Defence Motion to quash the indictment and to declare the Warrant of Arrest and all other consequential orders null and void', 19 September 2003.

[5] 'Additional Submissions for and on behalf of the Applicant herein Charles Ghankay Taylor pursuant to pursuant to Rule 72 G (i) of the Rules of Procedure and Evidence of the Special Court for Sierra Leone having regard to the order dated the 19th September 2003 of the Trial Chamber of the Special Court for Sierra Leone duly signed by the Presiding Judge Bankole Thompson pursuant to Rule 72(E) of the Rules of Procedure and Evidence of the Special Court for Sierra Leone' 1 October 2003.

[6] 'Prosecution Rule 72(G)(ii) Response Relating to the Defence Motion to quash the indictment', 14 October 2003.

[7] Applicant's Reply to Prosecution Rule 72(G)(ii) Response to Applicant's Motion made under protest and without waiving of immunity accorded to a Head of Stare President Charles Ghankay Taylor requesting that the Trial Chamber do quash the said

not be in question as it was merely the receiving state. A successful claim of sovereign immunity may lead to a claim by *Liberia* of a violation of its sovereignty, as the immunity attaches to the state concerned, not to a third state. However, Liberia is not before this court and in any event we have held that this court is an international court rather than the court of another sovereign state.

58. Since the Applicant is the subject of criminal proceedings before this court, processes issued in the course of, or for the purpose of, such proceedings against the Applicant cannot be vitiated by a claim of personal immunity.

59. Before this matter is concluded, it is apt to observe that the Applicant had at the time the Preliminary Motion was heard ceased to be a Head of State. The immunity *ratione personae* which he claimed had ceased to attach to him. Even if he had succeeded in his application the consequence would have been to compel the Prosecutor to issue a fresh warrant.

VII. DISPOSITION

60. For the reasons we have given this Motion must be dismissed.

Done at Freetown this thirty-first day of May 2004

Justice Ayoola
Presiding

Justice King

Justice Winter

[Seal of the Special Court for Sierra Leone]

B.

2. ICTR Jurisprudence



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

CHAMBER I - CHAMBRE I

OR : ENG

Before:

Judge Laïty Kama, Presiding
Judge Lennart Aspegren
Judge Navanethem Pillay

Registry:
Mr. Agwu U. Okali

Decision of: 2 September 1998

THE PROSECUTOR
VERSUS
JEAN-PAUL AKAYESU

Case No. ICTR-96-4-T

JUDGEMENT

The Office of the Prosecutor:
Mr. Pierre-Richard Prosper

Counsel for the Accused:
Mr. Nicolas Tiangaye
Mr. Patrice Monthé

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1. INTRODUCTION
1.1. The International Tribunal

479. Therefore, as can be seen, the forms of participation referred to in Article 6 (1), cannot render their perpetrator criminally liable where he did not act knowingly, and even where he should have had such knowledge. This greatly differs from Article 6 (3) analyzed here below, which does not necessarily require that the superior acted knowingly to render him criminally liable; it suffices that he had reason to know that his subordinates were about to commit or had committed a crime and failed to take the necessary or reasonable measures to prevent such acts or punish the perpetrators thereof. In a way, this is liability by omission or abstention.

480. The first form of liability set forth in Article 6 (1) is **planning** of a crime. Such planning is similar to the notion of *complicity* in Civil law, or *conspiracy* under Common law, as stipulated in Article 2 (3) of the Statute. But the difference is that planning, unlike complicity or plotting, can be an act committed by one person. Planning can thus be defined as implying that one or several persons contemplate designing the commission of a crime at both the preparatory and execution phases.

481. The second form of liability is **'incitation'** (in the french version of the Statute) to commit a crime, reflected in the English version of Article 6 (1) by the word *instigated.* In English, it seems the words incitement and instigation are synonymous82. Furthermore, the word "instigated" or "instigation" is used to refer to incitation in several other instruments83. However, in certain legal systems and, under Civil law, in particular, the two concepts are very different84. Furthermore, and even assuming that the two words were synonymous, the question would be to know whether instigation under Article 6 (1) must include the direct and public elements, required for incitement, particularly, incitement to commit genocide (Article 2 (3)(c) of the Statute) which, in this instance, translates *incitation* into English as "incitement" and no longer "instigation". Some people are of that opinion85. The Chamber also accepts this interpretation 86.

482. That said, the form of participation through instigation stipulated in Article 6 (1) of the Statute, involves prompting another to commit an offence; but this is different from incitement in that it is punishable only where it leads to the actual commission of an offence desired by the instigator87.

483. By **ordering** the commission of one of the crimes referred to in Articles 2 to 4 of the Statute, a person also incurs individual criminal responsibility. Ordering implies a superior- subordinate relationship between the person giving the order and the one executing it. In other words, the person in a position of authority uses it to convince another to commit an offence. In certain legal systems, including that of Rwanda 88, ordering is a form of complicity through instructions given to the direct perpetrator of an offence. Regarding the position of authority, the Chamber considers that sometimes it can be just a question of fact.

484. Article 6 (1) declares criminally responsible a person who "(...) or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in Articles 2 to 4 (...)". **Aiding** and **abetting**, which may appear to be synonymous, are indeed different. Aiding means giving assistance to someone. Abetting, on the other hand, would

involve facilitating the commission of an act by being sympathetic thereto. The issue here is to whether the individual criminal responsibility provided for in Article 6(1) is incurred only where there was aiding and abetting at the same time. The Chamber is of the opinion that either aiding or abetting alone is sufficient to render the perpetrator criminally liable. In both instances, it is not necessary for the person aiding or abetting another to commit the offence to be present during the commission of the crime.

485. The Chamber finds that, in many legal systems, aiding and abetting constitute acts of complicity. However, though akin to the constituent elements of complicity, they themselves constitute one of the crimes referred to in Articles 2 to 4 of the Statute, particularly, genocide. The Chamber is consequently of the opinion that when dealing with a person Accused of having aided and abetted in the planning, preparation and execution of genocide, it must be proven that such a person did have the specific intent to commit genocide, namely that, he or she acted with the intent to destroy in whole or in part, a national, ethnical, racial or religious group, as such; whereas, as stated *supra*, the same requirement is not needed for complicity in genocide89.

486. Article 6(3) of the Statute deals with the responsibility of the superior, or command responsibility. This principle, which derives from the principle of individual criminal responsibility as applied in the Nuremberg and Tokyo trials, was subsequently codified in Article 86 of the Additional Protocol I to the Geneva Conventions of 8 June 1977.

487. Article 6 (3) stipulates that:

"The fact that any of the acts referred to in Articles 2 to 4 of the present Statute was committed by a subordinate does not relieve his or her superior of criminal responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof".

488. There are varying views regarding the *Mens rea* required for command responsibility. According to one view it derives from a legal rule of strict liability, that is, the superior is criminally responsible for acts committed by his subordinate, without it being necessary to prove the criminal intent of the superior. Another view holds that negligence which is so serious as to be tantamount to consent or criminal intent, is a lesser requirement. Thus, the "Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949" stated, in reference to Article 86 of the Additional Protocol I, and the *mens rea* requirement for command responsibility that:

"[...] the negligence must be so serious that it is tantamount to malicious intent, apart from any link between the conduct in question and the damage that took place. This element in criminal law is far from being clarified, but it is essential, since it is precisely on the question of intent that the system of penal sanctions in the Conventions is based"90.

489. The Chamber holds that it is necessary to recall that criminal intent is the moral element required for any crime and that, where the objective is to ascertain the individual

ICTR-98-41-T
15-06-2004
(20630 - 20623)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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OR: ENG

TRIAL CHAMBER I

Before: Judge Erik Møse, presiding
Judge Jai Ram Reddy
Judge Sergei Alekseevich Egorov

Registrar: Adama Dieng

Date: 15 June 2004

2004 JUN 15 A 11:49
ICTR
JUDICIAL RECORDS

THE PROSECUTOR

v.

Théoneste BAGOSORA
Gratien KABILIGI
Aloys NTABAKUZE
Anatole NSENGIYUMVA

Case No. ICTR-98-41-T

DECISION ON PROSECUTOR'S MOTION FOR RECONSIDERATION OF THE TRIAL CHAMBER'S "DECISION ON PROSECUTOR'S MOTION FOR LEAVE TO VARY THE WITNESS LIST PURSUANT TO RULE 73*BIS*(E)"

Office of the Prosecutor:
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Drew White
Segun Jegede
Christine Graham
Rashid Rashid

Counsel for the Defence
Raphaël Constant
Paul Skolnik
Jean Yaovi Degli
Peter Erlinder
André Tremblay
Kennedy Ogetto
Gershom Otachi Bw'omanwa

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8. There is no exhaustive list of such "particular circumstances", but they include "a case in which the decision, though apparently *res judicata*, is void, and therefore non-existent in law, for the reason that a procedural irregularity has caused a failure of natural justice", or where a party has been subjected to "an unfair procedure".[2] In *Mucic et al.*, the Appeals Chamber, in examining its own powers to reconsider, held as follows:

> The Appeals Chamber has an inherent power to reconsider any decision, including a judgment where it is necessary to do so in order to prevent an injustice. The Appeals Chamber has previously held that a Chamber may reconsider a decision, and not only when there has been a change of circumstances, where the Chamber has been persuaded that its previous decision was erroneous and has caused prejudice. Whether or not a Chamber does reconsider its decision is itself a discretionary decision. Those decisions were concerned only with interlocutory decisions, but the Appeals Chamber is satisfied that it has such a power also in relation to a judgment which it has given – where it is persuaded:
>
> (a) (i) that a clear error of reasoning in the previous judgment has been demonstrated by, for example, a subsequent decision of the Appeals Chamber itself, the International Court of Justice, the European Court of Human Rights or a senior appellate court within a domestic jurisdiction, or
> (ii) that the previous judgment was given *per incuriam*; and
>
> (b) that the judgment of the Appeals Chamber sought to be reconsidered has led to an injustice.[3]

9. The Chamber notes that the language utilized by the Appeals Chamber in the above case seems to suggest that the Appeals Judges were primarily concerned with reconsideration at the appellate level. However, the Chamber considers that the holding is equally applicable to reconsideration of Trial Chamber decisions. This Trial Chamber has previously held that reconsideration is permissible where the impugned decision was erroneous in law or an abuse of discretion when decided,[4] or where there have been new circumstances since the filing of the impugned Decision that affect the premise of the impugned Decision.[5] It is noted that the Prosecution is basing its motion solely on the argument that the impugned decision was erroneous and has caused prejudice.

10. Consequently, the Chamber will now examine, in relation to each witness, if there were any errors in the impugned decision or an abuse of discretion, and whether an injustice has been occasioned by the decision.

Witness AMI

11. The Prosecution submits that the Decision erroneously characterized Witness AMI's proposed testimony as "repetitive": His evidence relates to the Accused Kabiligi's involvement

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[2] *Barayagwiza*, Decision (Prosecutor's Request for Review or Reconsideration) (AC), 31 March 2000, Separate Opinion of Judge Shahabuddeen, paras. 4-5.
[3] *Mucic et al.*, Judgment on Sentence Appeal (AC), 8 April 2003, para. 49.
[4] *Bagosora et al.*, Decision on Reconsideration of Order to Reduce Witness List and on Motion for Contempt for Violation of that Order (TC), 1 March 2004, para. 11.
[5] *Bagosora et al.*, Decision on Defence Motion for Reconsideration of the Trial Chamber's Decision and Scheduling Order of 5 December 2001 (TC), 18 July 2003.



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

IN THE APPEALS CHAMBER

Before:	**Judge Patrick Robinson, Presiding** **Judge Mehmet Güney** **Judge Fausto Pocar** **Judge Liu Daqun** **Judge Theodor Meron**
Registrar:	**Mr. Adama Dieng**
Judgement of:	**18 March 2010**

SIMON BIKINDI

v.

THE PROSECUTOR

Case No. ICTR-01-72-A

JUDGEMENT

Counsel for Simon Bikindi	**Office of the Prosecutor**
Mr. Andreas O'Shea	Mr. Hassan Bubacar Jallow Mr. Alex Obote-Odora Ms. Dior Fall

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146. In support of his contention, the Appellant refers to a paragraph of the *Nahimana et al.* Appeal Judgement, which sets out: (1) the distinction between instigation as a mode of responsibility as opposed to direct and public incitement to commit genocide, which is itself a crime under Article 2(3)(c) of the Statute;[367] and (2) the difference between the offences of genocide and direct and public incitement to commit genocide, namely that the crime of direct and public incitement to commit genocide is an inchoate offence, punishable even if no act of genocide has resulted therefrom.[368] Contrary to the Appellant's submission, the analysis in the *Nahimana et al.* Appeal Judgement in fact supports the proposition that the offence of direct and public incitement to commit genocide is, in and of itself, a serious offence warranting serious punishment, notwithstanding that no physical act of genocide may have been committed. It does not indicate any hierarchy between the two offences. This argument is accordingly dismissed.

147. The Appellant submits that the Trial Chamber committed a further error by taking into account the possible sentences for the crime of genocide under Rwandan law.[369] He argues that as the offence of direct and public incitement to commit genocide does not exist under Rwandan law, it is impossible to precisely assess how it would be treated.[370] The Appellant refers to two Rwandan cases which, in his view, illustrate that the offence of incitement, which does exist under Rwandan law, is closer to direct and public incitement than to genocide and that it is sometimes treated more leniently.[371]

148. The Appeals Chamber reiterates that whilst a Trial Chamber is obliged to take into account the general sentencing practice in Rwanda, it is not obliged to follow it.[372] The Appeals Chamber notes that although it would appear that Rwandan law does not make direct and public incitement to commit genocide a separate offence, it nevertheless criminalizes genocide[373] and provides that the act of, *inter alia*, "incitement, by way of speech, image or writing, to commits [sic] such a crime,

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[367] *Nahimana et al.* Appeal Judgement, para. 678, *citing* the Statute, Articles 6(1) with regard to instigation, and Article 2(3)(c) with respect to direct and public incitement to commit genocide, respectively.
[368] *Nahimana et al.* Appeal Judgement, para. 678.
[369] Bikindi's Appellant's Brief, para. 111, *citing* Trial Judgement, para. 447.
[370] Bikindi's Appellant's Brief, para. 111.
[371] Bikindi's Appellant's Brief, para. 111, fn. 140 *referring to* Bikindi's Respondent's Brief, para. 54 wherein the Appellant cites the following cases: *Prosecutor v. Karamira*, RP 006/KIG/CS, Affaire Procureur c./ Karamira, pp. 2, 11 ("*Karamira* Judgement"); *Prosecutor v. Gataza,* RPAA 0010/GEN/06/CS, Affaire Procureur c./ Gataza Noel [sic] ("*Gataza* Judgement").
[372] *See supra* para. 141.
[373] *See, e.g.,* Organic Law No. 33*bis*/2003 Repressing the Crime of Genocide, Crimes Against Humanity and War Crimes, of 6 September 2003 ("Organic Law No. 33*bis*/2003"), Article 2.

even where not followed by an execution" shall be punishable by penalties provided for under that law.[374]

149. The Appeals Chamber has considered the two Rwandan judgements proffered by the Appellant[375] and is not persuaded that these cases are sufficient to demonstrate that direct and public incitement to commit genocide is treated more leniently by Rwandan courts. The Appeals Chamber notes that Karamira was ultimately convicted for genocide based on various acts, including the giving of a "Hutu Power" speech to which the Appellant refers, and that he was sentenced to death.[376] With respect to Gataza, the Appeals Chamber notes that the Supreme Court of Rwanda confirmed Gataza's sentence of 30 years of imprisonment for murder, attempted murder and "*association de malfaiteurs*" pursuant to Article 51 of Rwanda's Organic Law No. 16/2004 of 19 June 2004.[377] The *Gataza* Judgement is therefore of little assistance in detemining what sentence would apply in Rwanda with respect to the crime for which the Appellant was convicted.

150. The Appellant also submits that the Trial Chamber erred by failing to take into account factors which it ought to have considered for purposes of sentencing, namely, that the Trial Chamber was concerned with an inchoate offence where it had not been demonstrated on the evidence that the commission of this offence resulted in death or physical harm.[378] He submits that this failure is evidenced by the fact that the Trial Chamber recounted the testimony of Witness AKK concerning the deaths of a number of individuals, without recognizing that it was not proven that these deaths resulted from the conduct for which the Appellant was convicted.[379]

151. The Appeals Chamber is not persuaded by these submissions. There is no indication in the Trial Chamber's reasoning on sentencing that it took into account the testimony of Witness AKK with respect to deaths which allegedly occurred as a result of the Appellant's conduct. Indeed, the paragraphs of the Trial Judgement cited by the Appellant were contained in the factual findings

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[374] *See* Organic Law No. 33*bis*/2003, Article 17(3). The Appeals Chamber observes that whilst it would have been preferable for the Trial Chamber to also refer to Organic Law No. 33*bis*/2003 in its discussion on the Rwandan law relating to the offence of genocide, its failure to do so does not impact the validity of the Trial Chamber's overall assessment of Rwanda's sentencing practice.

[375] The Appeals Chamber recalls its earlier finding that it would consider the merits of the Appellant's submissions with respect to these judgements when determining the merits of the Appellant's case. *See* Rule 115 Decision, para. 19.

[376] *See Karamira* Judgement, p. 50/A.

[377] *See Gataza* Judgement, para. 42. The Supreme Court of Rwanda confirmed the judgement of the High Military Court delivered on 5 October 2005 with respect to Gataza's appeal against the first instance judgement of the Military Tribunal dated 24 May 2002. *See Gataza* Judgement, paras. 2, 5, 38.

[378] Bikindi's Appellant's Brief, para. 112, *citing Semanza* Appeal Judgement, para. 374 and *Serushago* Appeal Judgement, para. 23.

[379] *See* Bikindi's Appellant's Brief, para. 112, *citing* Trial Judgement, paras. 268, 272, 273, 325. The Appellant's submissions at paragraphs 113 and 114 of his Appellant's Brief are addressed under the second sub-ground of the Appellant's appeal on sentence, to which they relate. *See infra* Section IV.B.2 (Alleged Failure to Have Regard to Global Trends in Sentencing (Ground B/2)).

under Rwandan law.[495] It argues that the crimes for which the Appellant was convicted would have placed him within the first or second category of Rwanda's Organic Law.[496] The Appeals Chamber recalls that in *Semanza* the Trial Chamber had considered the relevant provisions of Organic Law 08/96 with respect to, *inter alia*, the offence of genocide and the applicable penalties.[497] Similarly, in the present case, the Trial Chamber made it clear that it "considered that under Rwandan law, genocide carries a possible penalty of life imprisonment, or life imprisonment with special provisions, depending on the nature of the accused's participation."[498] The Appeals Chamber repeats that, as it found in the *Semanza* case, "all [that] the Tribunal's Statute requires [is] recourse to the general practice regarding prison sentences in the courts of Rwanda."[499]

198. The Prosecution submits that the sentence imposed by the Trial Chamber "does not serve the objective of reconciliation as recognised by the Tribunal"[500] and that this "low sentence of 15 years in this case, which does not give sufficient weight to Rwanda's sentencing practice, sends the wrong message and serves to further aggravate the suffering of victims".[501] The Appeals Chamber considers that these submissions fail to demonstrate that the sentence imposed does not further the two main purposes of sentencing: retribution and deterrence.[502]

199. The Appeals Chamber observes that the Trial Chamber took into account the maximum sentence available under Rwandan law in the context of all other relevant factors, general as well as individualized, in determining the appropriate sentence in this case. The Appeals Chamber therefore finds no discernible error in the reasoning of the Trial Chamber on this point.

200. This sub-ground of appeal is dismissed.

4. Alleged Inconsistency of the Sentence with the Tribunal's Sentencing Practice

201. The Prosecution contends that the Trial Chamber erred in relying upon the *Kajelijeli* and *Ruggiu* judgements as examples of relevant Tribunal sentencing practice, because they are significantly different from the present case.[503] It submits that the Trial Chamber failed to take into

[495] Prosecution's Appellant's Brief, para. 40.
[496] Prosecution's Appellant's Brief, para. 41, *citing* Organic Law No. 08/96 of 30 August 1996 on the Organisation of Prosecutions for Offences Constituting the Crime of Genocide or Crimes Against Humanity Committed Since October 1 1990 ("Organic Law 08/96"). *See also* AT. 30 September 2009 p. 65.
[497] *Semanza* Appeal Judgement, para. 378, *quoting Semanza* Trial Judgement, paras. 560, 561.
[498] Trial Judgement, para. 447, *citing* Organic Law No. 8/96, as amended by Organic Law No. 31/2007 of 25/07/2007 Relating to the Abolition of the Death Penalty.
[499] *Semanza* Appeal Judgement, paras. 345 (*citing* Statute, Article 23(1)), 347.
[500] Prosecution's Appellant's Brief, para. 43, *citing Akayesu* Sentencing Judgement, para. 19.
[501] Prosecution's Appellant's Brief, para. 43.
[502] *See Nahimana et al.* Appeal Judgement, para. 1057.
[503] Prosecution's Notice of Appeal, para. 2; Prosecution's Appellant's Brief, paras. 45-52.

UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

Original: English

TRIAL CHAMBER III

Before Judges: Inés Mónica Weinberg de Roca, Presiding
Florence Rita Arrey
Robert Fremr

Registrar: Adama Dieng

Judgement of: 2 December 2008

THE PROSECUTOR

v.

Simon BIKINDI

Case No. ICTR-01-72-T

JUDGEMENT

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in such a way as would best favour a fair determination of the case in consonance with the spirit of the Statute and the general principles of law.[43]

Burden and Standard of Proof

30. Pursuant to Article 20(3) of the Statute, an accused shall be presumed innocent until proven guilty. This presumption places on the Prosecution the burden of establishing the guilt of the accused, a burden which remains on the Prosecution throughout the entire trial. A finding of guilt may be reached only when a majority of the Trial Chamber is satisfied that guilt has been proven beyond reasonable doubt.[44] Accordingly, the Chamber determined whether it was satisfied that every element of the crime charged and of the mode of liability and any fact indispensable for a conviction were proven beyond reasonable doubt by the Prosecution.[45] In so doing, it has been necessary on certain occasions for the Chamber to draw inferences from circumstantial evidence. In such cases, the Chamber drew the *only* reasonable conclusion available from the evidence.[46] Where there was another conclusion reasonably open from that evidence inconsistent with the guilt of the Accused, the Chamber did not enter a finding of guilt.

Viva Voce Evidence

31. When evaluating *viva voce* evidence, the Chamber considered various factors, including the witnesses' demeanour in court, the plausibility and clarity of their testimony, and whether there were contradictions or inconsistencies within their testimony or between their testimony and their prior statements relied upon in court or admitted as exhibits. It also considered the individual circumstances of the witnesses, including their role in the events in question, their relationship with the Accused and whether the witnesses would have an underlying motive to give a certain version of the events.

32. The Chamber recognises that a significant period of time has elapsed between the events alleged in the Indictment and the testimonies given in court. Therefore, lack of precision or minor discrepancies between the evidence of different witnesses, or between the testimony of a particular witness and a prior statement, was not regarded in general as necessarily discrediting their evidence. When deciding not to rely on certain aspects of a witness's testimony, the Chamber nevertheless sometimes relied on other parts of the testimony deemed to be reliable and credible.

33. The Chamber also recalls that the testimony of a single witness on a material fact does not, as a matter of law, require corroboration.[47] However, when only one witness presented evidence on a particular incident, the Chamber examined the evidence with particular care before accepting it as a sufficient basis for finding guilt.

34. Applying these criteria, the Trial Chamber assessed the testimony of Witness BKW, a former motorcycle taxi-driver sentenced to death for his participation in the genocide,[48] with great caution. Not only is the witness an alleged accomplice to Bikindi, but he also admitted lying to a court in Rwanda and hiding the truth from Tribunal investigators.[49] Prosecution and

[43] Rule 89(B) of the Rules.
[44] Rule 87(A) of the Rules.
[45] *See Ntagerura et al.*, Judgement (AC), para. 174.
[46] *See Ntagerura et al.*, Judgement (AC), paras. 304 and 306, referring to *Čelebići*, Judgement (AC), para. 458.
[47] *See, e.g.*, *Muvunyi*, Judgement (AC), para. 128; *Seromba*, Judgement (AC), para. 79.
[48] Witness BKW, T. 16 October 2006, pp. 40-42.
[49] Witness BKW, T. 16 October 2006, p. 42; 19 October 2006, p. 10.

Defence Counsel both pointed out that the witness denied having killed anyone when testifying before the Tribunal in the *Nahimana et al.* case,[50] although he testified to the contrary in the present case.[51] As set out in following sections, the Trial Chamber found portions of his testimony to be largely unreliable.[52] Consequently, the Chamber relied on Witness BKW's evidence only insofar as it corroborated, or was corroborated by, other reliable and credible evidence and never as the sole basis for a finding of guilt.

35. The Chamber has also considered Witness KRQ's testimony that, while detained in Gisenyi Prison, sometime between 2003 and 2004, he and four co-detainees were taken to the Rwandan public prosecutor's office and asked by an employee of that office to level accusations against Bikindi.[53] However, in the absence of any corroboration of this serious accusation proferred by a witness with a criminal record, the Chamber has accorded no weight to the witness's assertion.

Expert Witnesses

36. When assessing and weighing the evidence of the expert witnesses, the Chamber considered factors such as the professional competence of the expert, the position held by the expert, the scope of his expertise, the methodologies used, the credibility of the findings made in light of these factors and other evidence, and the relevance and reliability of their evidence.

Documentary Evidence

37. Factors such as authenticity and proof of authorship assumed the greatest importance in the Chamber's assessment of the weight to be attached to individual pieces of documentary evidence.

Interpretation and Transcription

38. In a number of instances, the Chamber identified discrepancies between the French and English versions of the transcripts of testimonies given in Kinyarwanda. In those instances, because the testimonies given in Kinyarwanda were first interpreted in French, and then from French to English before being transcribed in English, the Chamber relied on the French version of the transcripts as more accurate. When in doubt, the Chamber resorted to the original testimony in Kinyarwanda with the assistance of the Tribunal's Languages Support Section.

39. The Chamber also took into account that, as a result of translation and transcription, names of individuals or locations given by witnesses which were similar, but not identical, may actually have referred to the same place or person.

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[50] Witness BKW, 19 October 2006, pp. 3, 10, referring to *The Prosecutor v. Ferdinand Nahimana et al.*, Case No. ICTR-96-11-T, T. 4 September 2001, p. 25.
[51] Witness BKW, T. 19 October 2006, pp. 3, 10.
[52] *See infra* paras. 99-100, 316-317.
[53] Witness KRQ, T. 4 October 2007, pp. 5-7, 14, 19.

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ORIGINAL: ENGLISH

TRIAL CHAMBER II

Before: Judge Khalida Rachid Khan, presiding
Judge Lee Gacuiga Muthoga
Judge Emile Francis Short

Registrar: Adama Dieng

Date: 30 September 2011

THE PROSECUTOR

v.

Casimir BIZIMUNGU
Justin MUGENZI
Jérôme-Clément BICAMUMPAKA
Prosper MUGIRANEZA

Case No. ICTR-99-50-T

JUDGEMENT AND SENTENCE

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Prosper Mugiraneza
Tom Moran
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to security.[311] Mugiraneza Defence Witness RWQ, an MRND and *Interahamwe* member who Witness GJQ testified had received grenades, denied ever possessing grenades, other than as part of his duties as a member of the Rwandan military.[312]

202. Prosecution Witness GJQ was the sole witness to accuse Mugiraneza of weapons distribution in 1991. His evidence was hearsay. He only learned of Mugiraneza's alleged role in 1992 when he joined the *Interahamwe*. Further, he offered no further testimony or details as to when in 1991 the distribution occurred. While Witness GJW corroborated Witness GJQ that Colonel Rwagafilita distributed weapons, Witness GJW did not implicate Mugiraneza in this activity and his evidence was hearsay as well.[313] Last, Witness GJQ's testimony that *Interahamwe* would walk around public places with grenades[314] was undermined by Prosecution Witness GTF. This witness owned a shop close to the Kibungo roundabout in 1994 and testified he did not see any *Interahamwe* armed with rifles, grenades or pistols before the President's death in Kibungo.[315]

203. The Chamber considers the Defence evidence denying the allegation is self-serving.[316] However, it is of the view that the uncorroborated hearsay testimony of Witness GJQ, whose evidence implicating the Accused has been treated with caution (*see* II.6.1), is not an adequate basis upon which to base findings beyond reasonable doubt. As such, the Prosecution has not proven beyond reasonable doubt that Mugiraneza distributed grenades in 1991 that were used in 1994 to kill Tutsis.

2.3 Weapons Distribution at *Hôtel Tourisme*, Gitarama, 1993

204. The Prosecution led evidence through Witness GHU of an alleged weapons distribution at a joint MRND/MDR-Power meeting in Gitarama at the *Hôtel Tourisme* between November and December 1993. Nzabonimana introduced Bicamumpaka to the audience of around 500 persons as a prominent MDR member. Nzabonimana told the crowd to know its enemy, "none other than the *Inyenzi*, and the *Inyenzi* are the Tutsis". Subsequently, Nzabonimana and Bicamumpaka distributed rifles and grenades to those present, including to several *Interahamwe*.[317] It was the second time Witness GHU had seen Bicamumpaka.[318]

205. In contrast, Witness VF-1, who Witness GHU testified was present and received weapons, denied ever having possessed weapons or meeting Bicamumpaka or Nzabonimana.[319] Bicamumpaka also denied having ever distributed weapons to *Interahamwe*

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[311] Mugiraneza, T. 22 May 2008 pp. 7-8.
[312] Witness RWQ, T. 2 June 2008 pp. 8-10, 21-22, 36-37.
[313] Witness GJW, T. 22 March 2004 pp. 52-56; T. 23 March 2004 p. 36; T. 24 March 2004 pp. 14-20, 26-27.
[314] Witness GJQ, T. 14 March 2005 pp. 10, 24-25.
[315] Witness GTF, T. 14 October 2004 pp. 14, 31, 41, 51-52, 57; Exhibit P79 (Witness GTF's Personal Information Sheet). Witness GTF testified to having been in detention three months for crimes not related to the genocide. He was found not guilty and released.
[316] The Chamber considers Mugiraneza's denial to be self-interested. Furthermore, although Witness RWQ expressly contradicted Witness GJQ's evidence, the Chamber is mindful of Witness RWQ's possible interest in distancing himself and the Accused from the alleged distribution of weapons.
[317] Witness GHU, T. 4 March 2004 pp. 5-9, 17-20, 22-23.
[318] Witness GHU, T. 4 March 2004 pp. 4-6, 11-12, 21. *See also* II.3.2.
[319] Witness VF-1, T. 18 October 2007 pp. 6-7, 18. Witness VF-1 was a Hutu and MRND member in 1994. Witness VF-1, T. 18 October 2007 pp. 6, 17-18; Exhibit 3D160 (Witness VF-1's Personal Information Sheet).

him in the evening of 3 April at Murilo's bar in Remera sector. Mugiraneza denied any knowledge of the Kibungo Club or having participated in any meeting on 3 April.

491. In assessing the credibility of Witness GJQ, the Chamber recalls that he was incarcerated at the time of his testimony while the appeal of his death sentence for involvement in the killings of Tutsis was pending.[708] He is an admitted accomplice of Prosper Mugiraneza and has blamed Mugiraneza for his actions. Specifically, while the witness confirmed that he pleaded guilty to the crimes he committed, he testified that he did not voluntarily take part in massacres. Consequently, he requested that the Chamber make Mugiraneza assume all of the responsibility for the crimes that Witness GJQ committed.[709]

492. The Chamber is troubled by Witness GJQ's statement, which imputes responsibility for *all* his crimes to Mugiraneza. The witness's evidence also appears to function as an attempt to minimise his role, or at least his culpability, in the crimes for which he has confessed. Given his pending appeal, the Chamber is reasonably concerned that the witness's testimony may be motivated by a desire to positively influence his proceedings.

493. Furthermore, the Defence challenged Witness GJQ's credibility based on the Judgement of the Kibungo Court of First Instance, which convicted him and sentenced him to death.[710] In its judgement, the Court noted the rejection of Witness GJQ's guilty plea by the Rwandan Office of the Prosecutor.[711] The Court also determined at several points that Witness GJQ lied, denying his responsibility for crimes, as well as falsely accusing his co-accused.[712] The Court did not accept the uncorroborated testimony of Witness GJQ regarding allegations related to the Kibungo Club (also called "Rwatoro Club").[713] This Chamber is not bound by findings of another court adjudicating a separate record, much of which is incomplete in this proceeding. Nonetheless, judicial determination of falsification by a witness raises concerns about his general credibility.[714]

494. Indeed, this Chamber has heard testimony that Witness GJQ threatened to falsely accuse other people and specifically targeted Mugiraneza. Witnesses RWL, RDK, RWB, RDZ and RDF testified that Witness GJQ told them that he would make false accusations against them unless they gave him bribes.[715] Witness RWB also testified that Witness GJQ told him that if they both testified against Mugiraneza, they would receive "compensation".

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[708] Witness GJQ, T. 9 March 2005 pp. 39-40; T. 14 March 2005 pp. 20-21, 26-28; T. 15 March 2005 pp. 3, 37-41; T. 16 March 2005 p. 20.
[709] Witness GJQ, T. 14 March 2005 pp. 19-20.
[710] Mugiraneza Closing Brief, paras. 119-120, 258- 259; Exhibit P213(F) (Judgement of the Kibungo Court of First Instance) p. 238. Exhibit P213 is in Kinyarwanda. The Kinyarawanda version was entered as an exhibit on 10 June 2008 during the testimony of Witness RRD. When it was admitted, translations were requested, but the translated versions (in either French or English) were not admitted as exhibits. Witness RRD, T. 10 June 2008 pp. 53-54. However, a French translation was disclosed on 17 March 2005. Interoffice Memorandum of O. De Schutter, Case Manager Government II Team to Félicité Talon, Coordinator, 17 March 2005. Despite references to "Exhibit P213(E)" in the Mugiraneza Closing Brief, the Chamber was not provided with an English translation of the exhibit.
[711] Exhibit P213(F) (Judgement of the Kibungo Court of First Instance) p. 11.
[712] Exhibit P213(F) (Judgement of the Kibungo Court of First Instance) pp. 192-193, 211-212.
[713] Exhibit P213(F) (Judgement of the Kibungo Court of First Instance) pp. 25-28, 211; *see also* Witness RRD, T. 10 June 2008 pp. 30-33.
[714] *Nchamihigo* Appeal Judgement, paras. 305, 309, 312-314 (overturning factual findings of the Trial Chamber, in part, because insufficient caution was used when assessing the evidence of an accomplice witness who admitted to misleading judicial officials in his own criminal case).
[715] Several witnesses explained that Witness GJQ asked for "sugar", which meant a bribe.

Similarly, Witness GJQ told Witness RDZ that he should have mentioned Mugiraneza's name during his trial in order to receive a lighter sentence. According to those questioned, these allegations were not reported to the Rwandan authorities because Witness GJQ allegedly had influence with them. In the Chamber's view, the testimonies of the five witnesses, while not conclusive, is further evidence that he may be inclined to ignore his testimonial oath and that his evidence should be viewed with considerable suspicion.[716]

495. Turning to the merits of his evidence, the Chamber observes that Witness GJQ provided statements to Tribunal investigators on 20 October 1999, 20 July 2001, 14 November 2002, 28 May 2003 and 21 July 2003.[717] The Defence confronted the witness with the fact that his prior accounts vary as to when he joined the MRND, ranging from September 1992 to August or September 1993.[718] Witness GJQ explained that it was possible that the person taking notes for his statements was mistaken or that he made a mistake concerning dates.[719] However, the witness maintained that attempts to lure him into the MRND party began in July 1992 when he met with Mugiraneza, Rwagafilita and Kabagema at Rwagasore's place, and continued into August.[720] He then testified that he was recruited into the MRND around September or October 1992.[721] The Chamber considers the explanation reasonable.

496. Turning to the Defence evidence, Witness RRD confirmed the existence of the Kibungo Club, that radio broadcasts were used to announce the general meeting in April 1994, and that Rwatoro and Tahimana (as identified by Witness GJQ) were leaders of the club. Like Witness GJQ, he confirmed that elections were held and that Prosper Mugiraneza was not present.[722]

497. However, Defence witness evidence veers dramatically from Witness GJQ's with respect to the topics of discussion and attendees. While Witness GJQ testified that the war was discussed and one of the speakers encouraged the attendees to kill Tutsis, Witnesses

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[716] Witness RWB, T. 6 May 2008 pp. 47-49, 53-57, 60, 62; Witness RDZ, T. 30 April 2008 pp. 29-31, 53-54, 63, 65; T. 1 May 2008 pp. 48-49; T. 5 May 2008 pp. 43-45; Witness RDF, T. 29 April 2008 pp. 14-19. The Chamber omits citation to Witness RDK's evidence due to witness identification concerns. The Defence also challenges Witness GJQ's credibility submitting that his "pattern of lying is consistent with GJQ's history of putting himself and his interests above all else". As an example, the Defence points to Witness GJQ's motivation for joining the MRND, which the Defence alleges was out of self-interest and the immediate benefit of tires for his lorry (Mugiraneza Closing Brief, para. 123). The Defence cites the evidence of Witnesses RWL and RDZ. Witness RWL, T. 5 March 2008 pp. 34, 43-45; Witness RDZ, T. 30 April 2008 pp. 28-30, 34, 59; T. 1 May 2008 pp. 57-58; Exhibit 4D82 (Names of the Individuals that Gave Tires to Witness GJQ). Witness GJQ admitted that he received tires from Rwagafilita. Witness GJQ, T. 10 March 2005 pp. 29-30.

[717] Witness GJQ, T. 9 March 2005 pp. 38-39; T. 16 March 2005 p. 12; Exhibit 1D59(E) (Witness GJQ's Statement, 20 October 1999). Aside from the statement dated 20 October 1999, the other four statements of Witness GJQ were not entered as exhibits despite inquiry from the Chamber. Consequently, the Chamber must rely on the excerpts or summaries of the other statements, which were read into the record. Witness GJQ, T. 17 March 2005 pp. 46-47.

[718] *See* Witness GJQ, T. 17 March 2005 pp. 24-25 (Witness GJQ's Statements, July 2001 and November 2002). *See also* Exhibit 1D59(E) (Witness GJQ's Statement, 20 October 1999) p. 2.

[719] Witness GJQ, T. 17 March 2005 p. 25.

[720] Witness GJQ, T. 17 March 2005 pp. 24-25. According to the October 1999 statement, Witness GJQ met with Mugiraneza, Rwagafilita, Kabagema, Emmanuel Mugiraneza and other persons at Rwagasore's bar in August or September 1993. Exhibit 1D59(E) (Witness GJQ's Statement, 20 October 1999) p. 2.

[721] Witness GJQ, T. 15 March 2005 pp. 21, 36; T. 17 March 2005 p. 25.

[722] Witness RRD, T. 10 June 2008 pp. 12-14, 18-20, 22-24, T. 11 June 2008 pp. 15-18; *see also* Witness GJQ, T. 10 March 2005 pp. 42-44, T. 14 March 2005 pp. 12-13, T. 17 March 2005 p. 34.

Mugenzi Defence Witness Jeannette Uzamukunda

682. Jeannette Uzamukunda, a Tutsi, is Mugenzi's wife and Vestine Ugiranyina's older sister.[1011] Uzamukunda testified that the gendarmes who were assigned to Mugenzi were not under his control and he could not order them to do things. Rather, they were under the control of the gendarmerie.[1012]

Deliberations

683. There is no dispute that Vestine Ugiranyina, along with possibly more than 1,000 other primarily Tutsi refugees took refuge at Rukara Parish around 7 April 1994. During Ugiranyina's stay, attackers, described by Witness LEL as *Interahamwe*, launched an assault as early as 8 April. According to Ugiranyina, firearms and grenades were employed in the attack. Prosecution Witness LEL and Ugiranyina confirmed that many persons who sought refuge there had been killed.

684. The Mugenzi Defence also agrees that Ugiranyina was rescued from the church at Rukara Parish by gendarmes in Mugenzi's security detail or persons cooperating with them. The Prosecution has presented this event as evidence of Mugenzi's ability to prevent massacres and knowledge that Tutsis were being killed at Rukara Parish. The Mugenzi Defence, however, contends that he was unaware both of the involvement of his security detail in this operation and that killings were occurring at Rukara Parish.[1013]

685. The Prosecution did not lead any direct evidence that Mugenzi knew that the Tutsi refugees in Rukara Parish were going to be massacred. Rather, it invites the Chamber to infer this knowledge based on Witness LEL's evidence that Mugenzi sent "soldiers" to rescue Ugiranyina. Witness LEL was the only witness to testify that Ugiranyina was rescued by soldiers on Mugenzi's orders.[1014]

686. At the outset, the Chamber accepts that Witness LEL sought refuge in the church at Rukara Parish in April 1994. The fundamental features of Witness LEL's evidence about attacks there and the rescue of Ugiranyina are corroborated by Defence evidence. The Chamber has considered that the Defence attempts to undermine her credibility, by pointing out how her testimony has evolved from prior statements to Tribunal investigators or the Prosecution, does little to undermine the central, undisputed aspects of her evidence.[1015]

[1011] Uzamukunda, T. 20 April 2006 pp. 47-48; Exhibit 2D98 (Witness Uzamukunda's Personal Information Sheet).

[1012] Uzamukunda, T. 20 April 2006 pp. 47-48; T. 21 April 2006 p. 20.

[1013] Mugenzi Closing Brief, paras. 1256, 1265; Mugenzi Closing Arguments, T. 2 December 2008 p. 84.

[1014] The Mugenzi Defence mistakenly notes at para. 1256 of its Closing Brief that Witness LEL did not give any evidence about who had ordered the gendarmes to go to Rukara Parish.

[1015] For example, the Mugenzi Defence noted that in a prior statement to Tribunal investigators in 2001, Witness LEL could not recall the name of who was rescued but identified Ugiranyina by name while testifying. *Compare* T. 16 February 2004 p. 43 (reading of Witness LEL's prior statement, indicating "I no longer recall her name") *and* T. 16 February 2004 p. 39 (testifying that once she heard Vestine's name in the church, she remembered it "from that date on"). Witness LEL explained that given the traumatic nature of the events, it was difficult to recall events but that she had known Vestine's name for "quite a while". Witness LEL, T. 16 February 2004 pp. 42-43, 54. *Compare* T. 16 February 2004 pp. 43-44, 48 (reading of her will-say statement, which states: "[t]his Vestine was the only refugee this witness knew of to have been saved from the Rukara church massacre by the intervention of a person in authority") *and* T. 16 February 2004 p. 33 (testifying that a second woman was rescued with Vestine). Witness LEL clarified that she had not seen the other woman leave with Vestine but had

687. Nonetheless, Witness LEL's testimony does not implicate Mugenzi in the attack on Rukara Parish. Specifically, she did not describe Mugenzi as being present during the assault, or the attackers, which she referred to as *Interahamwe*, as following Mugenzi's orders. Likewise, she gave no evidence to suggest that the security personnel who saved Ugiranyina, whom she called soldiers, participated in the attacks at Rukara Parish. Her evidence that Mugenzi had sent these soldiers to save Ugiranyina is second-hand, and thus of limited probative value.[1016]

688. The Prosecution's assertions that Mugenzi must have known and that the gendarmes would not have acted without his approval are not supported by the evidence.[1017] Mugenzi and Defence Witnesses Ugiranyina and Mukagakwavu have testified that although a driver and security personnel that were assigned to protect Mugenzi did extract Ugiranyina and her husband's niece, Claudine, they did so without Mugenzi's knowledge. Their evidence tends to suggest that Mugenzi was likewise unaware of what was occurring at Rukara Parish at that time.[1018] The Defence has also presented evidence that Mugenzi was not in control of the gendarmes assigned to him, but rather they were under the control of the gendarmerie.[1019]

689. The Chamber views the testimony of Mugenzi and the Defence witnesses with suspicion. Mugenzi has an interest in denying his ability to control soldiers and gendarmes, who, in the Indictment, are part of a category of assailants for which the Prosecution seeks to hold him responsible.[1020] Likewise, Defence Witnesses Ugiranyina, Mukagakwavu and Uzamukunda are close personal relations and received protection from him during the events of 1994.[1021]

690. Nevertheless, the Chamber also observes that there is undisputed evidence that on 9 April 1994, the day Ugiranyina and Mukagakwavu testified Ugiranyina's extraction from Rukara Parish occurred, Mugenzi was sworn in as a member of the Interim Government, involved in meetings and conveying instructions to MRND and *Interahamwe* leaders to stop killings throughout Kigali (II.7.2; II.7.3).

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heard about it and that at the time of her interview it was difficult to recall all the details about the event. Witness LEL, T. 16 February 2004 pp. 52-53.

[1016] Witness LEL, T. 16 February 2004 pp. 33 ("They [refugees] only said that it was Mugenzi who had sent these soldiers to come and take that woman."), 52 ("Q: I think you have made it plain in your evidence today that the soldiers did not mention Mugenzi's name; is that right? A: That's correct; he never mentioned his name."), 53 ("The soldiers did not say that [Mugenzi ordered them to get Vestine] while I was – it was in my earshot; it was stated by the refugees who were with me."), 56 ("Q: And he, or they [soldiers], never mentioned the name of Mugenzi, that's clear. A: The name was mentioned by the refugees.").

[1017] Prosecution Closing Brief, para. 413.

[1018] Mugenzi explains that on the day of the rescue he had sent his driver out to get his mother, Edreda Mukagakwavu, to bring her back to his home in Kigali. After the driver left he had no other contact with him, and was thus unaware that the driver agreed with Mukagakwavu to some detours, including picking up Ugiranyina. Mugenzi, T. 9 November 2005 p. 82. Defence Witnesses Vestine Ugiranyina and Edreda Mukagakwavu corroborate his testimony. Mukagakwavu, T. 24 April 2006 p. 9; Ugiranyina, T. 20 April 2006 pp. 7-8, 27-29, 43.

[1019] Uzamukunda, T. 21 April 2006 p. 20.

[1020] *See* Indictment, paras. 5.36-5.37, 6.14, 6.35, 6.37, 6.61, 6.63, 6.65.

[1021] In Gitarama Mugenzi arranged housing for Ugiranyina and her family, and protection by the Gitarama prefect. Mugenzi, T. 9 November 2005 p. 82. On 15 April 1994, Ugiranyina and her family stayed with Mugenzi's friend, Baptista Kamugisha, in Shyogwe, Gitarama. He later arranged for them to move to a house behind Democracy stadium in Gitarama town and for them to receive travel documents from Fidèle Uwizeye, the Gitarama prefect. Ugiranyina, T. 20 April 2006 pp. 13-14, 25-29. Mugenzi sent a driver and a guard to get his mother in Kigali and bring her to him. Mukagakwavu, T. 24 April 2006 pp. 9-10.

691. The Chamber has also considered evidence from Mugenzi, Bizimungu and former Minister André Ntagerura that telephone communication in Kigali had been disrupted.[1022] There is other evidence that travel between the two prefectures was also difficult. Specifically, the driving distance between Kigali and Rukara commune was significant.[1023] Additionally, there is evidence tending to suggest that roadblocks could have impeded travel and that some of the area was under RPF control.[1024] In the Chamber's view, this evidence raises further questions about whether Mugenzi was aware of what was occurring at Rukara Parish when he sent his car and driver to pick up his mother in Kigali on 7 April 1994.

692. It is also reasonable to conclude that, once in the company of Mugenzi's family, Mugenzi's security detail would have acted on their orders alone. Given all of the above, it is not unlikely that Mugenzi lacked knowledge about attacks on Rukara Parish or the details of what his security personnel were doing once having gone to assist his family.

693. Finally, the Chamber does not consider that Witness LEL's uncorroborated hearsay evidence provides a sufficient basis for it to conclude beyond reasonable doubt that Mugenzi sent security personnel, whether they be soldiers or gendarmes, to rescue Vestine Ugiranyina and her husband's niece, Claudine, knowing that attacks on Tutsis had occurred or were going to occur at Rukara Parish. Furthermore, the evidence fails to establish that Mugenzi gave orders to any category of assailants participating in the attack, or that any were his subordinates. Based on the foregoing, the Chamber need not address notice challenges.

6.5 Killings at the Saint Joseph Economat, 15 April 1994

Introduction

694. The Indictment alleges that, from 7 April 1994, massacres of the Tutsi population were perpetrated by militiamen, military personnel and gendarmes on the directives or to the knowledge of authorities, including the four Accused. Specifically, the Prosecution alleges that Colonels Rwagafilita and Nkuriyekubona, who were in charge of the massacres in Kibungo, ordered Witness GJQ to kill people who were hiding at the Economat on 15 April. It submits that government officials, including Prosper Mugiraneza, were aware of this

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[1022] For example, Mugenzi testified that there were no mobile phones in Rwanda in 1994. He also testified that telephones outside Kigali were broken down as the central system of Rwandan telephones had been blown up in the first week of the war and were only restored after the war. Mugenzi, T. 9 November 2005 pp. 53-54. Bizimungu testified that on 8 April 1994 most lines of communication from Kigali were cut and a couple of days later all lines of communication were out because the RPF had bombed telecommunication systems in Kigali. Bizimungu, T. 4 June 2007 pp. 44-45. Former Minister André Ntagerura testified that from 6 to 7 April 1994 the RPF destroyed the central telecommunications system in Kigali, cutting off all communication with other prefectures and the outside world. Ntagerura, T. 19 February 2007 p. 22. *But see* Makeli, T. 30 October 2007 p. 25 (agreed that by 23 April 1994, phone lines in Kacyiru and Remera were not working but those close to Radio Rwanda in Kigali were).

[1023] Former Minister André Ntagerura testified that, under normal conditions, travel from Kigali to Kigarama would take about 1 hour and 20 minutes. Ntagerura, T. 19 February 2007 p. 20. Paul Mujyambere testified that the drive from Kigarama to Rukara is about 30 kilometres. Mujyambere, T. 6 May 2008 p. 7; *see also* Exhibit 1D24 (Administrative and Roads Map of Rwanda); Exhibit 1D39(A) (Administrative and Roads Map of Rwanda).

[1024] Defence Witnesses WFQ1 and Antoine Nyetera testified that the Kigali-Kibungo road was impassable because of its location in a zone of combat controlled by the RPF. Witness WFQ1, T. 4 October 2006 pp. 48-49; Nyetera, T. 26 September 2006 p. 13.

testified that the last time he was in Kibungo was 3 April, which is corroborated by Witness GJQ's evidence.[1053]

712. Considering the uncorroborated hearsay evidence provided by Witness GJQ, as well as the Chamber's reservations about the witness generally, there is reasonable doubt that Mugiraneza was in contact with Rwagafilita during the planning and execution of the Economat massacre. Consequently, the Prosecution has failed to establish beyond reasonable doubt that Mugiraneza was involved in, or had knowledge of, the massacres occurring at the Economat in Kibungo on 15 April 1994 or the killing of injured persons on 18 April. In light of this finding, the Chamber need not consider objections related to insufficient notice.[1054]

7. KIGALI PREFECTURE, 6 – 12 APRIL 1994

7.1 Meeting and Distribution of Weapons in Kabuga, 6, 7 and 9 April 1994

Introduction

713. The Indictment alleges that from late 1990 to July 1994, all four Accused conspired amongst themselves and others to exterminate Tutsi civilians and eliminate members of the opposition. A component of this plan included the distribution of weapons to militiamen and certain civilians with the intent to exterminate the Tutsi population and its accomplices. More specifically, the Prosecution alleges that, on 6 April 1994, Bicamumpaka and others met at Joseph Sebisogo's house in Kabuga and Bicamumpaka ordered the *Interahamwe* to hunt down and kill Tutsis. Bicamumpaka returned to Kabuga on 9 April with weapons, which he gave to *Interahamwe* leaders to distribute. Following this, the massacres of Tutsis in Kabuga intensified once more. The Prosecution relies on the testimony of Witness GHY. The Prosecution, relying on the testimony of Witness GHT, further alleges that, on 7 April, Bicamumpaka brought weapons to Kabuga, distributed them to the *Interahamwe* after which massacres of Tutsis in Kabuga intensified.[1055]

714. Bicamumpaka's Defence argues that there was no notice for these allegations. Furthermore, it contends that Witnesses GHY and GHT are unreliable. Bicamumpaka was at home with his family in Kigali on 6 and 7 April 1994 and on 9 April he was present at the swearing-in ceremony of the Interim Government, held meetings with the diplomatic core in Kigali, and attended two cabinet meetings. He denies travelling to Kabuga at any point between 6 and 9 April. Bicamumpaka's Defence relies on the testimonies of Bicamumpaka, Witnesses Abubakar Nduwayezu, Jean Rwagatera, OK-3, TK-1, OG-3, TF-2 and LD-1, and Prosecution Witness DCH.[1056]

[1053] Mugiraneza, T. 27 May 2008 pp. 12-13; Witness GJQ, T. 16 March 2005 p. 50.
[1054] The Chamber recalls that evidence relating to events occurring in Kibungo prefecture was only admitted to be considered against Mugiraneza for the allegations of conspiracy to commit genocide and complicity in genocide. Reconsideration of the Trial Chamber's Decision of 5 February 2004 Pursuant to the Appeals Chamber's Decision of 15 July 2004 (TC), 4 October 2004, p. 14.
[1055] Indictment, paras. 5.1, 5.19, 5.22, 6.10, 6.16, 6.18, 6.35-6.36; Prosecution Pre-Trial Brief, paras. 136 (p. 30), 197-198 (p. 43), 283 (p. 56); Prosecution Closing Brief, paras. 123, 148, 251, 254, 362-364, 376-378, 846, 870, 889-890, 934-941, 957-1004; Prosecution 21 November 2008 Document, Item Nos. 76-77; Prosecution Closing Arguments, T. 1 December 2008 pp. 4, 12, 61-62.
[1056] Bicamumpaka Opening Statement, T. 13 August 2007 pp. 12, 17; Bicamumpaka Closing Brief, paras. 22, 65, 67, 239, 261, 305-362, 394, 401, 692-697, 798; Bicamumpaka Closing Arguments, T. 3 December 2008 pp. 65-66; T. 5 December 2008 pp. 28-31.

brother and the Tanzanian took Witness GHT away. On the next day, 9 April, Witness LD-1's brother told her that he and the Tanzanian had disguised Witness GHT as a Muslim so that she could pass through a roadblock, and had taken her to the mosque to hide her there. Witness LD-1 testified that Abubakar Nduwayezu was at the mosque between 8 and 12 April but she did not see him there or anywhere else during those dates.[1111]

752. Witness LD-1 did not see or meet Bicamumpaka at any time in March or April 1994. She also stated that she did not know Bicamumpaka during this time. She denied that Witness GHT was introduced to Bicamumpaka at her parents' home at any time in late March or early April as her parents did not know Bicamumpaka. She was sure that Bicamumpaka did not go to her father's home as he was "a drunkard," talkative and would have mentioned it.[1112]

Bicamumpaka Defence Witness OG-3

753. Witness OG-3, a Hutu, took care of Bicamumpaka's children and lived in his home in Kigali in 1994.[1113] On 6 April 1994, Bicamumpaka left the family house during the day, but had returned by the time President Habyarimana's plane was shot down. When he came back home he did not go to his bedroom but watched television in the sitting room as usual. Later that evening, following the news about the President's plane crash, a *communiqué* was issued over Radio Rwanda telling people to stay at home for their safety. Consequently, she and Bicamumpaka's family, including Bicamumpaka, stayed at home from that moment until around 10.00 p.m. on 8 April when he left with his family, accompanied by soldiers and Donat Murego, to an unknown location.[1114]

Deliberations

754. Relying on Witness GHY, the Prosecution alleges that on 6 April 1994, Bicamumpaka met others at Joseph Sebisogo's house and ordered the *Interahamwe* to kill Tutsis. Bicamumpaka returned to Kabuga on 9 April to distribute weapons to *Interahamwe*. Following this distribution, the massacre of Tutsis in Kabuga intensified. Further, relying on Witness GHT, the Prosecution alleges that on 7 April, Bicamumpaka brought weapons to Kabuga to distribute to the *Interahamwe* and thereafter massacres against Tutsis intensified.

755. Bicamumpaka denied travelling to Kabuga at any point between 6 and 9 April 1994 contending that he was at his home in Kigali with his family on 6, 7 and 8 April, and participating in Interim Government affairs in Kigali on 9 April. The Chamber shall address these allegations in turn.

(i) Meeting at Joseph Sebisogo's House, 6 April 1994

756. Witness GHY is the only Prosecution witness to provide evidence of Bicamumpaka's presence at a meeting in Kabuga on 6 April 1994. Specifically, Witness GHY testified that in the evening of 6 April she saw three men dressed in *Interahamwe* uniform drive into Kabuga from the direction of Kigali. She was subsequently told by one of her neighbours that

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[1111] Witness LD-1, T. 28 April 2008 pp. 9, 13-15, 22.
[1112] Witness LD-1, T. 28 April 2008 pp. 4, 10, 18-20.
[1113] Witness OG-3, T. 5 February 2008 pp. 18-19, 27; Exhibit 3D179 (Witness OG-3's Personal Information Sheet).
[1114] Witness OG-3, T. 5 February 2008 pp. 19-22, 27-28, 30-31, 33, 35, 37.

Bicamumpaka had been in the vehicle and that he had held a meeting later that evening with *Interahamwe* and others at *Interahamwe* treasurer Joseph Sebisogo's house.

757. Before turning to the merits of Witness GHY's testimony, the Chamber will consider her general credibility. Witness GHY testified at trial that she did not know who Bicamumpaka was on 6 April 1994 when she first saw him, but was told of his identity by her neighbour.[1115] However, in a 3 February 2000 statement to Tribunal investigators, Witness GHY contended that on 6 April she already knew Bicamumpaka, as he would often visit trader Sebisogo, who was also her neighbour.[1116] When confronted with this discrepancy at trial, Witness GHY denied that she had ever told the investigators that she had previously known Bicamumpaka and that when her statement had been read back to her in 2000 it did not contain that statement. Moreover, she queried whether the signature on the statement was hers, reiterating that she did not know Bicamumpaka at this time.[1117]

758. The Chamber considers that Witness GHY's insistence that she did not know who Bicamumpaka was in 1994 creates real concerns about her ability to identify him. By her own admission, she did not recognise him in the vehicle that passed her on 6 April as she did not know who he was. Rather, she only saw three unknown individuals wearing the uniform of the *Interahamwe* in the vehicle. She was subsequently told that Bicamumpaka had been in that vehicle by her neighbour, who had followed the vehicle to Sebisogo's house. The Chamber considers that in the absence of corroboration, Witness GHY's hearsay identification evidence is weak. The Chamber has similar concerns about the witness's ability to identify Bicamumpaka on 9 April (discussed below).

759. In an effort to impeach Witness GHY's testimony, the Bicamumpaka Defence proffered the judgement from a genocide trial of 32 accused before the Kigali Court of First Instance.[1118] As a general matter, the observations of judges reviewing an entirely separate record are of little probative value in this proceeding.[1119] However, judicial findings that a witness lied in a separate proceeding – rather than just general credibility concerns – could be a basis for considering his or her evidence before this Tribunal with caution.[1120] While, contrary to the Bicamumpaka Defence submission, the Kigali Court of First Instance did not find that Witness GHY lied on numerous occasions before it, it did question Witness GHY's sincerity.[1121] This gives the Chamber pause.

[1115] Witness GHY, T. 29 September 2004 pp. 3, 5-8, 19, 34-35.
[1116] Witness GHY's 7 February 2000 Statement was not admitted into evidence at trial. However, the relevant excerpt was read into the record at T. 29 September 2004 pp. 19-20.
[1117] Witness GHY, T. 29 September 2004 pp. 20-24.
[1118] Exhibit 3D8(F) (Judgement of the Kigali Court of First Instance) pp. 3, 7, 9, 27, 30-31, 33-34; Exhibit 3D156 (Judgement of the Kigali Court of First Instance) pp. 4-5, 8-9, 13, 22, 39.
[1119] *Cf. The Prosecutor v. Georges Rutaganda*, Case No. ICTR-96-03-R, Decision on Requests for Reconsideration, Review, Assignment of Counsel, Disclosure, and Clarification (AC), 8 December 2006, paras. 15, 20 (alleged findings in a Rwandan proceeding that Tribunal witnesses generally lacked credibility were insufficient to justify review proceedings).
[1120] *Cf. Nchamihigo* Appeal Judgement, paras. 68, 77, 83 (overturning factual findings of the Trial Chamber, in part, because it relied on the uncorroborated evidence of a witness convicted for forgery without having exercised appropriate caution), 305, 309, 312-314 (overturning factual findings of the Trial Chamber, in part, because insufficient caution was used when assessing the evidence of an accomplice witness who admitted to misleading judicial officials in his own criminal case).
[1121] Bicamumpaka Closing Brief, paras. 312-313; Exhibit 3D8(F) (Judgement of the Kigali Court of First Instance) p. 37.

760. Turning to the merits of Witness GHY's testimony about this allegation, the Chamber first recalls that in contrast to what the Prosecution alleges, Witness GHY only testified to Bicamumpaka's presence at a meeting attended by *Interahamwe*. She did not give any evidence that Bicamumpaka ordered Tutsis to be killed at this meeting. Moreover, her testimony that Bicamumpaka was at the meeting is based entirely on her neighbour's out-of-court statements, which are second-hand and thus of limited probative value.

761. Turning to the Defence evidence, Bicamumpaka denied having attended the meeting at Sebisogo's house on 6 April 1994 testifying that he remained at home in Kigali with his family from late afternoon on 6 April to 2.00 a.m. on 9 April. Bicamumpaka's testimony is generally corroborated by Witness OG-3 who was working at his residence. Moreover, Witnesses DCH, TK-1, OK-3 and TF-2, who lived in Kabuga in April 1994, did not see or hear that Bicamumpaka was in Kabuga in April.

762. This evidence is far from dispositive. Bicamumpaka has an interest in denying that he was in Kabuga on 6 April 1994. Likewise, Defence Witness OG-3 was a former employee of the Accused and consequently may have a motive to testify in a manner favourable to him. Witnesses TK-1, TF-2 and OK-3's general evidence that they did not see or alternatively hear that Bicamumpaka was in Kabuga in April is not dispositive. Notably, they also denied knowing him. Moreover, Witness TK-1 is an alleged accomplice of Bicamumpaka and, therefore, has a clear motive to deny Bicamumpaka's presence at Sebisogo's home where he was staying from 6 April for three to four weeks.[1122] Witness DCH's evidence is likewise of limited probative value in light of his testimony that he went home when he heard the shots that brought the President's plane down.[1123]

763. Bicamumpaka also introduced UNAMIR cables, which he claims demonstrate that it was impossible for him to have travelled from Kigali to Kabuga from 6 to 9 April 1994. The UNAMIR communications indicate that the RPF had taken control over some parts of eastern Kigali, the most likely route to Kabuga.[1124] Witness TK-1 testified, however, that several roads besides the paved road between Kigali and Kabuga would allow one to travel between the two locations.

764. Notwithstanding the frailties in the Defence evidence, Witness GHY's uncorroborated hearsay evidence fails to provide a sufficient basis for the Chamber to make findings beyond reasonable doubt. The Prosecution has not proven that Bicamumpaka attended a meeting with *Interahamwe* at Joseph Sebisogo's house on 6 April 1994 at which he ordered that Tutsis be killed.

(iii) Distribution of Weapons, 7 April 1994

765. Witness GHT is the only Prosecution witness to provide evidence of Bicamumpaka's role in weapons distribution in Kabuga on 7 April 1994. Specifically, Witness GHT testified that around 12.00 p.m., she saw, through the window of her father-in-law's house, a white

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[1122] Witness TK-1, T. 16 October 2007 pp. 74-75, 90-92; T. 17 October 2007 p. 3. The Chamber notes that Witness TF-2 was not asked, nor did he testify, specifically about his whereabouts on 6 April 1994.
[1123] Witness DCH, T. 21 September 2004 pp. 31-32.
[1124] Witness TK-1, T. 17 October 2007 p. 2; Exhibit 3D85 (Outgoing Cable from Booh-Booh to Annan, Goulding and Hansen, 9 April 1994) p. 1; Exhibit 3D87 (Outgoing Cable from Annan to Booh-Booh, 11 April 1994); Exhibit 3D97 (Outgoing Facsimile from Booh-Booh to Annan, 15 April 1994); *see also* Report on Site Visit (5 to 10 October 2008), 22 October 2008, p. 2 (distance from Kigali to Kabuga is 13 kilometres).

advising them not to take part in the massacres. Ndindabahizi was not aware of the cessation of killings by the *Interahamwe* after 9 April.[1213]

Mugenzi Defence Witness Agnès Ntamabyaliro

828. Agnès Ntamabyaliro, a Hutu, was appointed Minister of Trade and Industry in April 1992 and Minister of Justice in July 1993, a post which she retained in the Interim Government.[1214] After the swearing-in ceremony on 9 April 1994, Ntamabyaliro did not recall any other meetings that day. The first cabinet meeting took place on 10 April and she could not recall who was present, including whether Mugenzi attended. The cabinet was informed of the killings in Kigali, but not about other killings in the prefectures. The killings were committed by unruly soldiers and *Interahamwe*, which were denounced by the Interim Government. At the time, the ethnicity of the victims was unclear as people from all ethnic groups were being killed.[1215]

Deliberations

829. The parties do not dispute that there was a meeting among Mugenzi, Nzirorera, and *Interahamwe*, including Witness D, at which Witness D and the other *Interahamwe* were tasked with instructing the killers throughout Kigali to stop killing. Although Witness D places the meeting on 10 April 1994, the Chamber is satisfied that the meeting took place on 9 April, as Mugenzi testified.[1216] Further, the Interim Government, at the 9 April cabinet meeting, was advised that civilians were being killed by the *Interahamwe*. The only issues before the Chamber are the reasons for the pacification mission and whether Mugenzi expressed satisfaction that many Tutsis had been killed.

830. Witness D was the sole witness to testify for the Prosecution in relation to this event. Before turning to the merits of the Prosecution evidence, the Chamber looks at the general credibility of Witness D. His relationship with the Prosecution is extensive. He has provided information to the Prosecution and evidence on its behalf concerning the events of 1994 and assisted in the location of fugitives.[1217] Furthermore, he has received direct or indirect payments from the Prosecution between 1996 and May 2007 for his assistance and has been placed in a witness protection program. Many payments appear to be reasonable expenditures to cover travel, communication and other hardships related to assisting investigations or testifying before the Tribunal.[1218] Notwithstanding, the payments are significant.[1219]

[1213] Ndindabahizi, T. 2 May 2007 pp. 8-11, 15-16.
[1214] Ntamabyaliro, T. 21 August 2006 pp. 3-7; Exhibit 2D102A (Ntamabyaliro's Personal Information Sheet). At the time of her testimony, Agnès Ntamabyaliro was charged with genocide and a detainee in Kigali prison. Her trial had commenced but was postponed so that she could testify before the Tribunal. T. 23 August 2006 pp. 18-19.
[1215] Ntamabyaliro, T. 21 August 2006 pp. 42-44; T. 28 August 2006 pp. 55-56.
[1216] During his testimony, Witness D stated that he believed that the Interim Government had been sworn in on the day of the meeting. The Chamber accepts that the Interim Government was sworn in on 9 April 1994 (II.7.2), and, thus, accepts that the meeting where Witness D and others were instructed to undertake the pacification tour took place on 9 April. The Chamber notes that the Indictment places the meeting on 9 April.
[1217] *See* Witness D, T. 15 June 2004 pp. 67-68; T. 17 June 2004 pp. 13-14, 67-70.
[1218] *See, e.g.*, Witness D, T. 15 June 2004 pp. 68-69; T. 16 June 2004 pp. 8-9, 71; Exhibit P56 (Statement of Payments to Witness D, 15 February 2002).

831. Furthermore, in February 2002, the Prosecutor issued a statement that the Prosecution had decided not to open an investigation against Witness D given that the "evidence assessed" did not provide sufficient grounds to prosecute him. It further described his willingness to cooperate with the Office of the Prosecutor.[1220] Notably, this agreement was made in order to secure his testimony in the *Nahimana et al.* trial. While Witness D testified that this was done to allay suspicions about his involvement in the genocide and affirm his general credibility, it can also be seen as a concession made to obtain testimony.[1221] The record does not reflect that the Prosecution has acted improperly or sought to influence Witness D's testimony. Nonetheless, the possibility that Witness D is motivated to provide evidence favourable to the Prosecution in order to ensure continued benefits cannot be ignored.

832. In addition, aspects of Witness D's testimony regarding his position within the *Interahamwe* raise questions about his credibility. He testified that, by 1992, his position within the *Interahamwe* was by title only and that he held little influence within the organisation.[1222] However, he was a signatory to a January 1994 letter from the *Interahamwe* to UNAMIR that complained about the impartiality of its peacekeepers.[1223] After the formation of the Interim Government, Witness D was called upon to pacify *Interahamwe* killing Tutsis throughout Kigali and, during his tour, was able to move freely throughout Kigali. In the last week of April, he was part of a contingent of *Interahamwe* officials who met with General Roméo Dallaire to address the fact that *Interahamwe* were preventing UNAMIR-escorted refugees from the *Hôtel des Mille Collines* from reaching Kanombe airport.[1224] Finally, while in Butare, he was approached by Colonel Muvunyi to discourage *Interahamwe* arriving from Kigali to participate in looting.[1225]

833. Given his own admissions that *Interahamwe* participated in killings in 1994, his attempts to distance himself from the organisation, while understandable, are inconsistent with the contemporaneous recognition of his status by those in power in 1994 and his acts on the organisation's behalf.[1226] Under these circumstances, the Chamber does not consider Witness D to be an accomplice witness. However, the Chamber has some concerns that his evidence might be incomplete, particularly to the extent that it implicates him in criminal

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[1219] *See* Exhibit 4D163 (Payments to Witness D). In so finding, the Chamber has considered the Prosecution submissions about the nature of the compensation received by Witness D. *See* T. 16 June 2004 p. 15. Indeed, Witness D's estimates of the payments he has received are significantly lower than what records reveal. *See* Witness D, T. 16 June 2004 p. 71.

[1220] *See* Witness D, T. 15 June 2004 pp. 69-70; Exhibit P57 (Letter of Non-Prosecution of Witness D, 5 February 2002).

[1221] Witness D, T. 15 June 2004 p. 70; T. 16 June 2004 pp. 16, 71-72.

[1222] Witness D, T. 15 June 2004 pp. 61-65; T. 16 June 2004 pp. 44-45, 58-59; T. 17 June 2004 pp. 48-50, 58-59.

[1223] Witness D, T. 16 June 2004 pp. 51-52; Exhibit 2D14 (Letter from *Interahamwe* to UNAMIR, 19 January 1994).

[1224] Witness D, T. 15 June 2004 pp. 48, 50-54; T. 16 June 2004 pp. 29-32, 57-59.

[1225] Witness D, T. 17 June 2004 p. 65.

[1226] *See* Witness D, T. 17 June 2004 p. 51 ("Q. ... Some people have said that the *Interahamwe* is a criminal, genocidal organisation. Would you say it is fair or unfair to characterise the *Interahamwe* in general that way? A. It would be dishonest, in my view, to call this organisation as genocidaire, because as I explained to you, it is not only the *Interahamwe* who perpetrated the killings in Rwanda.").

conduct. Under these circumstances, his evidence should be assessed on a case-by-case basis and approached with the appropriate caution.[1227]

834. Turning to the question whether the true purpose of the pacification tour was to hide victims' bodies from the international community, the Chamber recalls Witness D's testimony that, at the time of the tour, some members of the expatriate community remained in Kigali, including UNAMIR troops. Indeed, Witness D encountered the Bengali faction of UNAMIR troops during the tour.[1228] Witness D acknowledged that the ICRC was trying to collect bodies around the time of the pacification tour.[1229] In this regard, the Chamber recalls Bizimungu's evidence that on 11 April 1994, Philippe Gaillard, an ICRC representative, told him that it was urgent that bodies in Kigali be collected to avoid an epidemic.[1230] Finally, the Chamber notes that contemporaneous UNAMIR cables and reports show that UNAMIR representatives were aware of killings and reported that they were ongoing in Kigali to their superiors at UN headquarters.[1231]

835. The Chamber considers that the presence of members of the international community, particularly UNAMIR, in Kigali at the time, the ICRC efforts related to the burial of bodies and the UNAMIR reports of mass killings in Kigali prior to the pacification tour raise doubt with respect to the plausibility of Witness D's evidence that the purpose of the pacification tour was to conceal killings from the international community. Moreover, the Chamber observes that while the removal of bodies from the streets of Kigali may have had the effect of improving the international community's impression of the situation, it would also have the effect of alleviating a clear public health risk. Under these circumstances, the Chamber does not accept Witness D's evidence with respect to the purpose of the pacification tour.

836. Nor does the Chamber accept Witness D's evidence that Mugenzi was pleased that many Tutsis had been killed in Kigali. Though he insisted that Mugenzi was pleased at the high number of people killed, his evidence on this point is highly subjective. Notably, Witness D did not claim that Mugenzi made any statement to the effect that he was pleased to hear about the killings.[1232] Rather, Witness D's conclusion with respect to Mugenzi's state of mind is based solely on Mugenzi's physical reaction to the report that the pacification tour had been a success. Under the circumstances, the Chamber considers that it can only accept Witness D's evidence if his were the only reasonable interpretation of Mugenzi's reaction.

[1227] The Chamber has also considered the evidence of Witness ALL-42 regarding Witness D's relationship with the RPF. *See* Exhibit 4D164 (*Bagosora et al.* Transcript of 8 November 2006) pp. 33-34. This evidence, which is general, does not raise questions about Witness D's reliability.

[1228] Witness D, T. 16 June 2004 pp. 54-55.

[1229] Witness D, T. 16 June 2004 p. 55.

[1230] Bizimungu, T. 24 May 2007 p. 35; *see also* II.7.4.

[1231] *See, e.g.*, Exhibit 2D59 (Various Documents) pp. 183-184 (*Communiqué de Presse* from SRSG Jacques-Roger Booh-Booh, 8 April 1994: refers to UNAMIR, representatives of the international community and the population of Kigali as powerless witnesses to horrible and senseless massacres), 187-189 (Redacted Outgoing Cable from Annan to UN Secretary-General, 9 April 1994: describes a "highly unstable" security situation in Kigali with "continued killings" and an "endangered civilian population"); Exhibit 4D45 (Outgoing Cable from Booh-Booh to Annan and Goulding, 8 April 1994) (refers, *inter alia*, to the massacre of Tutsis in Remera section of Kigali); Exhibit 3D85 (Outgoing Cable from Booh-Booh to Annan, Goulding and Hansen, 9 April 1994) (refers, *inter alia*, to ongoing killings by RGF, Presidential Guard and *Interahamwe* in Kigali, a campaign of "ethnic and general violence" conducted by "*Interahamwe* and other mobs", and though noting the difficulty of estimating the number of dead in Kigali, speculating that "as many as thousands have lost their lives"; identifying the victims as "mostly Tutsis and Hutus from the south or from non-MRND/CDR political parties").

[1232] Witness D, T. 16 June 2004 pp. 61-62.

following a meeting of Interim Government ministers at his home, which Uwizeye did not attend, Ndindabahizi told Uwizeye that Bizimungu had been given money to buy arms in Kinshasa and South Africa.[1457]

1009. Consequently, Uwizeye's evidence is hearsay and of limited probative value. Furthermore, it is contradicted by its source, Ndindabahizi, who testified that Bizimungu was sent to Zaire to ask Mobutu to facilitate ceasefire negotiations with the RPF. Ndindabahizi further testified that Uwizeye knew that this was the purpose of Bizimungu's mission, as he was present at the meeting at his house when this was decided. Uwizeye denied this, testifying that he had been absent when this was discussed.

1010. Ndindabahizi's evidence about the purpose of Bizimungu's trip is corroborated by Bizimungu, Mugenzi and Witness WAE.[1458] The Chamber considers their evidence with suspicion. Bizimungu has a clear interest in denying that he was sent on a mission to buy arms and Mugenzi, Bicamumpaka, Ndindabahizi and Witness WAE would be considered accomplices of Bizimungu in relation to this event. Furthermore, Bizimungu, Mugenzi and Ndindabahizi, who were central to rebutting Uwizeye's allegation, were detained together in the United Nations Detention Facility and Bizimungu had heard the testimonies of Mugenzi and Ndindabahizi before he testified.[1459] Notwithstanding, their evidence raises doubts about Uwizeye's hearsay testimony that Ndindabahizi had said Bizimungu was being sent to purchase weapons.

1011. The Chamber considers that several other circumstantial factors lend credence to Bizimungu's evidence that his mission was to broker a ceasefire rather than purchase weapons. First, Bizimungu was accompanied by Colonel Ephrem Setako, a legal advisor to the Rwandan army and a member of its neutral military observer group.[1460] Given his position, it is likely that Setako would have been involved as the military's representative in ceasefire negotiations with the RPF. Further, Witness WAE testified that, since Mobutu was a soldier, it was believed that a briefing for Mobutu done by a fellow military officer about the military developments would be "easier to understand".[1461]

1012. Furthermore, the day after Bizimungu's meeting with Mobutu, the latter met with the RPF and, less than a week later, Mobutu met with a second Rwandan government delegation who signed a ceasefire agreement. Bizimungu's testimony about the second delegation is corroborated by some of its members – Ntagerura, Ntamabyaliro and Witness WAE – and

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[1457] The Chamber observes that there is some disagreement as to whether Mugiraneza was present at the gathering when it was decided that Bizimungu would go to Zaire. Specifically, Mugiraneza and Witness RWV testified that Mugiraneza went straight to the Murambi Centre and did not stop at Fidèle Uwizeye's home once in Gitarama. *See* Mugiraneza, T. 22 May 2008 pp. 48-50, 52-54; T. 2 June 2008 pp. 58-59; T. 3 June 2008 pp. 55-56; Witness RWV, T. 9 June 2008 pp. 27-28, 30-32, 68. Witness RWW, on the other hand, testified that Mugiraneza joined several other government officials at Uwizeye's home when he arrived in Gitarama. Witness RWW, T. 13 March 2008 pp. 23, 25, 27, 37-38, 46. The Chamber considers it unnecessary to resolve this discrepancy.

[1458] Aside from indicating that Bizimungu was going to see President Sese Seko Mobutu in Zaire, the testimonies of Bicamumpaka as well as Witnesses WAA and WDK shed little light on why Bizimungu went there.

[1459] The fact that Bizimungu testified after other Defence witnesses is relevant when evaluating his evidence. *Ntakirutimana* Appeal Judgement, paras. 392-393.

[1460] Witness WAE, T. 13 February 2007 p. 70; T. 14 February 2007 pp. 52-53; Bizimungu, T. 5 June 2007 pp. 60-61.

[1461] Witness WAE, T. 13 February 2007 p. 70.

documentary evidence.[1462] This evidence reflects that Mobutu was being used generally as a mediator by the Rwandan government to facilitate ceasefire negotiations with the RPF.

1013. The Chamber has also considered the significant sum Bizimungu was allotted for this mission. On its face, the equivalent of $17,500 USD appears to be an excessive amount given the stated purpose of Bizimungu's mission in neighbouring Zaire. Further, Uwizeye testified that all the money in the prefecture's "coffers" or safe was taken.[1463] It is a reasonable possibility that additional funds could have been taken if they had been available in the coffers. Notwithstanding, Bizimungu testified that this money was also used to cover future missions, including his later travel to Switzerland and Tunisia. Bizimungu repeated this in a letter to Jean Kambanda in October 1994, in which he sought to rebut allegations that he had misappropriated funds.[1464] Bizimungu also added that his daily expenses in Zaire were significant, with his room at the InterContinental Hotel costing between $180 to $200 USD per day.[1465] The Chamber also observes that Ndindabahizi suggested that the sizeable amount anticipated the contingency that Bizimungu might have had to charter a plane while in Zaire.

1014. The Chamber considers that the explanations about why Bizimungu received around the equivalent of $17,500 USD and his use of the funds are equivocal.[1466] Although Bizimungu testified that he did not draw against them, his later mission orders allotted additional monies to be allocated to Bizimungu for those missions.[1467]

1015. Notwithstanding, other evidence in the record indicates that monies allocated for weapons purchases were substantially higher than the amount Bizimungu received. For example, Ndindabahizi testified that Colonel Théoneste Bagosora was given $1,000,000 USD to purchase weapons and a contract for the purchase of arms for $1,499,499 USD signed by Colonel Bagosora was entered as an exhibit.[1468] The significant difference between the expenditures made by Bagosora – nearly $1,500,000 USD – and the money given to Bizimungu – the equivalent of $17,500 USD – raises questions about whether the latter amount would have been considered sufficient to cover an arms purchase.[1469]

1016. Finally, in assessing the Prosecution case, the Chamber also considers Witness WAE's evidence that Colonel Théoneste Bagosora signed a contract to purchase weapons in Kinshasa, Zaire on 24 May 1994. In an attempt to circumvent an arms embargo, he disguised the arms purchase as an order for medication intended for the Ministry of Health. This is

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[1462] *See* Exhibit 1D150 (Ceasefire Agreement, 23 April 1994).
[1463] Uwizeye, T. 8 April 2005 pp. 8-10. Mugenzi testified that the Gitarama prefecture treasury did not have sufficient funds and he believed that other unidentified sources in the south provided funds as well (Mugenzi, T. 9 November 2005 pp. 55-56). However, no other witness corroborated this testimony.
[1464] Exhibit P154 (Letter from Bizimungu to Jean Kambanda, 30 October 1994) p. 2.
[1465] Bizimungu, T. 7 June 2007 pp. 8-9.
[1466] Having reviewed, for example, Bizimungu's hotel records in Kinshasa, Zaire, the Chamber is unable to determine the amount he was charged in USD.
[1467] *See* Exhibit 1D203 (Mission Order, 27 April 1994) *and* 1D210 (Mission Order, 28 June 1994) (providing daily subsistence allowances of 14,300 Rwandan francs, or approximately $70 USD, per day).
[1468] Exhibit P159 (Contract for the Purchase of Arms Between the Government of Rwanda and the *Société Commerciale du Sud*, 24 May 1994).
[1469] The Bizimungu Defence cites Expert Witness Helmut Strizek's Report that the omission of Bizimungu's name from the list of weapon buyers provided by André Guichaoua in his report in the *Nyiramasuhuko et al.* trial proves the falsity of any claim that Bizimungu went to buy weapons. The list was not entered into evidence in this case and the Chamber considers this evidence to have little probative value. *See* Exhibit 1D143 (Expert Report of Helmut Strizek) p. 40.

supported by documentary evidence.[1470] Notably, Bizimungu has presented evidence that he was in Zaire in the days before and possibly the very day this agreement was signed (II.14.2.2). Thus, evidence that Bagosora was sent to purchase weapons in Zaire and intended to disguise them as medical supplies *could be* consistent with the proposition that Bizimungu, the Minister of Health, was involved in or complicit in this purchase and possibly earlier ones. Further, Bizimungu was accompanied by a military officer, Setako, who conceivably could have assisted with a weapons purchase and it is a reasonable possibility that the funds given to Bizimungu was an initial payment, either related to Bagosora's purchase or a different weapons shipment.

1017. Notwithstanding, Witness WAE testified that Bizimungu was not present at the Rwandan Embassy when Bagosora signed the contract on 24 May 1994. Indeed, a contemporaneous radio broadcast indicates that Bizimungu was in Rwanda that day (II.14.2.2). Furthermore, Witness WAE did not believe that Bizimungu was aware of Bagosora's decision to disguise the weapons in this manner and Bizimungu testified that he did not learn of this until after his incarceration. The Prosecution did not cite to any direct evidence that Bizimungu would have known about this.[1471]

1018. The Chamber recalls that elsewhere in the Judgement it found that evidence implicating Bizimungu in the receipt and distribution of weapons in Gisenyi was insufficient to support findings beyond reasonable doubt (II.11.3). Under the circumstances, the Chamber is not satisfied that Uwizeye's uncorroborated hearsay evidence, which is contradicted by its source, provides a sufficient basis for it to conclude beyond reasonable doubt that Bizimungu was sent to Zaire on 12 April 1994 with $17,500 USD to buy weapons and did purchase them.

8.2 Kamonyi School, After 12 April 1994

Introduction

1019. The Prosecution contends that shortly after the Interim Government moved from Kigali to Gitarama prefecture, Prosper Mugiraneza and other Interim Government ministers, including Callixte Nzabonimana, were at Kamonyi parish school in the midst of an attack by armed *Interahamwe*. Reference is made to Fidèle Uwizeye.[1472]

1020. The Mugiraneza Defence argues that there was no attack as alleged by Uwizeye. Reference is made to the testimony of Witness RRJ and the Rule 92 *bis* statements of Witnesses RWY, BGK, BGL and BGD.[1473]

[1470] Exhibit P160 (Certificate of Funds Transfer, 26 May 1994). *See also* Witness WAE, T. 14 February 2007 pp. 59-60.
[1471] Prosecution Closing Brief, paras. 681-682.
[1472] Prosecution Closing Brief, paras. 261, 1192-1193; Prosecution Closing Arguments, T. 1 December 2008 p. 67. The Indictment contains no reference to the attack at Kamonyi secondary school nor is it mentioned in the Prosecution Pre-Trial Brief. The Chamber considers it for context only.
[1473] Mugiraneza Closing Brief, paras. 87, 621(v), 678; Mugiraneza Closing Arguments, T. 4 December 2008 p. 67. *See also*, Mugenzi Closing Brief, para. 411.

Defence Witness Jean-François Ruppol and Dominique Makeli

1559. Jean-François Ruppol worked in Rwanda from 1991 to 7 April 1994 as the head of a Belgian agency that cooperated with the Rwandan Ministry of Health and Dominique Makeli, a Hutu, was a journalist for Radio Rwanda in 1994.[2215] Ruppol was in Murambi, Gitarama prefecture on 16 and 17 May 1994 on a medical assistance mission, where he met with several Interim Government ministers, including André Rwamakuba. Ruppol asked him where Bizimungu was and was told that he was abroad.[2216]

1560. Makeli heard that the government sent various ministers all over the world to go and explain the "Rwanda issue", and read transcripts from a 19 May 1994 Radio Rwanda broadcast, where Rwamakuba stated that he was following the population's health "when the Minister of Health [was] on a foreign visit". Given Bizimungu's prior experience in the Ministry of Foreign Affairs, Makeli considered him to be the "right person to be sent out of the country" to explain what was happening in Rwanda.[2217]

Deliberations

1561. The Prosecution, relying on the testimony of Witness D, argues that Bizimungu met the witness in Kigali in the first half of May 1994 and informed him that the Interim Government had been concerned that killings would not occur in Butare. Consequently, it had decided to send a delegation of Butare natives, like the President and Prime Minister, to incite persons there. Bizimungu also stated that he was proud of what the *Interahamwe* was doing and that the Interim Government supported them. Bizimungu denies that this occurred, relying particularly on alibi evidence that he was not in Rwanda in the first half of May 1994.

1562. Before turning to the merits of the Prosecution evidence, the Chamber looks at the general credibility of Witness D. His relationship with the Prosecution is extensive. He has provided information to the Prosecution and evidence on its behalf concerning the events of 1994 and assisted in the location of fugitives.[2218] Furthermore, he received direct or indirect payments from the Prosecution between 1996 and May 2007 for his assistance and has been placed in a witness protection program. Many payments appear to be reasonable expenditures to cover travel, communication and other hardships related to assisting investigations or testifying before the Tribunal.[2219] Notwithstanding, the payments are significant.[2220]

1563. Furthermore, in February 2002, the Prosecutor issued a statement that it had decided not to open an investigation against Witness D given that the "evidence assessed" did not

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[2215] Ruppol, T. 2 October 2006 pp. 3-4; Exhibit 1D118 (Ruppol's Personal Information Sheet); Makeli, T. 22 October 2007 pp. 33, 37; T. 24 October 2007 pp. 37, 40; T. 29 October 2007 pp. 4, 22, 41; Exhibit 3D163 (Makeli's Personal Information Sheet).
[2216] Ruppol, T. 3 October 2006 pp. 13-14.
[2217] Makeli, T. 29 October 2007 pp. 33-34.
[2218] *See* Witness D, T. 15 June 2004 pp. 67-68; T. 17 June 2004 pp. 13-14, 67-70.
[2219] *See, e.g.*, Witness D, T. 15 June 2004 pp. 68-69; T. 16 June 2004 pp. 8-9, 71; Exhibit P56 (Statement of Payments to Witness D, 15 February 2002).
[2220] *See* Exhibit 4D163 (Payments to Witness D). In so finding, the Chamber has considered the Prosecution submissions about the nature of the compensation received by Witness D. *See* Witness D, T. 16 June 2004 p. 15. Indeed, Witness D's estimates of the payments he received are significantly lower than what records reveal. *See* Witness D, T. 16 June 2004 p. 71.

provide sufficient grounds to prosecute him. It further described his willingness to cooperate with the Office of the Prosecutor.[2221] Notably, this agreement was made in order to secure his testimony in the *Nahimana et al.* trial. While Witness D testified that this was done to allay suspicions about his involvement in the genocide and affirm his general credibility, it can also be seen as a concession made to obtain testimony.[2222] The record does not reflect that the Prosecution has acted improperly or sought to influence Witness D's testimony. Nonetheless, the possibility that Witness D is motivated to provide evidence favourable to the Prosecution in order to ensure continued benefits cannot be ignored.

1564. In addition, aspects of Witness D's testimony regarding his position within the *Interahamwe* raise questions about his credibility. He testified that, by 1992, his position within the *Interahamwe* was by title only and that he held little influence within the organisation.[2223] However, he was a signatory to a January 1994 letter from the *Interahamwe* to UNAMIR that complained about the lack of neutrality of its peacekeepers.[2224] After the formation of the Interim Government, Witness D was called upon to pacify *Interahamwe* killing Tutsis throughout Kigali, and during his tour, was able to move freely throughout Kigali. In the last week of April 1994, he was part of a contingent of *Interahamwe* officials who met with General Roméo Dallaire to address the fact that *Interahamwe* were preventing UNAMIR-escorted refugees from the *Hôtel des Mille Collines* from reaching Kanombe airport.[2225] Finally, while in Butare, he was approached by Colonel Muvunyi to discourage *Interahamwe* arriving from Kigali from participating in looting.[2226]

1565. Given his own admissions that *Interahamwe* participated in killings in 1994, his attempts to distance himself from the organisation, while understandable, are inconsistent with the contemporaneous recognition of his status by those in power in 1994 and his acts on the organisation's behalf.[2227] Under these circumstances, the Chamber does not consider Witness D to be an accomplice witness. However, the Chamber has some concerns that his evidence might be incomplete, particularly to the extent that it implicates him in criminal conduct. Under these circumstances, his evidence should be assessed on a case-by-case basis and approached with the appropriate caution.

1566. Turning to the allegation, the Chamber observes that the Defence does not dispute Witness D's ability to identify Bizimungu. Indeed, Bizimungu testified to his knowledge of *Interahamwe* officials.[2228] Given Witness D's position within the *Interahamwe* and Bizimungu's in the MRND and their mutual presence in Kigali for overlapping periods, it is not unlikely that the two knew each other.

[2221] *See* Witness D, T. 15 June 2004 pp. 69-70; Exhibit P57 (Letter of Non-Prosecution of Witness D, 5 February 2002).
[2222] Witness D, T. 15 June 2004 p. 70; T. 16 June 2004 pp. 16, 71-72.
[2223] Witness D, T. 15 June 2004 pp. 61-65; T. 16 June 2004 pp. 44-45, 58-59; T. 17 June 2004 pp. 48-50, 58-59.
[2224] Witness D, T. 16 June 2004 pp. 51-52; Exhibit 2D14 (Letter from *Interahamwe* to UNAMIR, 19 January 1994).
[2225] Witness D, T. 15 June 2004 pp. 48, 50-54; T. 16 June 2004 pp. 29-32, 57-59.
[2226] Witness D, T. 17 June 2004 p. 65.
[2227] *See* Witness D, T. 17 June 2004 p. 51 ("Q. ... Some people have said that the *Interahamwe* is a criminal, genocidal organisation. Would you say it is fair or unfair to characterise the *Interahamwe* in general that way? A. It would be dishonest, in my view, to call this organisation as genocidaire, because as I explained to you, it is not only the *Interahamwe* who perpetrated the killings in Rwanda.").
[2228] *See* Bizimungu, T. 30 May 2007 p. 37.

CHAPTER V: SENTENCING

(i) Introduction

1989. Having found Mugenzi and Mugiraneza guilty of crimes under the jurisdiction of the Tribunal, the Chamber must determine appropriate sentences.

(ii) Law

1990. All crimes under the Tribunal's Statute are serious violations of international humanitarian law.[2749] When determining a sentence, a Trial Chamber has considerable, though not unlimited, discretion on account of its obligation to determine penalties to fit the individual circumstances of an accused and to reflect the gravity of the crimes for which the accused has been convicted.[2750]

1991. The gravity of the offences committed is the deciding factor in the determination of the sentence.[2751] Gravity entails the particular circumstances of the case, the form and degree of the participation of the accused in the crimes, and the number of victims.[2752] The consequences of the crime upon any victims who were directly injured are also relevant.[2753]

1992. The Appeals Chamber has stated that "sentences of like individuals in like cases should be comparable".[2754] However, similar cases do not provide a legally binding benchmark for sentences. Although assistance can be drawn from previous decisions, such assistance is often limited, as each case contains a multitude of variables.[2755] In light of this, the Appeals Chamber has recognised that "[d]ifferences between cases are often more significant than similarities and different mitigating and aggravating circumstances might dictate different results".[2756]

1993. Pursuant to Article 23 of the Statute, and Rule 101 (B) of the Rules, the Chamber shall take into account the general practice regarding prison sentences in the courts of Rwanda, any aggravating circumstances, any mitigating circumstances, and the extent to which the convicted person has already served any penalty imposed by a court of any State for the same act. These factors are not exhaustive.[2757]

[2749] *Kayishema and Ruzindana* Appeal Judgement, para. 367 (quoting Article 1 of the Statute). *See also Nyiramasuhuko et al.* Trial Judgement, paras. 6188-6199.
[2750] *Nahimana et al.* Appeal Judgement, para. 1037; *Kajelijeli* Appeal Judgement, para. 291.
[2751] *Nshogoza* Appeal Judgement, para. 98; *Nahimana et al.* Appeal Judgement, para. 1060.
[2752] *Munyakazi* Appeal Judgement, para. 185; *Rukundo* Appeal Judgement, para. 243.
[2753] *See Blaškić* Appeal Judgement, para. 683 (addressing this issue in a subsection labeled "[t]he gravity of the offence").
[2754] *Dragomir Milošević* Appeal Judgement, para. 326; *Strugar* Appeal Judgement, para. 348; *Kvočka et al.* Appeal Judgement, para. 681.
[2755] *Dragomir Milošević* Appeal Judgement, para. 326; *Kvočka et al.* Appeal Judgement, para. 681.
[2756] *Dragomir Milošević* Appeal Judgement, para. 326, *citing Limaj et al.* Appeal Judgement, para. 135; *Dragan Nikolić* Appeal Judgement, para. 19.
[2757] *Seromba* Appeal Judgement, para. 228; *Nahimana et al.* Appeal Judgement, para. 1038; *Kajelijeli* Appeal Judgement, para. 290.

UNITED NATIONS
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Tribunal pénal international pour le Rwanda
International Criminal Tribunal for Rwanda

IN THE APPEALS CHAMBER

Before: **Judge Mohamed Shahabuddeen, Presiding**
Judge Mehmet Güney
Judge Liu Daqun
Judge Theodor Meron
Judge Wolfgang Schomburg

Registrar: **Mr. Adama Dieng**

Judgement of: **7 July 2006**

SYLVESTRE GACUMBITSI

v.

THE PROSECUTOR

Case No. ICTR-2001-64-A

JUDGEMENT

Counsel for Sylvestre Gacumbitsi:

Mr. Kouengoua
Ms. Anne Ngatio Mbattang

The Office of the Prosecutor:

Mr. Hassan Bubacar Jallow
Mr. James Stewart
Mr. Neville Weston
Mr. George Mugwanya
Ms. Inneke Onsea

in part, a protected group as such.[100] The Prosecution responds that the Trial Chamber's inferential approach was consistent with well established legal principles and amply supported by the evidence and factual findings in this case, including those connecting the Appellant to other perpetrators of the genocide.[101]

39. The Appeals Chamber finds that the Trial Chamber correctly recognized that genocide is a crime requiring "specific intent".[102] The Prosecution is required, under Article 2(2) of the Statute, to prove that the accused possessed the specific "intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such".

40. The Tribunal's jurisprudence conclusively establishes that genocidal intent can be proven through inference from the facts and circumstances of a case. By its nature, intent is not usually susceptible to direct proof. Only the accused himself has first-hand knowledge of his own mental state, and he is unlikely to testify to his own genocidal intent. Intent thus must usually be inferred. Here, the Trial Chamber stated:

> It is possible to infer the genocidal intent inherent in a particular act charged from the perpetrator's deeds and utterances considered together, as well as from the general context of the perpetration of other culpable acts systematically directed against that same group, notwithstanding that the said acts were committed by the same offender or by others. Other factors, such as the scale of atrocities committed, their general nature, in a region or a country, or furthermore, the fact of deliberately and systematically targeting victims on account of their membership in a particular group, while excluding members of other groups, can enable the Chamber to infer the genocidal intent of a particular act.[...] Evidence of genocidal intent can be inferred from "the physical targeting of the group or their property; the use of derogatory language toward members of the targeted group; the weapons employed and the extent of bodily injury; the methodical way of planning, the systematic manner of killing."[103]

41. This approach is consistent with the Appeals Chamber's previous holdings. For instance, the *Rutaganda* Appeal Judgement states:

> The Appeals Chamber concurs with the Appellant that in order to find a person guilty of genocide, it must be established that such a person was personally possessed of the specific intent to commit the crime at the time he did so. Nonetheless, as stated by the Appeals Chamber in *Kayishema/Ruzindana*, "explicit manifestations of criminal intent are [...] often rare in the context of criminal trials". In the absence of explicit, direct proof, the *dolus specialis* may therefore be inferred from relevant facts and circumstances. Such an approach prevents perpetrators from escaping convictions simply because such manifestations are absent.[104]

Specifically, relevant facts and circumstances could include "the general context, the perpetration of other culpable acts systematically directed against the same group, the scale of atrocities committed,

[99] Gacumbitsi Appeal Brief, para. 122.
[100] Gacumbitsi Appeal Brief, paras. 123-126.
[101] Prosecution Response, paras. 99-114.
[102] Trial Judgement, para. 250.
[103] Trial Judgement, paras. 252, 253.

the systematic targeting of victims on account of their membership of a particular group, or the repetition of destructive and discriminatory acts."[105] The Appeals Chamber emphasizes that the inferential approach does not relieve the Prosecution of its burden to prove each element of its case, including genocidal intent, beyond reasonable doubt. Rather, it is simply a different means of satisfying that burden.

42. In this case, in support of its finding that the Appellant possessed the requisite genocidal intent, the Trial Chamber cited the Appellant's urging of the *conseillers de secteur* in his commune, at a meeting on 9 April 1994, "to incite the Hutu to kill the Tutsi"; the Appellant's similar statements made directly to the Hutu population on three separate occasions on 13 and 14 April 1994; his instigation of the rape of Tutsi women and girls on 17 April 1994; and his personal killing of a Tutsi named Murefu on 15 April 1994, which signalled "the beginning of the attack at Nyarubuye Parish".[106] The Trial Chamber also referred to its earlier findings of fact. For instance, it found that at the 9 April 1994 meeting, the Appellant instructed the *conseillers* to return to their *secteurs* and organize meetings at which they were to instruct the Hutu "to separate themselves from the Tutsi" and then "to kill all the Tutsi, so that the *Inkotanyi* would no longer have any accomplices."[107] It also found that on 14 April 1994, at Rwanteru commercial centre, the Appellant "addressed about one hundred people and incited them to arm themselves with machetes and to participate in the fight against the enemy, specifying that they had to hunt down all the Tutsi."[108] And it found that later that same day, at Gisenyi trading centre, the Appellant urged about forty people "to kill all the Tutsi and throw their bodies into the River Akagera."[109]

43. The Appellant raises certain challenges to these and other findings, which will be discussed below. But he submits no serious contention that the Trial Chamber's findings of fact, if valid, were nonetheless insufficient as a matter of law to support an inference of genocidal intent. The Appellant offers no reasonable alternative explanation for the above-described actions and utterances. His repeated exhortations to crowds of people that they should kill all the Tutsis, even considered apart from his other actions, leave room for no other reasonable inference.

44. The Appellant further argues that the Trial Chamber improperly relied on the "acts of other perpetrators" to prove the Appellant's genocidal intent without establishing a nexus between those

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[104] *Rutaganda* Appeal Judgement, para. 525 (internal citations omitted).
[105] *Jelisic* Appeal Judgement, para. 47; *see Rutaganda* Appeal Judgement, para. 525. *See also, e.g., Krstic* Appeal Judgement, paras. 27, 34, 35.
[106] Trial Judgement, para. 259.
[107] Trial Judgement, paras. 101, 93.
[108] Trial Judgement, para. 98.
[109] Trial Judgement, para. 99.

finding.[165] Here, the Trial Chamber reasonably concluded that any inaccuracies in Witness TAW's account resulted from the fact that he was relying on what others had told him and did not fundamentally undermine his credibility. Notably, the witness was forthright in acknowledging the limits of his direct knowledge.[166]

71. The Appellant argues that Witness TAW is biased against the Appellant because he blames the Appellant for the death of his family members and the failure to protect his property.[167] The Trial Chamber declined to find that this allegation of bias affected the witness's credibility, citing his apparently truthful demeanour, and noting that he "refrained from exaggerating his account of events in order to hurt the Accused."[168] The Appeals Chamber finds that the Trial Chamber's assessment of credibility is reasonable and defers to it. It bears noting that the mere fact that a witness or his family was a victim of an accused does not necessarily imply a bias that discredits that witness's testimony. This Tribunal, like criminal courts everywhere, routinely relies on the testimony of victims of crime, who, one would assume, are as motivated as anyone to see that justice is done with accuracy. It is for the trier of fact to determine whether a particular witness may have an incentive to distort the truth, and here the Appellant has not demonstrated that the Trial Chamber's assessment was in error.

72. Finally, the Appellant submits that the Trial Chamber's reliance on Witness TAW in concluding, *inter alia*, that weapons were distributed was in error because the evidence was uncorroborated and circumstantial.[169] It is well established that a Trial Chamber has the discretion to rely on uncorroborated, but otherwise credible, witness testimony.[170] Moreover, it is also permissible to rely on circumstantial evidence to prove material facts.[171] The Appeals Chamber finds no error in the Trial Chamber's assessment of the evidence in this regard.

(b) Credibility of Witness TBH

73. In addition to the above-mentioned arguments concerning inconsistencies between the testimonies of Witnesses TAW and TBH, the Appellant contends that the Trial Chamber erred in crediting the testimony of Witness TBH. He maintains that the witness was personally biased because the Appellant had previously removed him from an official position. Furthermore, he

[165] *See, e.g., Rutaganda* Appeal Judgement, paras. 24, 442, 443.
[166] Trial Judgement, para. 84.
[167] Gacumbitsi Appeal Brief, paras. 169-171; *see* T. 21 August 2003 pp. 13-16.
[168] Trial Judgement, para. 84.
[169] Gacumbitsi Appeal Brief, paras. 201-208.
[170] *See Semanza* Appeal Judgement, para. 153.
[171] *See, e.g., Ntakirutimana* Appeal Judgement, para. 262.

evidence was to be assessed.[283] The Prosecution characterizes the alleged error as legal as well as factual, claiming that the Trial Chamber misunderstood the requirements for corroboration.[284]

115. It is well established that, as a matter of law, it is permissible to base a conviction on circumstantial evidence and/or hearsay evidence.[285] The Appeals Chamber recalls that, even if the law does not require evidence to be corroborated, a Trial Chamber, as the trier of fact, can decide that under particular circumstances corroboration is necessary.[286] Accordingly, the Trial Chamber made a factual finding specific to the evidence in this case: "the hearsay evidence of Witness TAS is insufficient, failing corroboration, to establish that the Accused ordered the murder of Marie and Béatrice."[287] Moreover, the Trial Chamber evidently did not ignore the evidence alleged by the Prosecution as corroborative of Witness TAS's hearsay evidence; it relied on this evidence to convict the Appellant of genocide and extermination.[288] Although the Trial Chamber did not specifically discuss this evidence in the context of the murder count, it was not obligated to set forth every step of its reasoning or to cite every piece of evidence that it considered.[289]

116. Moreover, it was reasonable for the Trial Chamber to conclude -- taking into account the hearsay testimony of Witness TAS as well as the circumstantial evidence -- that it was not established beyond reasonable doubt that the Appellant *ordered* the murders of Marie and Béatrice. The Appellant's involvement in various aspects of the genocidal campaign might reasonably be taken as support for the credibility of the hearsay testimony that he ordered these particular murders, as might the fact that he expelled Marie and Béatrice with little regard for the obvious danger to their lives. But none of this evidence provides such unambiguous proof that he issued such an order that a reasonable Trial Chamber would have *had* to convict him on that basis.

117. This sub-ground of appeal is dismissed.

2. Alleged Failure to Consider Other Modes of Liability

118. As an alternative to its ordering theory, the Prosecution argues that the Appellant should have been convicted for aiding and abetting the murders of Marie and Béatrice.[290] It maintains that the Trial Chamber's findings that the Appellant expelled his tenants in full knowledge of the risk

[283] Prosecution Appeal Brief, paras. 93, 94.
[284] *See* Prosecution Appeal Brief, paras. 75, 104.
[285] *Kamuhanda* Appeal Judgement, para. 241; *Kupreški} et al.* Appeal Judgement, para. 303.
[286] *Bagilishema* Appeal Judgement, para. 79.
[287] Trial Judgement, para. 196.
[288] *See, e.g.,* Trial Judgement, para. 237 (the Appellant's misuse of influence); 92-99 (meetings and public incitement); 194-196 (eviction of tenants and their death).
[289] *See, e.g., Kajelijeli* Appeal Judgement, para. 59.

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Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

ICTR-00-61-A
09th October 2012
{868/H – 761/H}

IN THE APPEALS CHAMBER

Before:	**Judge Liu Daqun, Presiding** **Judge Mehmet Güney** **Judge Fausto Pocar** **Judge Andrésia Vaz** **Judge Carmel Agius**
Acting Registrar:	**Mr. Pascal Besnier**
Judgement of:	**9 October 2012**

Jean-Baptiste GATETE

v.

THE PROSECUTOR

Case No. ICTR-00-61-A

JUDGEMENT

ICTR Appeals Chamber
Date: 09th October 2012
Action: R Juma
Copied To: All Judges, Parties, JPU, LOs, LSS

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Ms. Inneke Onsea
Mr. Mara Cheichk Tidiane
Ms. Priyadarshini Narayanan
Ms. Christiana Fomenky

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SIGNATURE: ..... DATE: 9/Oct/2012

II. STANDARDS OF APPELLATE REVIEW

7. The Appeals Chamber recalls the applicable standards of appellate review pursuant to Article 24 of the Statute. The Appeals Chamber reviews only errors of law which have the potential to invalidate the decision of the trial chamber and errors of fact which have occasioned a miscarriage of justice.[12]

8. Regarding errors of law, the Appeals Chamber has stated:

> Where a party alleges that there is an error of law, that party must advance arguments in support of the submission and explain how the error invalidates the decision. However, if the appellant's arguments do not support the contention, that party does not automatically lose its point since the Appeals Chamber may step in and, for other reasons, find in favour of the contention that there is an error of law.[13]

9. Where the Appeals Chamber finds an error of law in the trial judgement arising from the application of an incorrect legal standard, it will articulate the correct legal standard and review the relevant factual findings of the trial chamber accordingly.[14] In so doing, the Appeals Chamber not only corrects the legal error, but, when necessary, also applies the correct legal standard to the evidence contained in the trial record and determines whether it is itself convinced beyond reasonable doubt as to the factual finding challenged by the appellant before that finding may be confirmed on appeal.[15]

10. Regarding errors of fact, it is well established that the Appeals Chamber will not lightly overturn findings of fact made by a trial chamber:

> Where the Defence alleges an erroneous finding of fact, the Appeals Chamber must give deference to the Trial Chamber that received the evidence at trial, and it will only interfere in those findings where no reasonable trier of fact could have reached the same finding or where the finding is wholly erroneous. Furthermore, the erroneous finding will be revoked or revised only if the error occasioned a miscarriage of justice.[16]

11. A party cannot merely repeat on appeal arguments that did not succeed at trial, unless it can demonstrate that the trial chamber's rejection of those arguments constituted an error warranting the

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[12] *See, e.g., Hategekimana* Appeal Judgement, para. 6; *Kanyarukiga* Appeal Judgement, para. 7; *Ntabakuze* Appeal Judgement, para. 10. *See also Haradinaj et al.* Appeal Judgement, para. 9.
[13] *Ntakirutimana* Appeal Judgement, para. 11 (reference omitted). *See also, e.g., Hategekimana* Appeal Judgement, para. 7; *Kanyarukiga* Appeal Judgement, para. 8; *Ntabakuze* Appeal Judgement, para. 11; *Haradinaj et al.* Appeal Judgement, para. 10.
[14] *See, e.g., Hategekimana* Appeal Judgement, para. 8; *Kanyarukiga* Appeal Judgement, para. 9; *Ntabakuze* Appeal Judgement, para. 12. *See also Haradinaj et al.* Appeal Judgement, para. 11.
[15] *See, e.g., Hategekimana* Appeal Judgement, para. 8; *Kanyarukiga* Appeal Judgement, para. 9; *Ntabakuze* Appeal Judgement, para. 12. *See also Haradinaj et al.* Appeal Judgement, para. 11.
[16] *Krstić* Appeal Judgement, para. 40 (references omitted). *See also, e.g., Hategekimana* Appeal Judgement, para. 9; *Kanyarukiga* Appeal Judgement, para. 10; *Ntabakuze* Appeal Judgement, para. 13.

intervention of the Appeals Chamber.[17] Arguments which do not have the potential to cause the impugned decision to be reversed or revised may be immediately dismissed by the Appeals Chamber and need not be considered on the merits.[18]

12. In order for the Appeals Chamber to assess arguments on appeal, the appealing party must provide precise references to relevant transcript pages or paragraphs in the decision or judgement to which the challenge is made.[19] Moreover, the Appeals Chamber cannot be expected to consider a party's submissions in detail if they are obscure, contradictory, vague, or suffer from other formal and obvious insufficiencies.[20] Finally, the Appeals Chamber has inherent discretion in selecting which submissions merit a detailed reasoned opinion in writing, and it will dismiss arguments which are evidently unfounded without providing detailed reasoning.[21]

[17] *See, e.g., Hategekimana* Appeal Judgement, para. 10; *Kanyarukiga* Appeal Judgement, para. 11; *Ntabakuze* Appeal Judgement, para. 14. *See also Haradinaj et al.* Appeal Judgement, para. 13.
[18] *See, e.g., Hategekimana* Appeal Judgement, para. 10; *Kanyarukiga* Appeal Judgement, para. 11; *Ntabakuze* Appeal Judgement, para. 14. *See also Haradinaj et al.* Appeal Judgement, para. 13.
[19] Practice Direction on Formal Requirements for Appeals from Judgement, 4 July 2005, para. 4(b). *See also, e.g., Hategekimana* Appeal Judgement, para. 11; *Kanyarukiga* Appeal Judgement, para. 12; *Ntabakuze* Appeal Judgement, para. 15.
[20] *See, e.g., Hategekimana* Appeal Judgement, para. 11; *Kanyarukiga* Appeal Judgement, para. 12; *Ntabakuze* Appeal Judgement, para. 15.
[21] *See, e.g., Hategekimana* Appeal Judgement, para. 11; *Kanyarukiga* Appeal Judgement, para. 12; *Ntabakuze* Appeal Judgement, para. 15.

provisions but based on the same conduct are permissible only if each statutory provision involved has a materially distinct element not contained in the other.[630]

260. The Appeals Chamber recalls that genocide and conspiracy to commit genocide are distinct crimes under Articles 2(3)(a) and 2(3)(b) of the Statute. As the Trial Chamber correctly observed, the crime of genocide has a materially distinct *actus reus* from the crime of conspiracy to commit genocide and both crimes are based on different underlying conduct.[631] The crime of genocide requires the commission of one of the enumerated acts in Article 2(2) of the Statute,[632] while the crime of conspiracy to commit genocide requires the act of entering into an agreement to commit genocide.[633] The Appeals Chamber finds that the Trial Chamber did not err in concluding that the crimes are distinct and that the conduct underlying each crime is not the same.

261. The Appeals Chamber now turns to address the Prosecution's contention that the Trial Chamber erred in exercising its discretion not to enter a conviction for conspiracy to commit genocide.[634] In this respect, the Appeals Chamber considers that a trial chamber is bound to enter convictions for all distinct crimes which have been proven in order to fully reflect the criminality of the convicted person.[635] Accordingly, the Appeals Chamber finds, Judge Agius dissenting, that by convicting Gatete only of genocide while he was also found criminally responsible for conspiracy to commit genocide, the Trial Chamber failed to hold him responsible for the totality of his criminal conduct, which included entering into the unlawful agreement to commit genocide.

262. Turning to Gatete's reliance on the inchoate nature of the crime of conspiracy to commit genocide in support of his contention that the Trial Chamber was correct in following the approach adopted by the *Popović et al.* and *Musema* trial chambers,[636] the Appeals Chamber finds, Judge

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conspiracy to commit genocide is different from that forming the basis for genocide); *Nahimana et al.* Trial Judgement, paras. 1043, 1090 (where the trial chamber found that the test on cumulative convictions applied and that cumulative convictions were permissible as both crimes comprise materially distinct elements); *Kajelijeli* Trial Judgement, paras. 787-793, 798 (where the trial chamber noted the discrepancies between *Niyitegeka* and *Musema* Trial Judgements but did not feel called upon to express a preference as Kajelijeli was found not guilty of conspiracy to commit genocide); *Niyitegeka* Trial Judgement, paras. 420, 429, 480 (where the accused was convicted of both crimes); *Musema* Trial Judgement, paras. 198, 940, 941, p. 276 (where the trial chamber stated "that [it] has adopted the definition of conspiracy most favourable to Musema, whereby an accused cannot be convicted of both genocide and conspiracy to commit genocide on the basis of the same acts" without finding the accused guilty of the crime of conspiracy to commit genocide in the absence of any evidence presented by the Prosecution); *Kambanda* Trial Judgement, paras. 3, 39, 40 (where the accused pleaded guilty to both conspiracy to commit genocide and genocide).

[630] *Čelebići* Appeal Judgement, para. 412. *See also Ntabakuze* Appeal Judgement, para. 260; *Bagosora and Nsengiyumva* Appeal Judgement, para. 413; *Nahimana et al.* Appeal Judgement, para. 1019; *Ntakirutimana* Appeal Judgement, para. 542.

[631] *See* Trial Judgement, para. 654.

[632] *Nahimana et al.* Appeal Judgement, para. 492.

[633] *Seromba* Appeal Judgement, para. 218; *Nahimana et al.* Appeal Judgement, para. 894; *Ntagerura et al.* Appeal Judgement, para. 92.

[634] *See* Prosecution Appeal Brief, paras. 20, 30-32, 39, 40. *See also* Prosecution Reply Brief, para. 16.

[635] *Cf. Strugar* Appeal Judgement, para. 324; *Stakić* Appeal Judgement, para. 358.

[636] Gatete Response Brief, paras. 15, 16, 18.

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ORIGINAL: ENGLISH

TRIAL CHAMBER II

Before: Judge Arlette Ramaroson, Presiding
Judge Taghrid Hikmet
Judge Joseph Masanche

Registrar: Adama Dieng

Date: 6 December 2010

THE PROSECUTOR

v.

Ildephonse HATEGEKIMANA

Case No. ICTR-00-55B-T

JUDGEMENT AND SENTENCE

The Prosecution:
William T. Egbe
Peter Tafah
Adama Niane
Disengi Mugeyo
Amina Ibrahim

The Defence:
Jean de Dieu Momo
Ata Quam Dovi Avouyi

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to be the appropriate sentence for the direct participation, except for the rapes of three persons, in genocide, murder and rape as crimes against humanity, and murder and rape as serious violations of Article 3 Common to the Geneva Conventions, at four massacre sites.[1322] Renzaho was the *Préfet* of Kigali-Ville and a colonel in the Rwandan Army and therefore was clearly an important and influential authority of the Rwandan government.[1323] In *Seromba*, the Appeals Chamber decided to increase the sentence handed down in the first trial from 15 years to life imprisonment after having granted one count of the Prosecution's appeal regarding the destruction of a church where 1,500 refugees died or were seriously injured. This act was considered in appeal as a crime of genocide and not only as constituting the crime of extermination. He was therefore convicted of both genocide and extermination for his role in the destruction of the church. Given the extraordinary gravity of the crimes, the Appeals Chamber therefore imposed on the Accused a sentence of imprisonment for the remainder of his life.[1324] In *Gacumbitsi*, the Appeals Chamber also increased the Accused's previous conviction of 30 years to life imprisonment. In reaching its conclusion, the Appeals Chamber noted that Gacumbitsi played a central role in planning, instigating, ordering, committing, and aiding and abetting genocide and extermination in his *Commune* of Rusumo, where thousands of *Tutsis* were killed or seriously harmed.[1325]

3.2 Individual, Aggravating and Mitigating Factors

740. The Chamber has wide discretion in determining what constitutes mitigating and aggravating circumstances and the weight to be accorded thereto. Whilst aggravating circumstances need to be proved beyond reasonable doubt, mitigating circumstances need only be established on a balance of probabilities.[1326] Any particular circumstance that is included as an element of the crime for which the Accused is convicted will not also be considered as an aggravating factor.[1327]

741. The Prosecution submits that the aggravating factors against Hategekimana include: his position; his premeditation; his direct participation as a perpetrator; the violent and humiliating nature of his acts and the vulnerability of his victims; and the duration of the offences and suffering of his victims.[1328] The Chamber notes that it is well established in the ICTR and ICTY's jurisprudence that the manner in which the accused exercised his command or the abuse of an accused's personal position in the community may be considered as an aggravating factor.[1329]

742. The Appeals Chamber has held that an accused's abuse of his superior position or influence may be considered as an aggravating factor.[1330] The Chamber notes Hategekimana's position as the *de jure* and *de facto* Commander of the Ngoma Camp. The influence he derived from his position and his local status made it likely that others would follow his example, which is an aggravating factor.[1331]

[1322] *Renzaho* Trial Judgement paras 812, 825-826.
[1323] *Renzaho* Trial Judgement paras. 1, 819.
[1324] *Seromba* Appeal Judgement paras. 238-239.
[1325] *Gacumbitsi* Appeal Judgement paras 204-205.
[1326] *Simba* Appeal Judgement para. 328; *Nahimana et al.* Appeal Judgement para. 1038.
[1327] *Ndindabahizi* Trial Judgement para. 502; *Semanza* Trial Judgement para. 571.
[1328] Prosecution Closing Brief para. 546.
[1329] *Seromba* Appeal Judgement para. 230; *Aleksovski,* Appeal Judgement para. 183; *Kayishema and Ruzindana,* Appeal Judgement paras. 357-358; *Ntakirutimana* Appeal Judgement para. 563; *Kamuhanda* Appeal Judgement paras. 347-348; *Bisengimana* Trial Judgement para. 120; *Serugendo* Trial Judgement para. 48; *Ndindabahizi*, Appeal Judgement para. 136.
[1330] *Simba* Appeal Judgement paras. 284-285.
[1331] *Semanza* Appeal Judgement para. 336.

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ICTR-98-44A-A
23 May 2005
(3615/H-3488/H)

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Tribunal pénal international pour le Rwanda
International Criminal Tribunal for Rwanda

IN THE APPEALS CHAMBER

Before: **Judge Fausto Pocar, Presiding**
Judge Mohamed Shahabuddeen
Judge Florence Ndepele Mwachande Mumba
Judge Wolfgang Schomburg
Judge Inés Mónica Weinberg de Roca

Registrar: **Mr. Adama Dieng**

Judgement of: **23 May 2005**

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JUDICIAL RECORDS/ARCHIVES

ICTR Appeals Chamber
Date: 23 May 2005
Action:
Copied To: Concerned Judges, Parties, Judicial Archives, LOs, LSS

JUVÉNAL KAJELIJELI
(Appellant)

v.

THE PROSECUTOR
(Respondent)

Case No. ICTR-98-44A-A

JUDGEMENT

Counsel for the Appellant:

Prof. Lennox S. Hinds
Prof. Sherrie L. Russell-Brown
Ms. Juliette Chinaud

The Office of the Prosecutor:

Mr. Hassan Bubacar Jallow
Mr. James Stewart

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
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SIGNATURE: DATE: 23/05/05

XXIII. SENTENCING

289. The Appeals Chamber recalls that at trial, the Appellant was convicted for genocide (Count 2); direct and public incitement to commit genocide (Count 4); and extermination as a crime against humanity (Count 6).[584] The Trial Chamber sentenced the Appellant to imprisonment for the remainder of his life for Count 2 as well as Count 6, and to imprisonment for fifteen years for his conviction on Count 4, with all three sentences to run concurrently.[585] The Trial Chamber then reduced the Appellant's fifteen-year sentence under Count 4 by five years, five months and twenty-five days as credit for time served pursuant to Rule 101(D) of the Rules.[586]

290. The combined effect of Article 23 of the Statute and Rule 101 of the Rules is *inter alia* that,[587] in imposing a sentence, the Trial Chamber shall consider the following factors: (i) the general practice regarding prison sentences in the courts of Rwanda; (ii) the gravity of the offences or totality of the conduct;[588] (iii) the individual circumstances of the accused, including aggravating and mitigating circumstances; and (iv) the extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served.[589] The Appeals Chamber recalls, however, that the factors to be taken into account by the Trial Chamber at sentencing as listed in these provisions are by no means exhaustive.[590] Finally, it shall credit the accused for any time spent in detention pending transfer to the Tribunal, trial, or appeal.

291. The Appeals Chamber further recalls that under Article 24 of the Statute, its review of the Trial Chamber's determination of a sentence on appeal is of a corrective nature only rather than a *de novo* sentencing proceeding. The role of the Appeals Chamber is limited to correcting errors of law invalidating a decision and errors of fact that have occasioned a miscarriage of justice.[591] When determining a sentence, a Trial Chamber has considerable, though not unlimited, discretion on account of its obligation to individualize penalties to fit the individual circumstances of an accused and to reflect the gravity of the crimes for which the accused has been convicted.[592] Consequently,

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[584] Trial Judgement, para. 942.
[585] Trial Judgement, paras. 968, 969.
[586] Trial Judgement, para. 970. The Appeals Chamber notes that this credit encompassed the total period the Appellant was in custody pending surrender and trial, including his period of arrest and detention in Benin prior to transfer to the custody of the Tribunal. *See* Trial Judgement, paras. 965-967.
[587] *Cf. Blaškić* Appeal Judgement, para. 679.
[588] *Čelebići Case* Appeal Judgement, para. 429.
[589] Statute, art. 9(3).
[590] *Musema* Appeal Judgement, para. 380 citing *Čelebići Case* Appeal Judgement, para. 718; *Furundžija* Appeal Judgement, para. 238. *See also Blaškić* Appeal Judgement, para. 680.
[591] *Akayesu* Appeal Judgement, paras. 178, 408 citing *Čelebići Case* Appeal Judgement, paras. 724-725; *Kayishema and Ruzindana*, Appeal Judgement, para. 320; *Musema* Appeal Judgement, para. 15. *See also Dragan Nikolić* Sentencing Appeal Judgement, para. 8.
[592] *Čelebići Case* Appeal Judgement, para. 717; *Vasiljević* Appeal Judgement, para. 9; *Blaškić* Appeal Judgement, para. 680; *Dragan Nikolić* Sentencing Appeal Judgement, para. 9.

as a general rule, the Appeals Chamber will not substitute a sentence for that of a Trial Chamber, unless "it believes that the Trial Chamber has committed an error in exercising its discretion, or has failed to follow applicable law."[593] The appellant in principle bears the burden of demonstrating that there has been a discernible error in the exercise of the Trial Chamber's discretion by showing that "(a) the Trial Chamber either took into account what it ought not to have, or failed to take into account what it ought to have taken into account in the weighing process involved in the exercise of its discretion; and (b) if it did, that this resulted in a miscarriage of justice."[594] As long as the Trial Chamber has observed the proper limits of the discretionary framework afforded to it at sentencing without committing any discernible errors, the Appeals Chamber will not intervene.[595]

A. Appeal against the Sentence (Ground of Appeal 25)

292. The Appellant argues under Ground of Appeal 25 that the Trial Chamber erred in sentencing him to imprisonment for life because it failed to accept, as a mitigating factor,[596] all of the evidence proffered by the Appellant in support of his contention that he saved the lives of Tutsis.[597] Consequently, the Appellant requests the Appeals Chamber to quash his sentence and to substitute the sentence with a determinate one.[598]

293. Specifically, the Appellant contends that the Trial Chamber erred in making the following findings[599] when considering his alleged mitigating circumstances:

(i) that the allegation that the Appellant saved Tutsis prior to 1 January 1994 may not be considered as a mitigating circumstance;

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[593] *Serushago* Sentencing Appeal Judgement, para. 32. *See also Aleksovski* Appeal Judgement, para. 187; *Tadić* Sentencing Appeal Judgement, paras. 20-22; *Čelebići Case* Appeal Judgement, para. 725; *Blaškić* Appeal Judgement, para. 680.

[594] *Serushago* Sentencing Appeal Judgement, para. 23. *See also Kayishema and Ruzindana* Appeal Judgement, para. 366; *Dragan Nikolić* Sentencing Appeal Judgement, para. 9.

[595] *Aleksovski* Appeal Judgement, para. 187; *Furundžija* Appeal Judgement, para. 239; *Tadić* Sentencing Appeal Judgement, para. 22; *Čelebići Case* Appeal Judgement, para. 725; *Jelisić* Appeal Judgement, para. 99; *Serushago* Sentencing Appeal, para. 32; *Akayesu* Appeal Judgement, para. 409; *Dragan Nikolić* Sentencing Appeal Judgement, para. 9.

[596] The Appeals Chamber notes that in his Amended Notice of Appeal, at paras. 139, 140, the Appellant raised two additional sub-grounds of appeal under this ground with respect to alleged errors by the Trial Chamber in giving weight to the following aggravating factors at sentencing: 1) that the Appellant directed and participated in the killings in various locations in Ruhengeri Prefecture; and 2) that the Appellant used his considerable influence to bring people together to commit massacres and acted as a bridge between military and civilian spheres to for the purpose of attacking and massacring Tutsi civilians. However, the Appellant failed to raise these alleged errors again in his Brief, Brief in Reply or at the Appeal Hearing, or to develop any specific arguments or cite to any authorities in support of his contention that the Trial Chamber committed error in this regard. Thus, the Appeals Chamber declines to consider these sub-grounds, finding that the Appellant's right to appeal as to them is waived. *See Kayishema and Ruzindana* Appeal Judgement, para. 46.

[597] Amended Notice of Appeal, paras. 135-138; Appellant's Brief, paras. 394-404; Brief in Reply, paras. 108, 109. *See also* Trial Judgement, para. 968.

[598] Appellant's Brief, paras. 403, 404.

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Tribunal pénal international pour le Rwanda
International Criminal Tribunal for Rwanda

IN THE APPEALS CHAMBER

Before:	**Judge Theodor Meron, Presiding** **Judge Mehmet Güney** **Judge Fausto Pocar** **Judge Andrésia Vaz** **Judge Carmel Agius**
Registrar:	**Mr. Adama Dieng**
Judgement of:	**20 October 2010**

CALLIXTE KALIMANZIRA

v.

THE PROSECUTOR

Case No. ICTR-05-88-A

JUDGEMENT

Counsel for Callixte Kalimanzira:

Mr. Arthur Vercken
Ms. Anta Guissé

The Office of the Prosecutor:

Mr. Hassan Bubacar Jallow
Mr. Alphonse Van
Ms. Charity Kagwe-Ndungu
Mr. François-Xavier Nsanzuwera
Ms. Florida Kabasinga
Ms. Jane Mukangira

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inflammatory speech would have offered tacit approval of its message. The basis of Kalimanzira's conviction, however, rests on the Trial Chamber's conclusion that Kalimanzira's tacit approval not only sanctioned Ndayambaje's message, but in fact substantially contributed to killings which occurred after the ceremony.[203]

76. As the Trial Chamber noted, Witnesses BBB and BCA attest to killings occurring after the meeting.[204] Their accounts regarding these crimes are vague and devoid of any detail. In particular, the extent of Witness BBB's description of the killings is that "after the speech, people went to sweep their houses, that is to say, to kill those persons."[205] Witness BCA's account is similarly brief: "As was noticed later on, it meant that [Tutsis and Hutus who opposed the government] who had been hidden had to be taken out of their hiding so that they should be killed as well."[206]

77. The Appeals Chamber, Judge Pocar dissenting, considers that it is unclear from either account whether the witnesses had first-hand knowledge of the killings or whether their evidence was hearsay. They refer to no particular incident, provide no approximate time-frame for the killings, and do not give any identifying information concerning the assailants or victims. In such circumstances, the Appeals Chamber finds, Judge Pocar dissenting, that it is impossible to determine with any reasonable certainty whether any killings in fact occurred following the meeting and, if so, the degree to which they were related to the ceremony.

78. In the *Muvunyi* case, the Appeals Chamber reversed a conviction for genocide because the evidence of the killings which underpinned the finding of guilt were based on second- or third-hand testimony that "contain[ed] no detail on any specific incident or the frequency of the attacks."[207] The Appeals Chamber, Judge Pocar dissenting, can identify no material distinction between the quality of the evidence in the *Muvunyi* case and that provided by Witnesses BBB and BCA here with respect to the occurrence of killings.

79. Consequently, the Appeals Chamber, Judge Pocar dissenting, is not persuaded that the Trial Chamber acted reasonably in relying on the evidence of Witnesses BBB and BCA about the subsequent killings. No reasonable trier of fact could have concluded that Tutsis were killed as a result of the ceremony in circumstances where it heard no evidence about even a single incident. Therefore, the Trial Chamber erred in fact in finding that the evidence showed that Kalimanzira's

[202] *Br|anin* Appeal Judgement, para. 277.
[203] Trial Judgement, para. 292.
[204] Trial Judgement, para. 291. *See also* T. 16 June 2008 p. 20; T. 18 June 2008 pp. 50, 51.
[205] T. 16 June 2008 p. 20.
[206] T. 18 June 2008 pp. 50, 51.
[207] *Muvunyi* Appeal Judgement, para. 69. *See also Muvunyi* Appeal Judgement, paras. 68, 70-72.

presence at the inauguration substantially contributed to subsequent acts of genocide. As a result, the Appeals Chamber need not address Kalimanzira's other arguments under this ground of appeal.

80. For the forgoing reasons, the Appeals Chamber, Judge Pocar dissenting, grants Kalimanzira's Fifth Ground of Appeal and reverses his conviction for aiding and abetting genocide based on this event.

perpetrators' criminal plan.[227] Kalimanzira also asserts that the Trial Chamber erred in discussing his *mens rea* for genocide in a separate section of the Trial Judgement applicable to all relevant counts of the Indictment.[228] He asserts that this section improperly analyzes multiple separate incidents and also focuses only on genocidal intent, rather than the specific *mens rea* required for aiding and abetting.[229]

86. The Appeals Chamber has explained that an "aider and abettor commitFsğ acts specifically aimed at assisting, encouraging, or lending moral support for the perpetration of a specific crime, and that this support ha[s] a substantial effect on the perpetration of the crime."[230] Whether a particular contribution qualifies as "substantial" is a "fact-based inquiry"; such assistance need not "serve as condition precedent for the commission of the crime."[231] With regard to the *mens rea* required for aiding and abetting, the Appeals Chamber has held that "Ftğhe requisite mental element Ғ...ğ is knowledge that the acts performed assist the commission of the specific crime of the principal perpetrator."[232] Specific intent crimes such as genocide require that "the aider and abettor must know of the principal perpetrator's specific intent."[233]

87. Kalimanzira's contention that the Trial Chamber erred in finding that he made a substantial contribution to the killings at Kabuye hill is not convincing. The Trial Chamber reasonably concluded that he substantially contributed to the massacre by encouraging Tutsis to seek refuge at Kabuye hill and by providing armed reinforcements to those trying to kill the Tutsis there. Kalimanzira's assertion that he did not substantially aid the assault on Kabuye hill rests on his claim that no credible witnesses who were also principal perpetrators placed him there.[234] However, this claim does not take into account the evidence provided by Tutsi survivors of the attacks. It was on the basis of their testimonies that the Trial Chamber placed him at Kabuye hill on 23 April 1994.[235] The Appeals Chamber recalls that it is not necessary for a principal perpetrator to be aware of the aider and abettor's contribution.[236] It further recalls the Trial Chamber's finding that the attacks at Kabuye hill involved a large number of individuals over a broad terrain and long period of time.[237] In this context, it was reasonable for the Trial Chamber to conclude that Kalimanzira provided

[227] Kalimanzira Appeal Brief, paras. 213-215.
[228] Kalimanzira Appeal Brief, paras. 204-209.
[229] Kalimanzira Appeal Brief, paras. 206, 218-220.
[230] *Seromba* Appeal Judgement, para. 44. *See also Muvunyi* Appeal Judgement, para. 79; *Blagojević and Jokić* Appeal Judgement, para. 127.
[231] *Blagojević and Jokić* Appeal Judgement, para. 134.
[232] *Muvunyi* Appeal Judgement, para. 79.
[233] *Blagojević and Jokić* Appeal Judgement, para. 127.
[234] *See* Kalimanzira Appeal Brief, paras. 196-201. *See also* Kalimanzira Reply Brief, para. 24.
[235] *See* Trial Judgement, paras. 379-383, 393.
[236] *See Tadić* Appeal Judgement, para. 229.

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influenced by the Prosecution's practice of having its witnesses identify him from the witness stand and thus did not discuss identification evidence in the Trial Judgment.[253] Kalimanzira also provides specific analysis of the identification evidence provided by Witnesses BBO, BCF, BDC, BWK, and BWO in their testimony.[254] Kalimanzira focuses especially on Witness BWK, noting that she testified to meeting him only once prior to 23 April 1994, when he was identified by a third party. Kalimanzira also observes that she again required assistance in order to identify him on 23 April 1994.[255]

95. The Prosecution responds that the Trial Chamber gave careful consideration to the testimony of survivor witnesses for both the Prosecution and the Defence. It contends that differences in the Trial Chamber's description of these witnesses did not amount to an error.[256] It also suggests that the Trial Chamber appropriately chose to accept aspects of the Defence witnesses' testimony without finding that it undermined the testimony of Prosecution witnesses.[257] The Prosecution further contends that the Trial Chamber acted within its discretion in not specifically discussing the identification evidence of certain witnesses. The Prosecution asserts that there were no difficult circumstances with regard to identification that would require a more rigorously reasoned opinion on this issue.[258] With regard to Witness BWK, it notes that she provided "detailed evidence" regarding her first encounter with Kalimanzira, and notes that her meeting with him on 23 April 1994 "must have been clearly memorable to her."[259]

96. The Appeals Chamber recalls that in assessing witness testimony, "it falls to the Trial Chamber to take the approach it considers most appropriate for the assessment of evidence."[260] A trial chamber "is F...ğ not obliged in its judgement to recount and justify its findings in relation to every submission made at trial."[261] In addition, "neither the Rules nor the jurisprudence of the Tribunal obligeFğ [a] Trial Chamber to require a particular type of identification evidence."[262] However, identifications made in difficult circumstances, such as darkness, obstructed view, or traumatic events,[263] require careful and cautious analysis by a trial chamber.[264] In addition, in-court

[253] Kalimanzira Appeal Brief, paras. 176-178.
[254] Kalimanzira Appeal Brief, paras. 182-192. *See also* Kalimanzira Reply Brief, paras. 21, 22.
[255] Kalimanzira Appeal Brief, paras. 188-190.
[256] Prosecution Response Brief, paras. 93, 94.
[257] Prosecution Response Brief, para. 95.
[258] Prosecution Response Brief, paras. 97-99, 106. The Prosecution also provides specific analysis of the identification evidence provided by Witnesses BWO, BDC, BCF, BBO, and BWK, and concludes that their identifications were reliable. *See* Prosecution Response Brief, paras. 100-105.
[259] Prosecution Response Brief, para. 104.
[260] *Rutaganda* Appeal Judgement, para. 207.
[261] *Muhimana* Appeal Judgement, para. 176.
[262] *Kamuhanda* Appeal Judgement, para. 298.
[263] *See, e.g., Kupre{ki}* Appeal Judgement, para. 40.

identification evidence should be assigned "little or no credence" given the signals that can identify an accused aside from prior acquaintance.[265] The Appeals Chamber further recalls that "Fağ Trial Chamber has the discretion to cautiously consider hearsay evidence and has the discretion to rely on it."[266] However, "the weight and probative value to be afforded to that evidence will usually be less than that accorded to the evidence of a witness who has given it under oath and who has been cross-examined."[267]

97. Kalimanzira provides no relevant evidence or analysis to support his contention that the Trial Chamber inappropriately excused weaknesses in Prosecution witnesses' testimony on the basis of their past suffering. The Appeals Chamber also finds that the Trial Chamber acted within its discretion in accepting Defence witnesses' testimony regarding events at Gisagara marketplace and Kabuye hill, while also concluding that their failure to see Kalimanzira did not preclude his presence at these locations. Large numbers of individuals were involved in these two events, and the Trial Chamber's conclusions regarding Kabuye hill – that "no witness alone could amply describe everything that transpired or identify everyone who was present" – applies to the events at Gisagara marketplace with equal force.[268]

98. The Appeals Chamber notes that Kalimanzira points to no evidence and provides no analysis in relation to his assertion that identifications occurred under difficult circumstances. Therefore, this contention is summarily dismissed. The Appeals Chamber further notes that Kalimanzira appears to contradict himself by claiming that the in-court identification by Prosecution witnesses led the Trial Chamber to ignore the issue of identification evidence, while at the same time referring to Trial Chamber analysis of such identification evidence relating to Witnesses BBO and BWO.[269] In any event, the evaluation in the Trial Judgement of individual witness testimonies demonstrates that, for the most part, the Trial Chamber reasonably discussed identification evidence when this was relevant to assessing a witness's credibility. Thus, analysis of identification evidence was reasonably used both to explain the Trial Chamber's caution in accepting Witness BBO's evidence, and to help justify the finding that Witness BWO was credible. The absence of any analysis of identification evidence with respect to Witnesses BDC and BCF from the Trial Judgement is also reasonable. Both testified that they had seen Kalimanzira more

[264] *See, e.g., Bagilishema* Appeal Judgement, para. 75. *See also Kupre{ki}* Appeal Judgement, para. 39.
[265] *Kamuhanda* Appeal Judgement, para. 243.
[266] *Karera* Appeal Judgement, para. 39 (internal citations omitted).
[267] *Karera* Appeal Judgement, para. 39.
[268] Trial Judgement, para. 387. *See also Muhimana* Appeal Judgement, para. 113 (noting the limited probative value of claims by witnesses who did not see an accused during large scale attacks).
[269] *Compare* Kalimanzira Appeal Brief, para. 178, *with* Kalimanzira Appeal Brief, paras. 185, 191.

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

United Nations
Nations Unies

IN THE APPEALS CHAMBER

Before :
Judge Claude JORDA, Presiding
Judge Lal Chand VOHRAH
Judge Mohamed SHAHABUDDEEN
Judge Rafael NIETO-NAVIA
Judge Fausto POCAR

Registrar :
Mr Agwu U. OKALI

of : ctober 2000

Jean KAMBANDA
(Appelant)
v
THE PROSECUTOR
(Respondent)

Case No. ICTR 97-23-A

JUDGEMENT

Counsel for Jean KAMBANDA:
Mr Tjarda van der SPOEL
Mr Gerard PMF MOLS

Counsel for the Prosecutor :
Ms Carla DEL PONTE
Mr Solomon LOH
Mr Norman FARRELL
Mr Morris ANYAH
Mr Mathias MARCUSSEN

I. INTRODUCTION

A. Procedural Background

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109. It is thus apparent that it is within the discretion of the Trial Chamber to impose either a single sentence or multiple sentences for convictions on multiple counts. However, the question arises, in what circumstances is it appropriate for a Chamber to exercise its discretion to impose a single sentence.

110. On this point, the Appeals Chamber notes that with respect to the particular circumstances of the *Blaškić* case, ICTY Trial Chamber I stated that

> the crimes ascribed to the accused have been characterised in several distinct ways but form part of a single set of crimes committed in a given geographic region during a relatively extended time-span ... In light of this overall consistency, the Trial Chamber finds that there is reason to impose a single sentence for all the crimes of which the accused has been found guilty.

This followed similar reasoning in the *Jelisić* case.[125]

111. The Appeals Chamber agrees with the approach adopted in the *Blaškić* case: where the crimes ascribed to an accused, regardless of their characterisation, form part of a single set of crimes committed in a given geographic region during a specific time period, it is appropriate for a single sentence to be imposed for all convictions, if the Trial Chamber so decides. The issue is whether this case falls within such parameters.

112. The Appellant pleaded guilty to six counts under Article 2 (Genocide) and Article 3 (Crimes against humanity) of the Statute, for which he was subsequently convicted. These acts were carried out in Rwanda during a specific time period (1994) and formed part of a single set of crimes related to the widespread and systematic attack against the Tutsi civilian population of Rwanda, the purpose of which was to kill them. The Appeals Chamber finds that this was therefore a case in which it was appropriate to impose a single sentence for the multiple convictions.

113. Finding no merit in the Appellant's arguments, the Appeals Chamber dismisses this ground of appeal.

C. Fourth, Fifth, Seventh and Eighth Grounds of Appeal

114. The main issue raised by the Appellant in the fourth, fifth, seventh and eighth grounds of appeal is that the Trial Chamber erred in law in failing to properly take certain mitigating circumstances into account. As a result the sentence imposed by the Trial Chamber was excessive. The Appellant submits that the Trial Chamber erred in failing to consider that his plea of guilty as a mitigating factor carries a discount in sentence; failing to take into account both his personal circumstances and his substantial co-operation with the Prosecutor (both in the past and in the future[126]); and failing to take into account the general practice regarding prison sentences in the courts of Rwanda in the determination of sentence. In addition, he submits that the Trial Chamber erred in law and on the facts in taking into account the non-explanation of the Appellant when asked if he had anything to say himself in mitigation before sentence.

115. For the Appellant's appeal to succeed on these grounds, he must show that the Trial Chamber abused its discretion, so invalidating the sentence. The sentence must

be shown to be outside the discretionary framework provided by the Statute and the Rules.

116. The Appeals Chamber notes that a Trial Chamber is required as a matter of law, under both the Statute and the Rules, to take account of mitigating circumstances and the general practice regarding prison sentences in Rwanda. Therefore if it fails to do so, it commits an error of law. Article 23 provides *inter alia,* that "[i]n determining the terms of imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of Rwanda"[127] and that in imposing sentence it "should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person."[128] Rule 101(B) provides:

> In determining the sentence, the Trial Chamber shall take into account the factors mentioned in Article 23(2) of the Statute, as well as such factors as:
>
> (i) Any aggravating circumstances;
>
> (ii) Any mitigating circumstances including the substantial cooperation with the Prosecutor by the convicted person before or after conviction;
>
> (iii) The general practice regarding prison sentences in the courts of Rwanda:
>
> (iv) The extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served, as referred to in Article 9 (3) of the Statute.

117. Rule 101(B) is expressed in the imperative in that the Trial Chamber "shall take into account" the factors listed and therefore if it does not, it will commit an error of law. Whether or not this would invalidate the decision is of course another question.

118. In the Judgement the Trial Chamber considered both the Appellant's guilty plea on each count on the indictment, together with the Plea Agreement,[129] wherein the Appellant made full admissions of all the relevant facts alleged in the indictment and his involvement as Prime Minister. He "acknowledge[d] that...he as Prime Minister, instigated, aided and abetted the *Prefets, Bourgmestres*, and members of the population to commit massacres and killings of civilians, in particular Tutsi and moderate Hutu."[130] The Trial Chamber noted the gravity of the crimes in question and found as an aggravating factor the fact that the Appellant abused his position of authority and trust of the civilian population when he, as Prime Minister, was responsible for maintaining peace and security.[131] It considered the factors put forward by the Appellant in mitigation: plea of guilty; remorse, which the Appellant claimed was evident from the act of pleading guilty; and cooperation with the Prosecutor.[132] Nevertheless, it found that the Appellant had "offered no explanation for his voluntary participation in the genocide; nor [had] he expressed contrition, regret or sympathy for the victims in Rwanda, even when given the opportunity to do so by the Chamber, during the [pre-sentencing] hearing of 3 September 1998."[133]

119. Weighing up the submissions of both parties, in particular regarding the Appellant's past and future cooperation with the Prosecutor, the fact that the guilty plea would encourage others to come forward and recognize their responsibilities and

that it was in itself a mitigating circumstance, the Trial Chamber nevertheless determined that, in view of the "intrinsic gravity" of the crimes and the Appellant's position of authority,[134] "the aggravating circumstances surrounding the crimes...negate the mitigating circumstances, especially since [the Appellant] occupied a high ministerial post, at the time he committed the said crimes."[135] The Appellant was therefore sentenced *"à la peine d'emprisonnement à vie,"* (translated in the English text, as "life imprisonment").[136]

120. The Judgement illustrates that the Trial Chamber clearly considered the mitigating factors put forward by both the Appellant and the Prosecutor, the principle that a guilty plea as part of this mitigation carries with it a reduction in sentence and the general practice regarding prison sentences in the courts of Rwanda. The Trial Chamber acknowledged that the Prosecutor had asked the Trial Chamber "to regard as a significant mitigating factor, not only the substantial co-operation so far extended, but also the future co-operation..." of the Appellant.[137] It noted the early guilty plea of the Appellant and the fact that both the Appellant and the Prosecutor

> urged the Chamber to interpret [the Appellant's] guilty pleas as a signal of his remorse, repentance and acceptance of responsibility for his actions. The Chamber is mindful that remorse is not the only reasonable inference that can be drawn from a guilty plea; nevertheless it accepts that most national jurisdictions consider admissions of guilt as matters properly to be considered in mitigation of punishment.[138]

121. In addition, with regard to consideration of the general practice regarding prison sentences in the courts of Rwanda, the Trial Chamber analysed this issue at some length in paragraphs 18-25 and having reviewed the scale of sentences applicable in Rwanda, properly concluded that "the reference to this practice can be used for guidance, but is not binding."[139]

122. The Appeals Chamber therefore finds that the Trial Chamber clearly considered each of the above factors put forward by the Appellant in mitigation in reaching its decision and as required in the Statute and Rules and therefore to this extent did not commit an error of law.

123. However, the second question is whether the Trial Chamber properly took these factors into account. This turns on the question of the weight attached by the Trial Chamber to the mitigating factors. As the Prosecutor submits, "the Appellant's Brief does not appear to argue that the Trial Chamber failed to recognize this as a mitigating circumstance, but rather, that the Trial Chamber failed to give this mitigating circumstance sufficient weight."[140]

124. The weight to be attached to mitigating circumstances is a matter of discretion for the Trial Chamber and unless the Appellant succeeds in showing that the Trial Chamber abused its discretion, resulting in a sentence outside the discretionary framework provided by the Statute and the Rules, these grounds of appeal will fail.

125. The Appeals Chamber notes that the crimes for which the Appellant was convicted were of the most serious nature. A sentence imposed should reflect the inherent gravity of the criminal conduct. The Appeals Chamber of the ICTY has observed that "[c]onsideration of the gravity of the conduct of the accused is normally

the starting point for consideration of an appropriate sentence."[141] In sentencing the Appellant, the Trial Chamber found that

(v) the crimes for which Jean Kambanda is responsible carry an intrinsic gravity, and their widespread, atrocious and systematic character is particularly shocking to the human conscience;

(vi) Jean Kambanda committed the crimes knowingly and with premeditation;

(vii) and, moreover, Jean Kambanda, as Prime Minister of Rwanda was entrusted with the duty and authority to protect the population and he abused this trust.[142]

126. In this case, the Trial Chamber balanced the mitigating factors against the aggravating factors and concluded that "the aggravating circumstances surrounding the crimes negate the mitigating circumstances[143][144] The Appeals Chamber considers that this sentence falls within the discretionary framework provided by the Statute and the Rules, and so sees no reason to disturb the decision of the Trial Chamber.

THE APPEALS CHAMBER

UNANIMOUSLY

Done in English and French, the French text being authoritative.

Claude Jorda Presiding	Lal Chand Vohrah	Mohamed Shahabuddeen
Rafael Nieto-Navia	Fausto Pocar	

Done this nineteenth day of October 2000 t The Hague,

[Seal of the Tribunal]

[1] "Sentence", *The Prosecutor v. Jean Kambanda*, Case No. ICTR 97-23-S, Tr. Ch. I, 4 September 1998.

[2] "Notice of Appeal against Sentence of Trial Chamber I Art. 24 of Statute and Rule 108(A) of the Rules".

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[3] "Supplementary Notice of Appeal against Sentence of Trial Chamber I Art. 24 of Statute and Rule 108(A) of the Rules", filed on 25 September 1998.

[4] "Second Supplementary Notice of Appeal", filed on 24 November 1999.

[5] *Ibid.*, page 2.

[6] "Motion for Admission of New Evidence on Appeal pursuant to Rules 115 of the Rules of Procedure and Evidence".

[7] "Decision on the Appellant's Motion for Admission of New Evidence", 13 June 2000.

[8] "Prosecution's Response to Jean Kambanda's Provisional Appellant's Brief of 30 March 2000".

[9] "Reply to the Prosecutor's Response on the Appellant's Brief of 2 May 2000".

[10] "Order (date of hearing and Appellant's Appeal Books)", 2 June 2000.

[11] "Prosecution Motion under Rules 54 and 117 for an Order for Information from the Registrar of the ICTY Concerning the Detention of Kambanda".

Appellant's Reply, paras 8 to 20.

[16]On 22 July 1997, he stated in a letter to the Registry that: "When in future I express the desire for counsel, I wish to be defended or represented either by Mr. Johan Scheers or by a criminal lawyer who is a specialist in common law and is French-speaking" [translation from French]

[17]The hearing of 14 August 1997 involved the Trial Chamber's examination of the Prosecution Motion seeking an Order to extend the suspect Jean Kambanda's provisional detention under Rule 40 bis. Transcript, 14 August 1997, p. 5.

[18]The hearing of 16 September 1997 concerned the Prosecution Motion seeking an Order for an additional extension of provisional detention under Rule 40 bis. Transcript, 16 September 1997, p. 6.

[19]Letter dated 18 October 1997 from Jean Kambanda to the Registry, in "Registry's Reply to Appellant's Brief", 29 June 1999, Annex 1.

[20]Letter dated 5 March 1998 from Jean-Pelé Fomété to Jean Kambanda, in op. cit. *supra*, Annex 2a.

[21]Letter dated 5 March 1998 from Jean Kambanda to Jean-Pelé Fomété, ., Annex 2b.

[22] Letter dated 5 March 1998 from Jean-Pelé Fomété to Jean Kambanda, ., Annex 2c.

[23]"*Ayant appris que Maître Johan SCHEERS, par lequel j'avais exprimé mon intention d'être défendu, qu'il n'est pas repris sur la liste des conseils accrédités auprès du Tribunal et compte tenu du curriculum vitae de Maître Olivier Michael INGLIS que m'a été envoyé, après mon analyse, je n'ai pas objection à ce qu'il puisse assurer ma défense*". In letter dated 20 March 1998 from Jean Kambanda to Jean-Pelé Fomété, ., Annex 2g.

[24]

Date of Mr. Kambanda's initial appearance.

[26]The 3 September and 4 September 1998 hearings were the pre-sentencing and sentencing hearings pursuant to Rule 100.

[27] Appellant's Reply, para. 15; Transcript, 27 June 2000, p. 33.

[28] Transcript, 1 May 1998; Transcript, 3 September 1998; Transcript, 4 September 1998.

[29]"[...] I would like to ask the accused: "Do you now have the assistance of a counsel?", and Mr. Kambanda answered "Yes, Mr. President". See Transcript, 1 May 1998, p. 20.

[30]Appellant's Brief, para. 15; Transcript, 27 June 2000, p. 154.

[31]Transcript, 27 June 2000, p. 47.

[32]"Decision on the Prosecutor's Appeal Concerning the Admissibility of Evidence", *The Prosecutor v. Aleksovski,* Case No. IT-94-1-A, App. Ch., 16 February 1999, para. 19.

[33]On this point, see in particular "Judgement", *The Prosecutor v. Kayishema and Ruzindana*, Case No. ICTR-95-IT, Tr. Ch. II, 21 May 1999, para. 64.

[34]"Article 12: Remedy Against a Decision Not to Assign Counsel

(A)The suspect whose request for assignment of Counsel has been denied may seek the President's review of the decision of the Registrar. The President may either confirm the Registrar's decision or decide that a Counsel should be assigned.
(B) The accused whose request for assignment of Counsel for his initial appearance has been denied, may make a motion to the Trial Chamber before which he is due to appear for immediate review of the Registrar's decision. The Trial Chamber may either confirm the Registrar's decision or decide that a Counsel should be assigned.
(C) After the initial appearance of the accused, an objection to the denial of his request for the assignment of Counsel shall take the form of a preliminary motion by him before the Trial Chamber not later than 60 days after his first appearance and, in any event, before the hearing on the merits."

See "Judgement", *The Prosecutor v. Anto Furundžija*, Case No. IT-95-17/1-A, App. Ch.

[36]"Judgement", *The Prosecutor v. Duško Tadić,* Case No. IT-94-1-A, App. Ch., 15 July 1999, para. 55.

[37]"Decision Stating Reasons for Appeals Chamber's Order of 29 May 1998", *The Prosecutor v. Milan Kovačević,* Case No. IT-97-24-AR73, App. Ch., 2 July 1998, para. 33.

[38]*Albert Berry v. Jamaica,* Comm. No. 330/1998, 26 April 1994, UN doc. CCPR/C/50/D/330/1998, para. 11.6. See also *Glenford Campbell v. Jamaica,* Comm. No. 248/1997, 30 March 1992.

[39]Appellant's Reply, para. 12.

[40] Transcript, 27 June 2000, pp. 36 (last line), 37, 38, 39, 43, 94 and 164; Transcript, 28 June 2000, pp. 9, 28 and 29.

[41] The Plea Agreement, signed by the Appellant, states in its paragraph 48 that: "I, Jean Kambanda, have read and carefully reviewed every part of this plea agreement with my Counsel, Oliver Michael Inglis. Mr. Inglis has advised me of my rights, of possible defences, and of the consequences of

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UNITED NATIONS NATIONS UNITS

International Criminal Tribunal for Rwanda
Tribunal penal international pour le Rwanda
CHAMBER I - CHAMBRE I

OR: FR

Before: Judge Laïty Kama, Presiding Judge
Judge Lennart Aspegren
Judge Navanethem Pillay

Decision of: 4 September 1998

Registry: Mr. Agwu Okali

THE PROSECUTOR
VERSUS
JEAN KAMBANDA

Case no.: ICTR 97-23-S

JUDGEMENT and SENTENCE

Office of the Prosecutor:

Mr. Bernard Muna
Mr. Mohamed Othman
Mr. James Stewart
Mr. Udo Gehring

Counsel for the Defence:

Mr. Oliver Michael Inglis

Considering that the exceptional situation facing the country requires the adoption of adequate measures to meet the need of the Rwandan people for justice."

28. That said, it is clear that the penalties imposed on accused persons found guilty by the Tribunal must be directed, on the one hand, at retribution of the said accused, who must see their crimes punished, and over and above that, on other hand, at deterrence, namely dissuading for good those who will attempt in future to perpetrate such atrocities by showing them that the international community was not ready to tolerate the serious violations of international humanitarian law and human rights.

29. The Chamber recalls, however, that in the determination of sentences, it is required by Article 23 (2) of the Statute and Rule 101 (B) of the Rules to take into account a number of factors including the gravity of the offence, the individual circumstances of the accused, the existence of any aggravating or mitigating circumstances, including the substantial co-operation by the accused with the Prosecutor before or after his conviction. It is a matter, as it were, of individualising the penalty, for it is true that "among the joint perpetrators of an offence or among the persons guilty of the same type of offence, there is only one common element: the target offence which they committed with its inherent gravity. Apart from this common trait, there are, of necessity, fundamental differences in their respective personalities and responsibilities : their age, their background, their education, their intelligence, their mental structure....It is not true that they are *a priori* subject to the same intensity of punishment "[unofficial translation] [9]

30. Clearly, however, as far as the individualisation of penalties is concerned, the judges of the Chamber cannot limit themselves to the factors mentioned in the Statute and the Rules. Here again, their unfettered discretion to evaluate the facts and attendant circumstances should enable them to take into account any other factor that they deem pertinent.

31. Similarly, the factors at issue in the Statute and in the Rules cannot be interpreted as

[9] Merle and Virtu - Trait de Droit Criminal, Editions Culpas, paragraph 66, pages 115 and 116

having to be mandatorily cumulative in the determination of the sentence.

32. Recalling these factors, the Chamber would like to emphasise three of them, in particular. These are the aggravating circumstances, individual circumstances of Jean Kambanda[10] (Article 23 (2) of the Statute) and the mitigating circumstances.

33. Regarding the aggravating circumstances, it will be noted that the gravity of crimes such as genocide and crimes against humanity which are particularly revolting to the collective conscience alone, is enough to merit lengthy elaboration. The Chamber will, however, come back to it when weighing the aggravating factors against the mitigating factor or factors in favour of the accused for the determination of the sentence.

34. As far as the "individual circumstances of Jean Kambanda" are concerned, the individualisation of the sentence, as the expression itself seems to suggest, is not possible unless facts about his "personality" are known, including his background, his behaviour before, during and after the offence, his motives for the offence and demonstration of remorse thereafter.

35. With regard to the mitigating circumstances, Article 6 (4) of the Statute states that the fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him or her of criminal responsibility, but may be considered in mitigation of punishment if the Tribunal determines that justice so requires. The problem should not arise in the instant case, since the accused was the Prime Minister. For its part, Rule 101 (B) (ii) of the Rules, as mentioned earlier stipulates as mitigating circumstances " the substantial co-operation by the convicted person with Prosecutor before or after the conviction." In this regard, when determining the sentence for Jean Kambanda, the Chamber will have to assess the extent of the co-operation by the accused referred to by the Prosecutor in the documents under seal entitled "Agreement on a guilty plea.", signed by herself, the accused and his counsel.

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[10] The term "the accused" should rather be used since you do not pass sentence on a convicted person.

59. The Chamber recalls as aforementioned that the Tribunal was established at the request of the government of Rwanda; and the Tribunal was intended to enforce individual criminal accountability on behalf of the international community, contribute in ensuring the effective redress of violence and the culture of impunity, and foster national reconciliation and peace in Rwanda. (Preamble, Security Council resolution 955(1994)).

60. In her submissions, although the Prosecutor sought a term of life imprisonment for Jean Kambanda, she requested that the Tribunal, in the determination of the sentence, take into consideration the guilty plea and the cooperation of Jean Kambanda with her office. The Defence Counsel in his submissions emphasised that Jean Kambanda was only a puppet controlled by certain military authorities and that his power was consequently limited. He thus submitted that the Tribunal, taking into account the guilty plea, Jean Kambanda's cooperation and willingness to continue cooperating with the Prosecutor, and the role Jean Kambanda could play in the process of national reconciliation in Rwanda, sentence him for a term of imprisonment not exceeding two years.

61. The Chamber has examined all the submissions presented by the Parties pertaining to the determination of sentence, from which it can be inferred:

(A) (i) Jean Kambanda has cooperated and is still willingly cooperating with the Office of the Prosecutor;

(ii) the guilty plea of Jean Kambanda is likely to encourage other individuals to recognize their responsibilities during the tragic events which occurred in Rwanda in 1994;

(iii) a guilty plea is generally considered, in most national jurisdictions, including Rwanda, as a mitigating circumstance;

(B) but that, however:

(v) the crimes for which Jean Kambanda is responsible carry an intrinsic gravity, and their widespread, atrocious and systematic character is particularly shocking to the human conscience;

(vi) Jean Kambanda committed the crimes knowingly and with premeditation;

(vii) and, moreover, Jean Kambanda, as Prime Minister of Rwanda was entrusted with the duty and authority to protect the population and he abused this trust.

62. On the basis of all of the above, the Chamber is of the opinion that the aggravating circumstances surrounding the crimes committed by Jean Kambanda negate the mitigating circumstances, especially since Jean Kambanda occupied a high ministerial post, at the time he committed the said crimes.

UNITED NATIONS
NATIONS UNIES

Tribunal pénal international pour le Rwanda
International Criminal Tribunal for Rwanda

IN THE APPEALS CHAMBER

Before:	**Judge Theodor Meron, Presiding** **Judge Mohamed Shahabuddeen** **Judge Florence Ndepele Mwachande Mumba** **Judge Wolfgang Schomburg** **Judge Inés Mónica Weinberg de Roca**
Registrar:	**Mr. Adama Dieng**
Judgement of:	**19 September 2005**

JEAN DE DIEU KAMUHANDA
(Appellant)

v.

THE PROSECUTOR
(Respondent)

Case No. ICTR-99-54A-A

JUDGEMENT

Counsel for the Appellant:

Ms. Aïcha Condé

The Office of the Prosecutor:

Mr. Hassan Bubacar Jallow
Mr. James Stewart
Ms. Amanda Reichman
Mr. Neville Weston
Ms. Inneke Onsea

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A. The Appellant's High Position as an Aggravating Circumstance

346. The Appellant argues that the Trial Chamber failed to provide a reasoned opinion in support of its conclusion that the high position he held as a civil servant was an aggravating circumstance.[761]

347. The Trial Chamber, in the part of the Trial Judgement dealing with the aggravating circumstances, indeed found that the Appellant's "high position [...] as a civil servant can be considered as an aggravating factor".[762] The high position of an accused has previously been considered as an aggravating factor both before the ICTR and the ICTY. In *Kambanda*, for example, the Appeals Chamber found the fact that "Jean Kambanda, as Prime Minister of Rwanda was entrusted with the duty and authority to protect the population and he abused this trust", to constitute an aggravating circumstance.[763] In *Aleksovski*, the ICTY Appeals Chamber maintained that the Appellant's "superior responsibility as a warden seriously aggravated the Appellant's offences, [and that] instead of preventing it, he involved himself in violence against those whom he should have been protecting...."[764] The Appeals Chamber in *Kayishema and Ruzindana* further clarified that a position of authority by itself does not amount to an aggravating factor, but that the "the manner in which an accused exercises his command"[765] can justify a finding of a high position of authority as an aggravating circumstance. More recently, in *Ntakirutimana*, the Appeals Chamber affirmed the Trial Chamber's holding that the abuse of the Appellant's personal position in the community to commit the crimes was an aggravating circumstance.[766]

348. In light of the above and contrary to the Appellant's submissions, the Appeals Chamber does not find that the finding of the Trial Chamber that his high position is an aggravating circumstance "lacks merit".[767] Further, the Appeals Chamber does not consider that there is anything "disturbing"[768] or otherwise inadequate in the Trial Chamber's reasoning and does not

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[761] Appeal Brief, para. 507.
[762] Trial Judgement, para. 764.
[763] *Kambanda* Trial Judgement, paras. 61(B)(vii), 62, quoted with approval in *Kambanda* Appeal Judgement, para. 119.
[764] *Aleksovski* Appeal Judgement, para. 183, quoted in *Kayishema and Ruzindana* Appeal Judgement, para. 357.
[765] *Kayishema and Ruzindana* Appeal Judgement, para. 358.
[766] *Ntakirutimana* Appeal Judgement, para. 563.
[767] Appeal Brief, para. 507.
[768] Appeal Brief, para. 506.

find any element that would indicate that the Appellant was sentenced to life imprisonment solely on the basis of this aggravating factor.[769]

349. For the foregoing reasons, this part of the Appellant's ground of appeal is dismissed.

B. National Reconciliation and Restoration of Peace

350. The Appellant submits that the Trial Chamber, while it stated that it was "mindful" of the aims of the United Nations Security Council in creating the Tribunal, including national reconciliation and restoration of peace, as expressed in Resolution 955,[770] nevertheless sentenced him to life imprisonment, "notwithstanding the Dissenting Opinion of Judge Maqutu, according to which the Accused should not have been given the heaviest sentence, precisely because the wisdom derived from his severe experience could benefit the aim of national reconciliation".[771] In his view, the Trial Chamber "ostentatiously first outlined the rules it purported to have applied. However, it did not apply those rules."[772] In support of this assertion, the Appellant contends that the Trial Chamber "gave no explanation whatsoever as to what extent [...] the sentence it imposed would help restore peace and national reconciliation".[773] The Prosecution responds that "[i]t is unclear from the Appellant's argument how the Trial Chamber failed to assess this subject properly, or how a reconsideration of it would lead to the sentences being reduced to the level the Appellant now seeks",[774] and therefore argues that this submission must fail.[775]

351. The Appeals Chamber first notes that while national reconciliation and the restoration and maintenance of peace are important goals of sentencing, they are not the only goals. Indeed, the Trial Chamber correctly referred to "deterrence, justice, reconciliation, and the restoration and maintenance of peace" as being among the goals consistent with Security Council Resolution 955 of 8 November 1994[776] which set up the Tribunal.[777] These goals cannot be separated but are intertwined, and, in any case, nothing in Resolution 955 indicates that the Security Council intended that one should prevail over another. The Appellant contends that sentencing him to life

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[769] Appeal Brief, paras. 506, 514. The Appellant was found guilty of genocide and extermination as a crime against humanity. It is only after considering each charge individually that the Trial Chamber reached such verdict.
[770] Appeal Brief, para. 502.
[771] Appeal Brief, para. 503. *See also* Appeal Brief, para. 508.
[772] Appeal Brief, para. 508. In the original French text: "[...] c'est de pure forme que la Chambre avait au préalable indiqué les règles de droit sur lesquelles elle se serait fondée".
[773] Appeal Brief, para. 508.
[774] Respondent's Brief, para. 282.
[775] Respondent's Brief, para. 283.
[776] S.C. Res. 955, U.N. Doc. S/RES/955 (1994) ("Resolution 955").

imprisonment would deprive "both his fellow Rwandans and their country of what they could learn from him upon his release"[778] and therefore not serve the goal of national reconciliation. The Appeals Chamber is not persuaded by this argument. The Trial Chamber was free to conclude that any advantage in terms of national reconciliation gained by the Appellant's eventual release was either minimal or was outweighed by the harms to both general deterrence and national reconciliation that would be created by a lenient sentence that was not perceived to reflect the gravity of the crimes committed. Moreover, too lenient a sentence might also undermine other fundamental principles of sentencing, in particular proportionality,[779] by giving the impression that the punishment does not reflect the gravity of the crimes committed. In any case, it is not a matter – as the Appellant contends – of "the triumph of the law over the barbarous acts that were committed"[780] or of whether or not "sentencing [him] to life imprisonment [would] contribute, even momentarily, to the restoration of peace or national reconciliation, which is one of the Tribunal's goals".[781] It is settled case law before both the ICTR and the ICTY that the underlying principle is that Trial Chambers must tailor the penalty to fit the individual circumstances of the accused and the gravity of the crime.[782] The Appellant has neither demonstrated that the Trial Chamber committed any error in its assessment of the goals behind the creation of the Tribunal, nor that the Trial Chamber improperly exercised its discretion in determining the appropriate sentence.

352. For the foregoing reasons, this part of the Appellant's fifteenth ground of appeal is dismissed.

C. The Appellant's "Individual Circumstances"

353. The Appellant argues under this part of his ground of appeal that the Trial Chamber failed to fulfil its obligation, pursuant to Article 23(2) of the Statute, to take into account his "individual circumstances".[783] He points out, for example, that he is "relatively young in age" and is "the father of four young children".[784] The Prosecution responds that the Trial Chamber did consider the Appellant's personal circumstances at paragraphs 756 to 758 of the Trial Judgement and, in

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[777] Trial Judgement, para. 753, quoting, in part, Resolution 955, Preamble.
[778] Appeal Brief, para. 509.
[779] *Blagojevi} et al.*, Decision on Dragan Obrenovi}'s Application for Provisional Release, para. 37.
[780] Appeal Brief, para. 508.
[781] Appeal Brief, para. 508.
[782] *See Celebici Case* Appeal Judgement, para. 717; *Akayesu* Appeal Judgement, para. 407.
[783] Appeal Brief, para. 510.
[784] Appeal Brief, para. 510.

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ORIGINAL: ENGLISH

TRIAL CHAMBER III

Before: Judge Dennis C.M. Byron, presiding
Judge Gberdao Gustave Kam
Judge Vagn Joensen

Registrar: Adama Dieng

Date: 2 February 2012

THE PROSECUTOR

v.

Édouard KAREMERA and
Matthieu NGIRUMPATSE

Case No. ICTR-98-44-T

JUDGEMENT AND SENTENCE

Office of the Prosecution:
Don Webster
Maria Wilson
Takeh Sendze
Sunkarie Ballah-Conteh
Jean-Baptiste Nsanzimfura

Defence Counsel for Édouard Karemera:
Dior Diagne Mbaye and Félix Sow

Defence Counsel for Matthieu Ngirumpatse
Chantal Hounkpatin and Frédéric Weyl

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174. The witness[246] testified that at a meeting in January 1992, the Provisional National Committee was introduced to party members and Jean-Pierre Turatsinze. Turatsinze was the *Interahamwe* coordinator in the sense that he was the liaison between the *Interahamwe* and the MRND. At a meeting of the Kigali-Ville *préfecture* committee in the same month, Ngirumpatse told everyone that the *Interahamwe* were to be set up throughout the country. At a meeting a week or two later, he stated that the *Interahamwe* had been formed and that leaders had been appointed.[247]

Prosecution Witness G

175. The witness was a high-ranking member of the *Interahamwe*.[248] He received extensive benefits, financial and otherwise, from the Prosecution in exchange for his testimony.[249]

176. Ngirumpatse played a role in the establishment of the *Interahamwe* in Kigali-ville and on one occasion even attended a meeting regarding the establishment of the *Interahamwe*, which he encouraged.[250] At one point, the MRND leadership requested that *Interahamwe* be recruited from the ranks of the unemployed.[251]

177. The witness agreed with the content of the transcript of Ngirumpatse's speech in Ruhengeri on 15 November 1992, which states that Ngirumpatse referred to the *Interahamwe* and asked them to recruit sharp members who were committed to the party throughout the country.[252]

Prosecution Witness T

178. The witness was a high-ranking member of the *Interahamwe*.[253] At the time of his testimony, he had pleaded guilty to genocide charges in Belgium and was cooperating with the Belgian authorities.[254] He received extensive benefits, financial and otherwise, from the Prosecution in exchange for his testimony.[255]

179. In January 1992, Ngirumpatse asked members of the Provisional National Committee of the *Interahamwe* to reflect on the implementation of the *Interahamwe*

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[246] See para. 157, *supra*.
[247] T. 1 November 2006, p. 28.
[248] T. 13 October 2005, p. 9 (closed session).
[249] *Karemera et. al.*, Disclosure of Prosecutor's Compliance with Decision on Prosper Mugiraneza's Motion for Records of All Payments Made Directly or Indirectly to Witness D, filed confidentially on 17 April 2008; *Karemera et al.*, Decision on Joseph Nzirorera's Motion for Reconsideration of Oral Decision on Motion to Compel Full Disclosure of ICTR Payments for the Benefit of Witnesses G and T and Motion for Admission of Exhibit: Payments Made for the Benefit of Witness G (TC), 29 May 2008.
[250] T. 10 October 2005, p. 70.
[251] *Id.*, p. 65.
[252] T. 17 October 2005, p. 19.
[253] T. 22 May 2006, p. 21.
[254] *Id.*, p. 22.
[255] *Karemera et. al.*, Decision on Joseph Nzirorera's Motion for Reconsideration of Oral Decision on Motion to Compel Full Disclosure of ICTR Payments for the Benefit of Witnesses G and T and Motion for Admission of Exhibit: Payments Made for the Benefit of Witness G (TC), 29 May 2008; Prosecutor's *Ex Parte* Disclosure Regarding Expenses on Behalf of Witness T, filed confidentially and *ex parte* on 15 July 2008; Notice of Further Material Relating to Witness T, under Rule 67D, filed confidentially on 8 September 2008; Interoffice Memorandum – Disclosure of Previously Withheld Witness T Materials, filed confidentially on 3 June 2010.

UNITED NATIONS
NATIONS UNIES

Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

IN THE APPEALS CHAMBER

Before:	**Judge Patrick Robinson, Presiding** **Judge Fausto Pocar** **Judge Liu Daqun** **Judge Theodor Meron** **Judge Iain Bonomy**
Registrar:	**Mr. Adama Dieng**
Decision of:	**29 May 2009**

Édouard KAREMERA
Matthieu NGIRUMPATSE
Joseph NZIRORERA
v.
THE PROSECUTOR

Case No. ICTR-98-44-AR73.17

DECISION ON JOSEPH NZIRORERA'S APPEAL OF DECISION ON ADMISSION OF EVIDENCE REBUTTING ADJUDICATED FACTS

Office of the Prosecutor:
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Mr. Don Webster
Mr. Saidou N'Dow
Mr. Arif Virani
Ms. Sunkarie Ballah-Conteh
Mr. Takeh Sendze

Counsel for the Defense:
Ms. Dior Diagne Mbaye and Mr. Félix Sow for Mr. Édouard Karemera
Ms. Chantal Hounkpatin and Mr. Frédéric Weyl for Mr. Matthieu Ngirumpatse
Mr. Peter Robinson and Mr. Patrick Nimy Mayidika Ngimbi for Mr. Joseph Nzirorera

considering the evidence in the context of the other evidence brought in the *Karemera et al.* case.[32] He argues that depriving an accused of the right to use evidence from the original trial as part of his rebuttal of adjudicated facts undermines the reason that taking judicial notice is permitted in the first place, which is that the accused is free to rebut the adjudicated fact.[33]

D. Discussion

13. The Appeals Chamber recalls that facts judicially noticed pursuant to Rule 94(B) of the Rules are merely presumptions that may be rebutted with evidence at trial.[34] The legal effect of judicially noticing an adjudicated fact is only to relieve the Prosecution of its initial burden to produce evidence on the point; the defence may put the adjudicated fact into question by introducing evidence to the contrary.[35] This Appeal raises the issue of the nature of the evidence that can be introduced in rebuttal in such circumstances.

14. In the *Karemera et al.* Appeal Decision on Judicial Notice, the Appeals Chamber held that the Defence may rebut the presumption by introducing "reliable and credible" evidence to the contrary.[36] The requirement that the evidence be "reliable and credible" must be understood in its proper context, through the lens of the general standard for admission of evidence at trial set out in Rule 89(C) of the Rules: "[a] Chamber may admit any relevant evidence which it deems to have probative value". Only evidence that is reliable and credible may be considered to have probative value.[37]

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[31] Response, para. 21.
[32] Reply, para. 3.
[33] Reply, para. 6.
[34] *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-AR73.1, Decision on Interlocutory Appeals Against Trial Chamber's Decision on Prosecution's Motion for Judicial Notice of Adjudicated Facts and Prosecution's Catalogue of Agreed Facts, 26 June 2007 ("*Dragomir Milošević* Appeal Decision"), para. 16, citing *Karemera et al.* Appeal Decision on Judicial Notice, para. 42; *See also Momir Nikolić v. Prosecutor*, Case No. IT-02-60/1-A, Decision on Appellant's Motion for Judicial Notice, 1 April 2005 ("*Nikolić* Appeal Decision"), para. 11; *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-AR73.5, Decision on the Prosecution's Interlocutory Appeal Against Trial Chamber's 10 April 2003 Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, 28 October 2003 ("*Slobodan Milošević* Appeal Decision"), p. 4.
[35] *Dragomir Milošević* Appeal Decision, para. 16; *Karemera et al.* Appeal Decision on Judicial Notice, paras. 42, 49.
[36] *Karemera et al.* Appeal Decision on Judicial Notice, paras. 42, 49. *See also Dragomir Milošević* Appeal Decision, para. 17.
[37] *See Prosecutor v. Mladen Naletilić and Vinko Martinović*, Case No. IT-98-34-A, Judgement ("*Naletilić and Martinović* Appeal Judgement"), para. 402, citing *Prosecutor v. Zejnil Delalić et al.*, Case No. IT-96-21-AR73.2, Decision on Application of Defendant Zejnil Delalić for Leave to Appeal Against the Decision of the Trial Chamber of 19 January 1998 for the Admissibility of Evidence, 4 March 1998 ("*Delalić et al.* Appeal Decision"), para. 20: "The implicit requirement that a piece of evidence be *prima facie* credible – that it have sufficient indicia of reliability – is a factor in the assessment of its relevance and probative value." *See also Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/1-AR73, Decision on Prosecution's Appeal on Admissibility of Evidence, 16 February 1999, para. 15 (dealing with hearsay evidence); *Prosecutor v. Dario Kordi} and Mario ^erkez*, Case No. IT-95-14/2-AR73.5, Decision on

20. Lastly, the Trial Chamber reasoned that "the very purpose of admitting adjudicated facts would be undermined by permitting a party to admit such evidence" because "[j]udicial economy would not be achieved if parties were entitled to challenge adjudicated facts with evidence that has already been rejected in relation to that finding."[48] In this respect, the Appeals Chamber underscores that the principle of judicial economy must yield to the fundamental right of the accused to a fair trial. A Trial Chamber cannot deny the Defence its right to put the adjudicated fact into question by introducing evidence to the contrary simply because it would frustrate judicial economy. Further, the Appeals Chamber emphasizes that Rule 94(B) of the Rules fosters judicial economy by avoiding the need for evidence in chief to be presented in support of a fact already previously adjudicated. Hence, the purpose of judicial economy underlying Rule 94(B) of the Rules is not frustrated by the admission of rebuttal evidence.

21. Similarly, the fact that the judicial notice mechanism was also created to favour consistency and uniformity of the case-law cannot be a matter that weighs against the admissibility of rebuttal evidence. In this respect, the Appeals Chamber stresses that adjudicated facts that are judicially noticed by way of Rule 94(B) of the Rules remain to be assessed by the Trial Chamber to determine what conclusions, if any, can be drawn from them when considered together with all the evidence brought at trial. The Rule 94(B) mechanism does not allow a Chamber to simply defer to the assessment of the evidence by another Chamber on the ground that this mechanism was fashioned to favour consistency and uniformity in the Tribunal's case-law.

22. The Appeals Chamber concludes that the Trial Chamber incorrectly applied the governing law in finding that "evidence which has already been considered and rejected by another Trial Chamber in making a finding of fact should not be admissible in a later proceeding to rebut that same finding of fact".[49] This approach would have the effect of denying to the opposite party its fundamental right to contest the material admitted by rebutting the presumption created by the admission of the adjudicated fact. In deferring to the assessment of the reliability of Ntakirutimana's testimony by the *Ntakirutimana* Trial Chamber, the Trial Chamber not only failed to fulfil its obligation to examine whether the evidence may have probative value in the circumstances of the case before it, but also misapplied the standard for admission of evidence which only requires *prima facie* indicia of reliability and credibility.

[48] Impugned Decision, para. 12.
[49] Impugned Decision, para. 12.

2758/H

ICTR-98-44-AR75.15
05th May 2009
{2758/H – 2750/H}

UNITED NATIONS
NATIONS UNIES

Tribunal pénal international pour le Rwanda
International Criminal Tribunal for Rwanda

IN THE APPEALS CHAMBER

Before: Judge Liu Daqun, Presiding
Judge Fausto Pocar
Judge Theodor Meron
Judge Carmel Agius
Judge Iain Bonomy

ICTR Appeals Chamber
Date: 05th May 2009
Action: R. Junior
Copied To: Concerned Judge, SLOs, COs, ALAs, Counsel, CMS Archive, CSS.

Registrar: Mr. Adama Dieng

Decision of: 5 May 2009

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ÉDOUARD KAREMERA
MATTHIEU NGIRUMPATSE
JOSEPH NZIRORERA

v.

THE PROSECUTOR

Case No. ICTR-98-44-AR73.15

DECISION ON JOSEPH NZIRORERA'S APPEAL AGAINST A DECISION OF TRIAL CHAMBER III DENYING THE DISCLOSURE OF A COPY OF THE PRESIDING JUDGE'S WRITTEN ASSESSMENT OF A MEMBER OF THE PROSECUTION TEAM

Counsel for the Appellant:
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Counsel for the Co-Accused
Ms. Dior Diagne Mbaye and Mr. Félix Sow for Édouard Karemera
Ms. Chantal Hounkpatin and Mr. Frédéric Weyl for Matthieu Ngirumpatse

The Office of the Prosecutor:
Mr. Hassan Bubacar Jallow
Mr. Alex Obote-Odora
Ms. Inneke Onsea
Mr. David Morris

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SIGNATURE: DATE: 05 May 2009

allotment of time for the presentation of evidence.[25] He further points to the "fervor with which the Presiding Judge and Trial Chamber denied the motion, labeling it 'vexatious'", which in his view lends credence to the possibility of bias.[26]

6. Finally, Mr. Nzirorera submits that the Trial Chamber erred in denying his counsel fees associated with the motion.[27] He argues that such sanctions must be imposed cautiously.[28] Mr. Nzirorera acknowledges that there is no appeal as of right against a decision denying fees, but notes that the Trial Chamber granted certification of the entire decision, which necessarily includes the denial of fees.[29] In the event that his appeal is successful, he asks that the sanctions be reversed.[30]

7. The Prosecution responds that the Trial Chamber did not abuse its discretion in denying disclosure of the assessment of Mr. Morley.[31] It argues that the Trial Chamber, after describing the purpose of an assessment in connection with an application for Queen's Counsel, correctly determined that the process could not give rise to a claim of bias or an appearance of bias and thus denied the motion.[32] The Prosecution further argues that Rule 68 of the Rules has no applicability as nothing in the assessment would suggest the innocence or mitigate the guilt of the accused or affect the credibility of Prosecution evidence.[33] The Prosecution also contends that a denial of fees is not subject to appeal.[34]

DISCUSSION

8. This appeal raises two principal questions concerning whether the Trial Chamber erred in refusing to disclose the assessment and in denying fees to Mr. Nzirorera's counsel. The Appeals Chamber will only overturn a Trial Chamber's discretionary decision where it is found to be: (i) based on an incorrect interpretation of governing law; (ii) based on a patently incorrect conclusion of fact; or (iii) so unfair or unreasonable as to constitute an abuse of the Trial Chamber's discretion.[35]

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[25] Appeal, para. 36.
[26] Appeal, para. 37.
[27] Appeal, paras. 46-48; Reply, paras. 26-28.
[28] Appeal, para. 46.
[29] Appeal, para. 48; Reply, para. 27.
[30] Appeal, paras. 47, 48.
[31] Response, paras. 4, 25-48.
[32] Response, paras. 25-31.
[33] Response, paras. 32-48.
[34] Response, paras. 4, 24, 49-54.
[35] *See, e.g.*, Decision on Mathieu Ngirumpatse's Appeal from the Trial Chamber Decision of 17 September 2008, 30 January 2009, para. 18; Decision on Interlocutory Appeal Regarding Witness Proofing, 11 May 2007, para. 3.

A. Alleged Error in Refusing to Disclose the Assessment

9. The Statute and Rules guarantee an accused's right to be tried by impartial Judges.[36] Rule 15(A) of the Rules specifically provides that "[a] Judge may not sit in any case in which he has a personal interest or concerning which he has or has had any association which might affect his impartiality." In particular, a Judge must withdraw from a case if it is shown that actual bias exists or if the circumstances would lead a reasonable observer, properly informed, to reasonably apprehend bias.[37]

10. Rule 15(B) of the Rules prescribes a two-stage process for making a request to disqualify a Judge which consists of (i) an application to the Presiding Judge of the Trial Chamber seized with the proceedings, and (ii) a *de novo* determination by the Bureau.[38] The Appeals Chamber's consideration of matters relating to disqualification is limited to an appeal on the merits of the case or, as here, where the issue properly arises in an interlocutory appeal certified by the Trial Chamber.[39]

11. Mr. Nzirorera has not filed a request to disqualify Judge Byron in accordance with Rule 15(B) of the Rules. Rather, he sought disclosure of material directly from the concerned Trial Chamber in order to assess the merits of making such a claim.[40] While the Statute and Rules do not explicitly provide for the disclosure of material from a Judge in connection with a request for disqualification, they also do not prevent a party from requesting disclosure of information in this regard. The Appeals Chamber recalls that a presumption of impartiality, which cannot be easily rebutted, attaches to the Judges of the Tribunal.[41] Bearing this in mind, a request for disclosure must specifically identify the material or information in the possession of the Judge and make a *prima facie* showing that it would demonstrate actual bias or the appearance of bias.

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[36] *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Judgement, 28 November 2007, para. 47 ("*Nahimana et al.* Appeal Judgement").
[37] *Nahimana et al.* Appeal Judgement, para. 49, quoting *The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-A, Judgement, 1 June 2001, para. 203 ("That there is a general rule that a Judge should not only be subjectively free from bias, but also that there should be nothing in the surrounding circumstances which objectively gives rise to an appearance of bias. On this basis, the Appeals Chamber considers that the following principles should direct it in interpreting and applying the impartiality requirement of the Statute: A. A Judge is not impartial if it is shown that actual bias exists. B. There is an unacceptable appearance of bias if: (i) a Judge is a party to the case, or has a financial or proprietary interest in the outcome of a case, or if the Judge's decision will lead to the promotion of a cause in which he or she is involved, together with one of the parties. Under these circumstances, a Judge's disqualification from the case is automatic; or (ii) the circumstances would lead a reasonable observer, properly informed, to reasonably apprehend bias.").
[38] *The Prosecutor v. Athanase Seromba*, ICTR-01-66-AR, Decision on Interlocutory Appeal of a Bureau Decision, 22 May 2006, para. 5 ("*Seromba* Appeal Decision").
[39] *Seromba* Appeal Decision, para. 4.
[40] Impugned Decision, para. 3.
[41] *Nahimana et al.* Appeal Judgement, para. 48.

12. There is no dispute that Mr. Nzirorera has sufficiently identified the requested material. The main question therefore is whether he has shown that it is capable of demonstrating bias or the appearance of bias. Mr. Nzirorera claims that the Trial Chamber erred in law in holding that the contents of the assessment could not be disclosed because giving the assessment amounted to a judicial act. As previously noted in this case, the fact that a Judge performs an act in a judicial capacity provides no shield from a claim of bias or appearance of bias.[42] In any event, even though the assessment was presumably based on the Presiding Judge's observations of Mr. Morley's competence in court, the Appeals Chamber is not convinced that it constituted a judicial act of the Tribunal.

13. Nevertheless, the Appeals Chamber does not agree with Mr. Nzirorera that the Trial Chamber denied disclosure only because it considered the assessment to be a judicial act. In refusing to disclose the assessment, the Trial Chamber reviewed the nature and purpose of the exercise and concluded that it did not demonstrate any bias or an appearance of bias.[43] Only then, did the Trial Chamber go on to observe that the assessment was a judicial function. This reference was made to highlight what the Trial Chamber viewed as Mr. Nzirorera's "lack of respect for the Chamber" and does not appear to be the basis of the decision.[44]

14. The Appeals Chamber is also not persuaded that the Trial Chamber failed to properly consider whether the assessment demonstrates bias or an appearance of bias. In this respect, the Trial Chamber referred to the nature of the exercise, which was to provide a confidential assessment available only to the Queen's Counsel nominating committee about the applicant's competencies in cases of substance, complexity, or particular difficulty.[45] The Trial Chamber also considered this exercise against the backdrop of a Judge's duty to remain impartial.[46]

15. The Appeals Chamber agrees that there is nothing *per se* improper about a Judge providing an assessment of a counsel's professional competence – whether ultimately positive or negative or characterized as a letter of recommendation – in connection with an application for a distinction or rank conferred by a domestic jurisdiction. Consequently, it can identify no error on the part of the Trial Chamber in refusing to disclose the assessment.

16. In support of Mr. Nzirorera's contention that a Judge should not provide a letter of recommendation for a person appearing in a pending case before him or her, he points to a

[42] *See* Reasons for Decision on Interlocutory Appeals Regarding the Continuation of Proceedings with a Substitute Judge and on Nzirorera's Motion for Leave to Consider New Material, 22 October 2004, para. 68.
[43] Impugned Decision, paras. 5, 6
[44] Impugned Decision, para. 7.
[45] Impugned Decision, paras. 5, 6.
[46] Impugned Decision, para. 6.



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

IN THE APPEALS CHAMBER

Before :
Judge Mohamed Shahabuddeen, Presiding Judge
Judge Mehmet Güney
Judge Liu Daqun
Judge Theodor Meron
Judge Wolfgang Schomburg

Registrar : Mr. Adama Dieng

Date of filing : 16 June 2006

Prosecutor
v.
Édouard KAREMERA
Mathieu NGIRUMPATSE
Joseph NZIRORERA
Case No. ICTR-98-44-AR73(C)

DECISION ON PROSECUTOR'S INTERLOCUTORY APPEAL OF DECISION ON JUDICIAL NOTICE

Office of the Prosecutor

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Mr. Peter Robinson for **Joseph Nzirorera**

other proceedings of the Tribunal relating to the matter at issue in the current proceedings."

Taking judicial notice of adjudicated facts under Rule 94(B) is a method of achieving judicial economy and harmonizing judgements of the Tribunal while ensuring the right of the Accused to a fair, public and expeditious trial.[69]

40. Although governed by some of the same principles, judicial notice under Rule 94(B) is different in nature from judicial notice under Rule 94(A). Adjudicated facts are different from facts of common knowledge (although there is some overlap in the categories). There is no requirement that adjudicated facts be beyond reasonable dispute. They are facts that have been established in a proceeding between other parties on the basis of the evidence the parties to that proceeding chose to introduce, in the particular context of that proceeding. For this reason, they cannot simply be accepted, by mere virtue of their acceptance in the first proceeding, as conclusive in proceedings involving different parties who have not had the chance to contest them.

41. Thus, there are two crucial differences between the two provisions. One is built into the Rule: whereas judicial notice under Rule 94(A) is mandatory, judicial notice under Rule 94(B) is discretionary, allowing the Trial Chamber to determine which adjudicated facts to recognize on the basis of a careful consideration of the accused's right to a fair and expeditious trial. The principles guiding and limiting the exercise of that discretion have been developed through jurisprudence and are discussed below.

42. The second difference is established by the Tribunal's jurisprudence, and concerns the consequences of judicial notice: whereas facts noticed under Rule 94(A) are established conclusively, those established under Rule 94(B) are merely presumptions that may be rebutted by the defence with evidence at trial.[70] The Appeals Chamber reiterates that judicial notice does not shift the ultimate burden of persuasion, which remains with the Prosecution. In the case of judicial notice under Rule 94(B), the effect is only to relieve the Prosecution of its initial burden to produce evidence on the point; the defence may then put the point into question by introducing reliable and credible evidence to the contrary. This approach is consistent with practice in national jurisdictions: whereas judicial notice of facts of common knowledge may be treated as conclusive,[71] the final adjudication of facts in judicial proceedings is treated as conclusively binding only, at most, on the parties to those proceedings (*res judicata*).[72]

43. The Prosecution sought judicial notice under Rule 94(B) of 153 adjudicated facts. The Trial Chamber rejected this request in full, and the Prosecution appeals with respect to 147 of the facts. The Prosecution, the Accused, and the Trial Chamber have not proceeded in their analysis one by one through these facts, and the Appeals Chamber will not do so either. It will instead address the two major reasons given by the Trial Chamber for refusing to take judicial notice and consider whether each constitutes a legitimate reason to so refuse under Rule 94(B). In doing so, the Appeals Chamber bears in mind that "a Trial Chamber's exercise of discretion will only be overturned if the challenged decision was (1) based on an incorrect interpretation of governing law; (2)

UNITED NATIONS
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Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

IN THE APPEALS CHAMBER

Before: **Judge Fausto Pocar, Presiding**
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Liu Daqun
Judge Theodor Meron

Registrar: **Mr. Adama Dieng**

Judgement of: **2 February 2009**

FRANÇOIS KARERA

v.

THE PROSECUTOR

Case No. ICTR-01-74-A

JUDGEMENT

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Office of the Prosecutor

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Mr. Alex Obote-Odora
Ms. Dior Sow Fall
Mr. Abdoulaye Seye
Mr. François-Xavier Nsanzuwera
Mr. Alfred Orono Orono
Ms. Florida Kabasinga
Ms. Béatrice Chapaux

II. STANDARDS OF APPELLATE REVIEW

7. The Appeals Chamber recalls the applicable standards of appellate review pursuant to Article 24 of the Statute. The Appeals Chamber reviews only errors of law which invalidate the decision of the Trial Chamber and errors of fact which have occasioned a miscarriage of justice.[13]

8. As regards errors of law, the Appeals Chamber has stated:

> Where a party alleges that there is an error of law, that party must advance arguments in support of the submission and explain how the error invalidates the decision. However, if the appellant's arguments do not support the contention, that party does not automatically lose its point since the Appeals Chamber may step in and, for other reasons, find in favour of the contention that there is an error of law.[14]

9. Where the Appeals Chamber finds an error of law in the trial judgement arising from the application of an incorrect legal standard, the Appeals Chamber will articulate the correct legal interpretation and review the relevant factual findings of the Trial Chamber accordingly. In so doing, the Appeals Chamber not only corrects the legal error, but, when necessary, applies the correct legal standard to the evidence contained in the trial record and determines whether it is itself convinced beyond reasonable doubt as to the factual finding challenged by the appellant before that finding may be confirmed on appeal.[15]

10. As regards errors of fact, it is well established that the Appeals Chamber will not lightly overturn findings of fact made by a Trial Chamber:

> Where the Defence alleges an erroneous finding of fact, the Appeals Chamber must give deference to the Trial Chamber that received the evidence at trial, and it will only interfere in those findings where no reasonable trier of fact could have reached the same finding or where the finding is wholly erroneous. Furthermore, the erroneous finding will be revoked or revised only if the error occasioned a miscarriage of justice.[16]

11. A party cannot merely repeat on appeal arguments that did not succeed at trial, unless it can demonstrate that the Trial Chamber's rejection of those arguments constituted an error warranting the intervention of the Appeals Chamber.[17] Arguments which do not have the potential to cause the

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[13] *See Muvunyi* Appeal Judgement, para. 8. *See also Martić* Appeal Judgement, para. 8.
[14] *See Muvunyi* Appeal Judgement, para. 9 citing *Ntakirutimana* Appeal Judgement, para. 11 (citations omitted).
[15] *See Martić* Appeal Judgement, para. 10.
[16] *Muvunyi* Appeal Judgement, para. 10 citing *Krstić* Appeal Judgement, para. 40 (citations omitted).
[17] *See Muvunyi* Appeal Judgement, para. 11. *See also Martić* Appeal Judgement, para. 14.

corroborated and un-contradicted testimony.[79] He also submits that neither the Trial Chamber nor the Prosecution provided justification for this preference.[80]

39. It is well established that, as a matter of law, it is permissible to base a conviction on hearsay evidence.[81] A Trial Chamber has the discretion to cautiously consider hearsay evidence[82] and has the discretion to rely on it.[83] While the weight and probative value to be afforded to that evidence will usually be less than that accorded to the evidence of a witness who has given it under oath and who has been cross-examined, it will depend upon "the infinitely variable circumstances which surround hearsay evidence".[84] Thus, the fact that the evidence regarding a specific event is hearsay evidence does not in itself suffice to render it not credible or unreliable.[85] The source of information,[86] the precise character of the information,[87] and the fact that other evidence corroborates the hearsay evidence[88] are relevant criteria in assessing the weight or probative value of hearsay evidence. In any event, it is for the appealing party to demonstrate that no reasonable trier of fact could have relied upon hearsay evidence in reaching a specific finding.[89]

40. The Appeals Chamber rejects the unsubstantiated and vague contentions made under this sub-ground of appeal that the Trial Chamber systematically erred in its assessment of hearsay evidence, that it failed to provide a reasoned opinion in relation to its assessment of hearsay evidence, and that it also failed to explain why it relied upon that evidence and disregarded evidence favourable to the Appellant.

41. Furthermore, the Appeals Chamber finds no merit in the Appellant's contention that the Trial Chamber erred in preferring hearsay testimony to the Appellant's uncontradicted testimony. Contrary to the Appellant's assertion,[90] his testimony denying his participation in all of the crimes

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[79] Brief in Reply, para. 33.
[80] Brief in Reply, paras. 33, 35.
[81] *Muvunyi* Appeal Judgement, para. 70; *Muhimana* Appeal Judgement, para. 49; *Gacumbitsi* Appeal Judgement, para. 115.
[82] *Rutaganda* Appeal Judgement, para. 34; *Ndindabahizi* Appeal Judgement, para. 115; *Akayesu* Appeal Judgement, paras. 288, 289, 292.
[83] *Nahimana et al.* Appeal Judgement, para. 831; *Akayesu* Appeal Judgement, para. 292; *Naletili} and Martinovi}* Appeal Judgement, para. 217.
[84] *Aleksovski* Decision, para. 15.
[85] *See, e.g., Nahimana et al.* Appeal Judgement, paras. 215, 473.
[86] *Nahimana et al.* Appeal Judgement, para. 831; *Ndindabahizi* Appeal Judgement, para. 115 (about "unverifiable hearsay" evidence); *Semanza* Appeal Judgement, para. 159; *Rutaganda* Appeal Judgement, paras. 154, 156, 159.
[87] *Ndindabahizi* Appeal Judgement, para. 115.
[88] *Nahimana et al.* Appeal Judgement, para. 473 (for an illustration of hearsay testimonies corroborating each other); *Gacumbitsi* Appeal Judgement, para. 115.
[89] *Nahimana et al.* Appeal Judgement, para. 509 (concerning second-degree hearsay evidence); *Semanza* Appeal Judgement, para. 159; *Naletili} and Martinovi}* Appeal Judgement, paras. 217, 218.
[90] Appellant's Brief, para. 35; Brief in Reply, paras. 33, 35.

depending on its assessment, rely on a single witness's testimony for the proof of a material fact.[101] It may thus convict an accused on the basis of evidence from a single witness, although such evidence must be assessed with appropriate caution.[102] Any appeal based on the absence of corroboration must therefore necessarily be against the weight attached by the Trial Chamber to the evidence in question.[103]

46. The Appeals Chamber dismisses the assertions made by the Appellant under this sub-ground of appeal as general and unsubstantiated. The Appellant's submission relating to possible collusion between the four Prosecution witnesses testifying about the events in Ntarama[104] will be addressed below.[105]

47. For the foregoing reasons, this sub-ground of appeal is dismissed.

E. Alleged Errors relating to the Observations Made during the Site Visit

48. The Appellant submits that the Trial Chamber erred in law by failing to provide the factual findings arising from the site visit, thus denying him the opportunity to present a full defence, as well as the right to an intelligible judgement.[106] The Appellant further submits that the Trial Chamber erred in fact by making factual findings which are contrary to the observations it made during its site visit in Rwanda from 1 to 3 November 2006.[107] He argues that observations made during the site visit brought to light certain details about the Ntarama area that are not revealed in the Trial Judgement.[108] He argues that, absent a *procès-verbal,* pictures or admissions, it is now impossible to use the observations made during the site visit to challenge the credibility of unreliable witnesses and to demonstrate the Trial Chamber's errors in this respect.[109] He also

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[101] *Kajelijeli* Appeal Judgement, para. 170, citing *Niyitegeka* Appeal Judgement, para. 92; *Semanza* Appeal Judgement, para. 153. *See also Kordić and Čerkez* Appeal Judgement, para. 274, citing *Kupreškić et al.* Appeal Judgement, para. 33.

[102] *Kordić and Čerkez* Appeal Judgement, para. 274. In *Kordić and Čerkez,* the Appeals Chamber also held that "care must be taken to guard against the exercise of an underlying motive on the part of the witness." *Kordić and Čerkez* Appeal Judgement, para. 274. *See also Ntagerura et al.* Appeal Judgement, para. 203. In *Ntagerura et al.*, the Appeals Chamber confirmed that "considering that accomplice witnesses may have motives or incentives to implicate the accused person before the Tribunal, a Chamber, when weighing the probative value of such evidence, is bound to *carefully* consider the totality of the circumstances in which it was tendered." *Ntagerura et al.* Appeal Judgement, para. 204 (citation omitted).

[103] *Kordić and Čerkez* Appeal Judgement, para. 274.

[104] Trial Judgement, paras. 250, 308, 313.

[105] *See infra* paras. 231-235.

[106] Appellant's Brief, para. 44.

[107] Notice of Appeal, paras. 43, 44.

[108] Appellant's Brief, para. 43. *See also* Appellant's Brief, para. 207; AT. 28 August 2008 p. 54.

[109] Appellant's Brief, para. 45; AT. 28 August 2008 pp. 12, 13. The Appellant submits that he was not obliged to request that minutes be taken during the site visit and that it was the obligation of the Trial Chamber to ensure that a report of the site visit be produced. AT. 28 August 2008 p. 13.

Witness BMG's evidence corroborated that of Witness BMF about sparing the life of a Tutsi man named Callixte Kalisa.[341]

171. The Appellant submits that the Trial Chamber's assessment of the evidence of these witnesses and its finding that certain houses of Tutsis were spared on the Appellant's orders are erroneous.[342] The Prosecution responds that the Trial Chamber properly assessed the evidence concerning the order that certain houses of Tutsis be spared.[343]

172. The Appellant first contends that Prosecution Witnesses BMG, BMF, and BMH do not corroborate each other since none of them "gave the same reasons advanced by Fthe Appellantğ or by those persons who were quoting him, as to why the lives and houses of some Tutsi had to be spared."[344]

173. The Appeals Chamber recalls its holding in the *Nahimana et al.* Appeal Judgement that:

> two testimonies corroborate one another when one *prima facie* credible testimony is compatible with the other *prima facie* credible testimony regarding the same fact or a sequence of linked facts. It is not necessary that both testimonies be identical in all aspects or describe the same fact in the same way. Every witness presents what he has seen from his own point of view at the time of the events, or according to how he understood the events recounted by others. It follows that corroboration may exist even when some details differ between testimonies, provided that no credible testimony describes the facts in question in a way which is not compatible with the description given in another credible testimony.[345]

174. The Appeals Chamber further recalls that minor inconsistencies commonly occur in witness testimony without rendering it unreliable and that it is within the discretion of the Trial Chamber to evaluate such inconsistencies and to consider whether the evidence as a whole is credible, without explaining its decision in every detail.[346]

175. While the Trial Chamber did not explicitly address this matter, the Appeals Chamber finds that the alleged inconsistency is minor and that it is not relevant to the material facts underlying the conviction. Accordingly, the Trial Chamber's failure to address this issue does not render its reliance on the witnesses erroneous.

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[341] Trial Judgement, para. 174.
[342] Notice of Appeal, para. 102; Appellant's Brief, para. 149.
[343] Respondent's Brief, paras. 110, 111.
[344] Appellant's Brief, para. 148.
[345] *Nahimana et al.* Appeal Judgement, para. 428.
[346] *Kvočka et al.* Appeal Judgement, para. 23.

the accused; it is sufficient to demonstrate that the instigation was a factor substantially contributing to the conduct of another person committing the crime.[727]

318. Contrary to the Appellant's contention, the specific identification of the perpetrators, who were identified in the Trial Judgement as *Interahamwe*, was not required for a finding that the Appellant instigated the killing of Gakuru. In any event, the Trial Chamber did identify the perpetrators. It is implicit, but certain, in the Trial Judgement that the Trial Chamber found that Gakuru was killed by the *Interahamwe* who were informed by the Appellant that Gakuru was an "*Inyenzi*" and who received his order to arrest him. The Trial Chamber found that "[b]y doing so, Karera left him [Gakuru] in the hands of *Interahamwe*" and that "[u]nder the prevailing circumstances, he must have understood that Gakuru would be killed".[728] That the Trial Chamber made such a finding is implicit in its recollection of the evidence of Witnesses BMO and BMN.[729] While it would have been preferable for the Trial Chamber to explicitly state that it identified the perpetrators of Gakuru's murder as being the *Interahamwe* to whom the Appellant indicated that Gakuru was an "*Inyenzi*" and who received the order to arrest him, this omission does not amount to an error.

319. However, based on the Trial Chamber's factual findings, the Trial Chamber could not have reasonably concluded that the Appellant prompted the perpetrators to kill Gakuru. The Trial Chamber made no factual findings supporting such a conclusion. It merely concluded that the Appellant had informed the *Interahamwe* who later killed Gakuru that he was an "*Inyenzi*" and ordered them to arrest him. The Trial Chamber should have further explained how, on the basis of these factual findings, it inferred that the Appellant had prompted the *Interahamwe* to kill Gakuru. In the absence of such an explanation, the Appeals Chamber finds that the Trial Chamber erred in convicting the Appellant for instigating Gakuru's murder.

320. The Appeals Chamber now turns to the Appellant's submission that the Trial Chamber erred in entering a conviction for aiding and abetting murder as a crime against humanity.

321. The *actus reus* of aiding and abetting is constituted by acts or omissions that assist, further, or lend moral support to the perpetration of a specific crime, and which substantially contribute to the perpetration of the crime.[730] The *mens rea* for aiding and abetting is knowledge that acts

[727] *Nahimana et al.* Appeal Judgement, para. 480; *Gacumbitsi* Appeal Judgement, para. 129; *Kordić and Čerkez* Appeal Judgement, para. 27.
[728] Trial Judgement, para. 456.
[729] *See* Trial Judgement, paras. 445, 447.
[730] *Nahimana et al.* Appeal Judgement, para. 482.

performed by the aider and abettor assist in the commission of the crime by the principal.[731] It is well established that it is not necessary for an accused to know the precise crime which was intended and which in the event was committed, but he must be aware of its essential elements.[732] If an accused is aware that one of a number of crimes will probably be committed, and one of those crimes is in fact committed, he has intended to facilitate the commission of that crime.[733]

322. The Trial Chamber found that the Appellant told the *Interahamwe* that Gakuru was an "*Inyenzi*" and that he ordered his arrest by the *Interahamwe*, which he must have understood would result in his murder.[734] On the basis of these findings, it was reasonable for the Trial Chamber to conclude that the Appellant aided and abetted the murder of Gakuru.[735] By instructing the *Interahamwe* to arrest Gakuru and telling them that Gakuru was an "*Inyenzi*", it was reasonable to conclude that the Appellant substantially contributed to the commission of his murder through specifically assisting and providing moral support to the principal perpetrators. Furthermore, in light of the evidence adduced, the Appeals Chamber finds no error in the Trial Chamber's finding that the Appellant had the requisite *mens rea.*

323. For the foregoing reasons, the Appeals Chamber grants this sub-ground of appeal in part and reverses the Appellant's conviction for instigating murder as a crime against humanity based on this event. The Appellant's conviction for aiding and abetting murder as a crime against humanity based on the killing of Gakuru is upheld.

F. Conclusion

324. The Appeals Chamber grants the Appellant's First Ground of Appeal and reverses the Appellant's conviction for aiding and abetting genocide and extermination as a crime against humanity, based on the alleged weapons distribution in Rushashi commune.

325. The Appeals Chamber further grants the Seventh Ground of Appeal, in part, and reverses the Appellant's conviction for instigating murder as a crime against humanity based on the killing of Gakuru.

[731] *Nahimana et al.* Appeal Judgement, para. 482.
[732] *Nahimana et al.* Appeal Judgement, para. 482.
[733] *See Stakić* Appeal Judgement, para. 50; *Nahimana et al.* Appeal Judgement, para. 482.
[734] Trial Judgement, para. 456.
[735] Trial Judgement, para. 560.

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Tribunal pénal international pour le Rwanda
International Criminal Tribunal for Rwanda

IN THE APPEALS CHAMBER

Before: **Judge Fausto Pocar, Presiding**
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Liu Daqun
Judge Wolfgang Schomburg

Registrar: **Mr. Adama Dieng**

Judgement of: **21 May 2007**

MIKAELI MUHIMANA

v.

THE PROSECUTOR

Case No. ICTR-95-1B-A

JUDGEMENT

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Mr. Kazadi Kabimba
Mr. Mathias Sahinkuye

The Office of the Prosecutor:

Mr. Hassan Bubacar Jallow
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Ms. Linda Bianchi
Mr. Abdoulaye Seye
Mr. François Xavier Nsanzuwera

Ngendombi Hill, between 9 and 11 April 1994.[92] In making findings concerning the second attack at Nyarutovu Hill, the Trial Chamber relied solely on the evidence of Witness W.[93] Under this ground of appeal, the Appellant submits that the Trial Chamber erred in law and in fact in its assessment of Witnesses AW and W and in its failure to consider other Defence evidence.[94] The Appeals Chamber has already considered the Appellant's other challenges to the findings related to the two attacks on Nyarutovu Hill under Ground of Appeal 7.

1. Alleged Errors in the Assessment of Witness AW

56. The Appellant submits that the Trial Chamber erred in law and in fact in relying on the testimony of Witness AW in making findings in relation to the attack on Nyarutovu Hill, arguing that his testimony was uncorroborated, inconsistent, and implausible.[95] In this respect, the Appellant raises six principal arguments which are discussed below in turn.

57. The Appellant initially submits that the Trial Chamber erred in fact in relying on the testimony of Witness AW because he contradicted himself by first stating that the Appellant arrived on 8 April 1994 in the Bisesero area in a red minivan and subsequently noting that he arrived during the attack in a white Toyota.[96] In this regard, the Appellant also submits that it was established by other witnesses that the commune did not have a red-coloured van.[97]

58. A review of the transcripts reveals that Witness AW made reference to a red minivan at the beginning of his testimony[98] and, when specifically questioned by the Prosecution about the vehicle, identified it as a white Toyota.[99] In recounting Witness AW's testimony in the Trial Judgement, the Trial Chamber referred only to the Appellant arriving in a "red minivan" and did not explicitly address this contradiction.[100] The Appeals Chamber recalls that, while a Trial Chamber is

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[92] Trial Judgement, paras. 67, 76. The Trial Chamber also found that, on the day of the second attack on Nyarutovu Hill, the Appellant also participated in attacks in neighbouring areas such as Nyarutovu, Kiziba, and Ngendombi. The Trial Chamber discussed in detail only the attacks on Nyarutovu Hill and Ngendombi Hill and its findings on genocide are based only on those two locations. Trial Judgement, paras. 63-79, 513. The parties also do not address these other attacks in detail, and the Appeals Chamber therefore sees no need to address them.
[93] Trial Judgement, paras. 46-50, 67.
[94] Notice of Appeal, p. 3, paras. 8-10, 13; pp. 10-11, paras. 15-21; Appellant's Brief, paras. 89-106, 111-116.
[95] Notice of Appeal, p. 3, paras. 8, 9; pp. 10-11, paras. 15-17, 19; Appellant's Brief, paras. 89-102, 111-114.
[96] Appellant's Brief, paras. 90, 91, 96, 97, 111-114. At paragraph 111 of the Appellant's Brief, the Appellant refers to alleged contradictions between the evidence given by Witness AW and Witness W relating to the "means" the Appellant used to arrive at Nyarutovu Hill. The Appellant however goes on to illustrate this with an alleged internal inconsistency in Witness AW's testimony. Appellant's Brief, paras. 112, 113.
[97] Notice of Appeal, p. 10, para. 16. The Appeals Chamber notes that this argument was not mentioned in the Appellant's Brief and that the Appellant does not provide citation to evidence on the record.
[98] T. 14 April 2004 p. 5.
[99] T. 14 April 2004 p. 7.
[100] Trial Judgement, para. 39.

required to consider inconsistencies and any explanations offered in respect of them when weighing the probative value of evidence,[101] it does not need to individually address them in the Trial Judgement.[102] Furthermore, the presence of inconsistencies within or amongst witnesses' testimonies does not *per se* require a reasonable Trial Chamber to reject the evidence as being unreasonable.[103] The Appeals Chamber notes that Witness AW's testimony was consistent as to the owner and occupants of the vehicle.[104] The Appeals Chamber is therefore not convinced that no reasonable trier of fact could have relied on his testimony, notwithstanding the discrepancy concerning the colour of the vehicle.

59. The Appellant also submits that the Trial Chamber erred in fact in relying on Witness AW's testimony given his account that from Nyarutovu Hill he could see vehicles parked close to the Appellant's house in Gishyita town.[105] The Appellant submits that this would have been impossible in light of the witness's testimony that it would take approximately thirty minutes to walk from one location to the other, which the Appellant surmised corresponded to a distance of about two-and-a-half kilometres.[106]

60. A review of the relevant transcript shows that the witness found it difficult to estimate the distance between Gishyita town and Nyarutovu Hill, given the "roundabout pathways that lead from one place to the other."[107] Yet, the witness considered that "the distance was not very large" and could be covered in a thirty minute walk.[108] In this context, the witness was also asked to explain the location of a place called Kiziba in relation to Nyarutovu Hill and Gishyita town.[109] The witness stated that Kiziba was located between the two places.[110] He also stated that the distance between Kiziba and Nyarutovu Hill measured between thirty and fifty metres and that, in relation to Nyarutovu Hill, Kiziba was located in the valley below.[111] In challenging Witness AW's testimony on this point, the Appellant advances his own view of the situation based on speculation and selective references to the witness's testimony, which fail to account for the witness's elevated

[101] *Niyitegeka* Appeal Judgement, para. 96.
[102] *Niyitegeka* Appeal Judgement, para. 124. *See also Musema* Appeal Judgement, para. 20.
[103] *Niyitegeka* Appeal Judgement, para. 95, quoting *Kupreškić et al.* Appeal Judgement, para. 31.
[104] T. 14 April 2004 pp. 5, 7, 41.
[105] Appellant's Brief, paras. 92, 96, 97.
[106] Notice of Appeal, p. 10, para. 15; Appellant's Brief, para. 92. In the Notice of Appeal, the Appellant also submits that the hills Kirunga, Rurebero, and Gitovu were located between the Appellant's house and Nyarutovu Hill and, therefore, obstructed the view from one location to the other. *See* Notice of Appeal, p. 10, para. 15. This argument has not been presented or developed in the Appellant's Brief and, therefore, will not be addressed.
[107] T. 14 April 2004 p. 6.
[108] T. 14 April 2004 p. 6.
[109] T. 14 April 2004 p. 6.
[110] T. 14 April 2004 p. 6.

subordinate relationship between him and Mugonero.[430] He submits that the Trial Chamber was required to establish his position of authority in order to show that he used his authority to "persuade or force another person to commit a crime."[431]

189. The Appeals Chamber has explained that an aider and abettor carries out acts specifically directed to assist, encourage, or lend moral support to the perpetration of a specific crime, and that this support has a substantial effect on the perpetration of the crime.[432] The requisite mental element of aiding and abetting is knowledge that the acts assist the commission of the specific crime of the principal perpetrator.[433] For an accused to be convicted of abetting an offence, it is not necessary to prove that he had authority over the principal perpetrator.[434]

190. The Appeals Chamber is not convinced that the Trial Chamber erred in convicting the Appellant for abetting the rape of Witness BG when he gave permission to Mugonero to "take away" Witness BG. The Trial Chamber concluded that the Appellant was a well-known and influential person in his community.[435] The Trial Chamber further found that the Appellant knew that Mugonero wanted to rape the witness.[436] The Appeals Chamber considers that a reasonable trier of fact could find that the Appellant's actions in such circumstances amounted to encouragement which had a substantial affect on Mugonero's subsequent rape of Witness BG. In the *Semanza* Appeal Judgement, the Appeals Chamber reached a similar conclusion in respect of an "influential" accused who encouraged the rape of Tutsi women by giving "permission" to rape them.[437]

191. Accordingly, this sub-ground of appeal is dismissed.

E. Conclusion

192. In view of the foregoing, this ground of appeal is dismissed in its entirety.

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[430] Appellant's Brief, paras. 275, 285-290.
[431] Appellant's Brief, paras. 285, 290.
[432] *Ntakirutimana* Appeal Judgement, para. 530; *Vasiljević* Appeal Judgement, para. 102.
[433] *Ntakirutimana* Appeal Judgement, para. 530; *Vasiljević* Appeal Judgement, para. 102.
[434] *Cf. Semanza* Appeal Judgement, para. 257 (referring to instigation).
[435] Trial Judgement, para. 604.
[436] Trial Judgement, para. 323.
[437] *Semanza* Appeal Judgement, paras. 256, 257, quoting *Semanza* Trial Judgement, para. 478.

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Tribunal pénal international pour le Rwanda
International Criminal Tribunal for Rwanda

IN THE APPEALS CHAMBER

Before:	**Judge Patrick Robinson, Presiding** **Judge Mehmet Güney** **Judge Liu Daqun** **Judge Andrésia Vaz** **Judge Carmel Agius**
Registrar:	**Mr. Adama Dieng**
Judgement of:	**28 September 2011**

THE PROSECUTOR

v.

YUSSUF MUNYAKAZI

Case No. ICTR-97-36A-A

JUDGEMENT

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II. STANDARDS OF APPELLATE REVIEW

5. The Appeals Chamber recalls the applicable standards of appellate review pursuant to Article 24 of the Statute. The Appeals Chamber reviews only errors of law which have the potential to invalidate the decision of the Trial Chamber and errors of fact which have occasioned a miscarriage of justice.[13]

6. Regarding errors of law, the Appeals Chamber has stated:

> Where a party alleges that there is an error of law, that party must advance arguments in support of the submission and explain how the error invalidates the decision. However, if the appellant's arguments do not support the contention, that party does not automatically lose its point since the Appeals Chamber may step in and, for other reasons, find in favour of the contention that there is an error of law.[14]

7. Where the Appeals Chamber finds an error of law in the trial judgement arising from the application of an incorrect legal standard, the Appeals Chamber will articulate the correct legal standard and review the relevant factual findings of the Trial Chamber accordingly.[15] In so doing, the Appeals Chamber not only corrects the legal error, but, when necessary, also applies the correct legal standard to the evidence contained in the trial record and determines whether it is itself convinced beyond reasonable doubt as to the factual finding challenged by the appellant before that finding may be confirmed on appeal.[16]

8. Regarding errors of fact, it is well established that the Appeals Chamber will not lightly overturn findings of fact made by the Trial Chamber:

> Where the Defence alleges an erroneous finding of fact, the Appeals Chamber must give deference to the Trial Chamber that received the evidence at trial, and it will only interfere in those findings where no reasonable trier of fact could have reached the same finding or where the finding is wholly erroneous. Furthermore, the erroneous finding will be revoked or revised only if the error occasioned a miscarriage of justice.[17]

9. A party cannot merely repeat on appeal arguments that did not succeed at trial, unless it can demonstrate that the Trial Chamber's rejection of those arguments constituted an error warranting

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[13] *Muvunyi II* Appeal Judgement, para. 7; *Renzaho* Appeal Judgement, para. 7. *See also Haradinaj et al.* Appeal Judgement, para. 9.
[14] *Ntakirutimana* Appeal Judgement, para. 11 (internal citation omitted). *See also Muvunyi II* Appeal Judgement, para. 8; *Renzaho* Appeal Judgement, para. 8; *Haradinaj et al.* Appeal Judgement, para. 10.
[15] *Muvunyi II* Appeal Judgement, para. 9; *Renzaho* Appeal Judgement, para. 9. *See also Haradinaj et al.* Appeal Judgement, para. 11.
[16] *Muvunyi II* Appeal Judgement, para. 9; *Renzaho* Appeal Judgement, para. 9. *See also Haradinaj et al.* Appeal Judgement, para. 11.
[17] *Krstić* Appeal Judgement, para. 40 (internal citations omitted). *See also Muvunyi II* Appeal Judgement, para. 10; *Renzaho* Appeal Judgement, para. 10; *Haradinaj et al.* Appeal Judgement, para. 12.

the intervention of the Appeals Chamber.[18] Arguments which do not have the potential to cause the impugned decision to be reversed or revised may be immediately dismissed by the Appeals Chamber and need not be considered on the merits.[19]

10. In order for the Appeals Chamber to assess arguments on appeal, the appealing party must provide precise references to relevant transcript pages or paragraphs in the decision or judgement to which the challenge is made.[20] Moreover, the Appeals Chamber cannot be expected to consider a party's submissions in detail if they are obscure, contradictory, vague, or suffer from other formal and obvious insufficiencies.[21] Finally, the Appeals Chamber has inherent discretion in selecting which submissions merit a detailed reasoned opinion in writing, and it will dismiss arguments which are evidently unfounded without providing detailed reasoning.[22]

[18] *Muvunyi II* Appeal Judgement, para. 11; *Renzaho* Appeal Judgement, para. 11. *See also Boškoski and Tarčulovski* Appeal Judgement, para. 16.
[19] *Muvunyi II* Appeal Judgement, para. 11; *Renzaho* Appeal Judgement, para. 11. *See also Boškoski and Tarčulovski* Appeal Judgement, para. 16.
[20] Practice Direction on Formal Requirements for Appeals from Judgement, 15 June 2007, para. 4(b). *See also Muvunyi II* Appeal Judgement, para. 12; *Renzaho* Appeal Judgement, para. 12; *Boškoski and Tarčulovski* Appeal Judgement, para. 17.
[21] *Muvunyi II* Appeal Judgement, para. 12; *Renzaho* Appeal Judgement, para. 12; *Boškoski and Tarčulovski* Appeal Judgement, para. 17.
[22] *Muvunyi II* Appeal Judgement, para. 12; *Renzaho* Appeal Judgement, para. 12; *Boškoski and Tarčulovski* Appeal Judgement, para. 17.

Witness BWQ's evidence, which the Trial Chamber considered credible, that he was familiar with Munyakazi prior to the event.[176] Moreover, the witness personally interacted with Munyakazi after the assailants arrived at the parish,[177] and saw him two more times: once through a ventilation hole as the main door of the church was destroyed; and again as Munyakazi entered the church after the destruction of the door, but *before* the assailants began throwing grenades at the refugees.[178] Witness BWR also corroborated Witness BWQ's account of Munyakazi's presence at the church door.[179] In this context, Munyakazi has not shown that it was unreasonable for the Trial Chamber to rely on Witness BWQ's eye-witness account of Munyakazi's actions at the church.

71. The Appeals Chamber is also not convinced that Munyakazi has identified any inconsistency between the accounts of Witnesses BWU and BWW that would call into question the Trial Chamber's reliance on their evidence. The Appeals Chamber recalls that the Trial Chamber has the main responsibility to resolve any inconsistencies that may arise within or among witnesses' testimonies.[180] It is within the discretion of the Trial Chamber to evaluate any such inconsistencies, to consider whether the evidence taken as a whole is reliable and credible, and to accept or reject the fundamental features of the evidence.[181] The Appeals Chamber further recalls that "corroboration may exist even when some details differ between testimonies, provided that no credible testimony describes the facts in question in a way which is not compatible with the description given in another credible testimony."[182]

72. The Trial Chamber viewed the evidence of Witnesses BWU and BWW with caution, given their participation in the attack as accomplices of Munyakazi, and therefore accepted it only where corroborated.[183] In this respect, the Trial Chamber considered that the testimonies of Witnesses BWU and BWW were consistent on a number of key details, including the date and timeframe of the attack, the participation of Munyakazi and the *Interahamwe*, his dress and possession of a weapon, and the general tenor of how the attack unfolded.[184] It also relied on Witness BWU, together with the evidence of Witnesses BWQ and BWR, concerning Munyakazi's role in the

[176] Trial Judgement, paras. 320, 365.
[177] Trial Judgement, paras. 325, 365.
[178] T. 22 April 2009 pp. 15, 30, 31; T. 22 April 2009 p. 33 ("A. [...] But I know that after [Munyakazi] broke down the door, he took a look inside the church. And later on I heard only the noises of the victims, and I knew nothing again of what happened subsequently. Q. You were able to see him after you'd moved to the centre area of the church; is that what you're saying? A. I've explained this already. When they had done breaking down the door, he threw a look inside. Then he moved back and started lobbing in grenades.").
[179] Trial Judgement, para. 365.
[180] *Renzaho* Appeal Judgement, para. 355; *Rukundo* Appeal Judgement, para. 207; *Simba* Appeal Judgement, para. 103.
[181] *Renzaho* Appeal Judgement, para. 355; *Rukundo* Appeal Judgement, para. 207; *Simba* Appeal Judgement, para. 103.
[182] *Nahimana et al.* Appeal Judgement, para. 428. *See also Rukundo* Appeal Judgement, para. 201; *Karera* Appeal Judgement, para. 173.
[183] Trial Judgement, paras. 366, 367. *See also* Trial Judgement, para. 119.

75. Accordingly, the Appeals Chamber can identify no error in the Trial Chamber's reliance on Witnesses BWU and BWW to establish that Munyakazi led the attack.

76. Turning to the site visit, the Appeals Chamber recalls that the Trial Chamber has the primary discretion to decide whether or not a site visit is necessary or relevant in the assessment of evidence.[196] The only credibility issue argued by Munyakazi that reasonably relates to the physical features of the parish is Witnesses BWQ's and BWR's ability to see assailants through the ventilation holes. On this point, the Trial Chamber heard testimony concerning the placement and size of the holes, as well as the ease with which one could see through them.[197] Munyakazi points to no other evidence on the record that would cast doubt on the physical features of the ventilation holes. Moreover, Witnesses BWQ and BWR testified that they saw Munyakazi immediately after the door was destroyed.[198] Furthermore, Witness BWU, who was outside the church, also testified about Munyakazi's presence at the door and the manner of the attack.[199] In these circumstances, the Appeals Chamber is satisfied that the Trial Chamber acted within its discretion in cancelling the site visit.

77. The Appeals Chamber also can identify no error in the Trial Chamber's reliance on Witnesses MM and MP. The Trial Chamber expressly noted that they "provided only hearsay evidence" which came "from the same source."[200] The Appeals Chamber recalls that the Trial Chamber has the discretion to cautiously consider and rely on hearsay evidence.[201] The Appeals Chamber considers that, in making its findings, the Trial Chamber relied principally on the "detailed first-hand evidence" of Witnesses BWQ, BWR, BWU, and BWW.[202]

78. There is no merit in Munyakazi's submission that the Trial Chamber erred in relying on exaggerated evidence. The Trial Chamber was clearly aware of the potential for exaggeration in view of its observation that Witness BWW had "a marked tendency to exaggerate figures".[203] The Trial Chamber, however, relied only on this witness's evidence when corroborated.[204] The Trial Chamber's findings were based principally on four eye-witnesses "from a wide array of

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[196] *Simba* Appeal Judgement, para. 16.
[197] *See supra* para. 69.
[198] Witness BWQ, T. 22 April 2009 pp. 15, 33; Witness BWR, T. 22 April 2009 p. 45. *See also* Trial Judgement, paras. 365, 366.
[199] Trial Judgement, para. 366.
[200] Trial Judgement, para. 368.
[201] *Kalimanzira* Appeal Judgement, para. 96; *Karera* Appeal Judgement, para. 39; *Nahimana et al.* Appeal Judgement, para. 831. *See also Muvunyi I* Appeal Judgement, para. 70; *Ndindabahizi* Appeal Judgement, para. 115; *Gacumbitsi* Appeal Judgement, para. 115; *Rutaganda* Appeal Judgement, para. 34.
[202] Trial Judgement, para. 376. *See also* Trial Judgement, paras. 363-368.
[203] Trial Judgement, para. 367.
[204] Trial Judgement, para. 367.

particular, he highlights inconsistencies between the accounts of Witnesses MM and MP with respect to the number of gendarmes who addressed the assailants, their ability to see Munyakazi or vehicles within the parish premises, where the refugees were killed, how the attack started, and whether there was a victim selection process.[267] Munyakazi argues that these discrepancies cannot be reasonably explained by the passage of time or confusion given Witnesses MM's and MP's similar vantage points during the attack and their shared role in ensuring the welfare of the refugees.[268] Munyakazi also highlights the discrepancy between Witnesses MM's and MP's contention that the gendarmes tried to prevent the attack and Witness BWW's assertion that the gendarmes welcomed the attackers.[269]

102. Munyakazi argues that the Trial Chamber failed to appreciate the differences in Witnesses MM's, LCQ's, and BWW's respective accounts concerning the location and manner of the killings.[270] Munyakazi further contends that Witnesses MM and LCQ could not corroborate each other given their different vantage points during the attack.[271] Furthermore, Munyakazi submits that the evidence of Witness BWW is exaggerated and lacking in key details.[272] Munyakazi also points to differences among the witnesses' descriptions of the assailants' attire, the gender of the refugees at the parish, and the involvement of certain attackers.[273] Finally, Munyakazi submits that, had the Trial Chamber not cancelled the site visit, it would have determined that the discrepancies between the testimonies of Witnesses MM, MP, LCQ, and BWW were significant.[274]

103. A review of the Trial Judgement and record reflects that there are certain differences between the accounts of the Prosecution witnesses, which are partly reflected in the summary of their evidence in the Trial Judgement. Contrary to Munyakazi's submissions, however, these differences are generally minor and do not call into question the reasonableness of the Trial Chamber's reliance on the accounts of the witnesses. The Appeals Chamber recalls that the Trial Chamber has the main responsibility to resolve any inconsistencies that may arise within or among witnesses' testimonies.[275] It is within the discretion of the Trial Chamber to evaluate inconsistencies in the evidence, to consider whether the evidence taken as a whole is reliable and credible, and to

[267] Munyakazi Appeal Brief, paras. 204, 205, 207, 214-217, 223, 224.
[268] Munyakazi Appeal Brief, paras. 207, 216, 217, 232.
[269] Munyakazi Appeal Brief, paras. 223-225, 230.
[270] Munyakazi Appeal Brief, paras. 211, 212, 218-220, 229.
[271] Munyakazi Appeal Brief, para. 213.
[272] Munyakazi Appeal Brief, paras. 226, 228, 232.
[273] Munyakazi Appeal Brief, paras. 206-210, 221, 222, 229, 231.
[274] Munyakazi Appeal Brief, paras. 233, 234; Munyakazi Reply Brief, para. 57.
[275] *Renzaho* Appeal Judgement, para. 269; *Rukundo* Appeal Judgement, para. 207; *Simba* Appeal Judgement, para. 103.

accept some but reject other parts of a witness's testimony.[276] Furthermore, corroboration does not require witnesses' accounts to be identical in all aspects since "[e]very witness presents what he has seen from his own point of view at the time of the events, or according to how he understood the events recounted by others."[277] Rather, the main question is whether two or more credible accounts are incompatible.[278]

104. Witness MP's account of how the attack unfolded is mostly incompatible with those of Witnesses MM, LCQ, and BWW.[279] Specifically, according to the Trial Judgement, Witness MP described an attack involving killings which occurred in the classrooms on the premises of the parish.[280] In contrast, Witnesses MM, LCQ, and BWW indicated that the victims were first gathered at the parish, removed from its premises, stripped naked, and killed elsewhere.[281] The Trial Chamber considered that this discrepancy could be explained by the passage of time and confusion due to the frequency of attacks on the parish during that period.[282] The Appeals Chamber is satisfied that these circumstances reasonably explain why Witness MP may have been mistaken about some of the specific details of the attack on 30 April 1994. Accordingly, the Appeals Chamber finds that the Trial Chamber acted within its discretion in rejecting many of the inconsistent details of the attack given by Witness MP and in preferring the corroborated version of events provided by Witnesses MM, LCQ, and BWW.[283]

105. The other discrepancies between Witnesses MM and MP, which were not expressly addressed in the Trial Judgement, are minor and could also be explained by confusion and the passage of time. It was within the discretion of the Trial Chamber to nonetheless rely on other aspects of Witness MP's evidence on points where his evidence was consistent with that of other witnesses, such as the time and date of the attack, the number of victims, and the leader of the attack.[284] Accordingly, Munyakazi has not demonstrated that the discrepancies between Witness MP's testimony about the attack and the other evidence call into question the reasonableness of the Trial Chamber's findings.

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[276] *Rukundo* Appeal Judgement, para. 207; *Simba* Appeal Judgement, para. 103. *See also Muvunyi II* Appeal Judgement, para. 26; *Muvunyi I* Appeal Judgement, para. 128.
[277] *Nahimana et al.* Appeal Judgement, para. 428.
[278] *Nahimana et al.* Appeal Judgement, para. 428.
[279] Trial Judgement, para. 413.
[280] Trial Judgement, para. 413.
[281] Trial Judgement, para. 413. *See also* Witness MM, T. 27 April 2009 p. 63; Witness LCQ, T. 28 April 2009 p. 21; Witness BWW, T. 29 May 2009 p. 21. The Trial Chamber noted, however, that Witness BWW testified that the *Interahamwe* killed some of the refugees inside the parish itself as night time approached. *See* Trial Judgement, para. 400.
[282] Trial Judgement, para. 413.
[283] Trial Judgement, para. 413.
[284] Trial Judgement, paras. 390, 397, 414, 415, 422, 496.

117. The Trial Chamber did not discuss the differences in the evidence of Prosecution Witnesses MM, MP, and LCQ concerning the initial attacks at the parish on 11 or 13 April 1994. Witness MM indicated that the attacks began on 11 April 1994.[319] Witness LCQ believed that the first attack occurred on 13 April 1994.[320] Witness MP acknowledged that there were other attacks, but did not specify any dates and was not questioned about when they occurred.[321] The Appeals Chamber considers that, despite these minor variances in detail, the accounts of these witnesses remain compatible. Notably, Witnesses MM, MP, and LCQ consistently recalled the three most significant attacks at the parish on 18, 20, and 30 April 1994 and mentioned other assaults by local inhabitants.[322]

118. Witness Nahimana's omission of a significant attack at the parish on 20 April 1994, which was confirmed by three eye-witnesses, is more significant than the possible omission by the Prosecution witnesses of earlier, smaller incidents.[323] However, the events at the parish on that date were not necessarily a central feature of his testimony, and neither party questioned him extensively on this issue. Even if it were an error to discount his evidence on this basis, the Appeals Chamber can identify no miscarriage of justice. The fact remains that Witness Nahimana asserted that no attack occurred on 30 April 1994 and that he never heard about one from Witnesses MM and MP or other sources.[324] In contrast, the Trial Chamber heard evidence from four Prosecution witnesses, including Witnesses MM and MP; in the view of the Trial Chamber, this evidence credibly confirmed that Munyakazi participated in an attack at the parish on 30 April 1994.[325] The Appeals Chamber recalls that, when faced with competing versions of events, it is the duty of the Trial Chamber that heard the witnesses to determine which evidence it considers more probative.[326] Based on the foregoing, the Appeals Chamber finds that it was reasonable for the Trial Chamber to accept the Prosecution evidence over Witness Nahimana's account.

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[319] Witness MM, T. 27 April 2009 p. 61 ("The attacks began on the 11th of April, and they were carried out by the local inhabitants of the area, and we had to defend ourselves and repel the attacks by throwing stones, but the attacks continued.").
[320] Witness LCQ, T. 28 April 2009 p. 17 ("The first attack, *to my recollection*, was launched on the 13th [...] of April")(emphasis added).
[321] Witness MP, T. 27 April 2009 p. 45 ("Many attacks were waged against the parish and they varied in magnitude. However, I'm going to mention the attacks that took place on [18, 20, and 30 April 1994]").
[322] Witness MP, T. 27 April 2009 p. 45; Witness MM, T. 27 April 2009 p. 61; T. 28 April 2009 p. 6; Witness LCQ, T. 28 April 1994 pp. 17, 28.
[323] Trial Judgement, para. 419.
[324] Trial Judgement, paras. 406-408.
[325] Trial Judgement, paras. 412-417, 422, 423.
[326] *Muvunyi II* Appeal Judgement, para. 57; *Muhimana* Appeal Judgement, para. 103; *Gacumbitsi* Appeal Judgement, para. 81; *Rutaganda* Appeal Judgement, para. 29.

conducted a site visit, there would have been additional reasons to discount their testimony.[416] Munyakazi also highlights his alibi, which, in his view, was unreasonably discounted and further emphasizes that Witnesses MBRE, YCC, and YCH confirmed that there was no attack at the parish on 16 April 1994.[417] Finally, Munyakazi contends that the Trial Chamber correctly questioned his participation in the massacre at the parish based on the attack at CIMERWA.[418]

152. The Appeals Chamber underscores that Trial Chambers enjoy broad discretion in assessing evidence, to which deference is owed.[419] Although the Trial Chamber found Witnesses LAY and BWP to be "generally credible and reliable",[420] the Prosecution does not fully appreciate that the Trial Chamber heard competing evidence, which was not discounted, from Witnesses MBRE, YCC, and YCH that no attack occurred at the parish on 16 April 1994.[421] Although these Defence witnesses were not at the parish, as the Prosecution notes, the Trial Chamber observed that, based on their respective vantage points in and around Kabeza Centre, from where the entrance of the parish was visible, they were in a position to know whether an attack occurred at the parish on that date.[422] The Prosecution does not dispute this or raise any other challenge to the Trial Chamber's assessment of this Defence evidence. Consequently, the accounts of Witnesses LAY and BWP that Munyakazi participated in an attack at the parish on 16 April 1994 cannot be easily reconciled with Witnesses MBRE's, YCC's, and YCH's testimony.

153. The evidence concerning the involvement of the Bugarama *Interahamwe* in the attack at CIMERWA on 16 April 1994 may reasonably be described as circumstantial support for the proposition that Munyakazi did not participate in another massacre on that same day at Nyamasheke parish with members of that same group. As the Prosecution observes, there is no indication that Munyakazi participated in the attack at CIMERWA.[423] However, it cannot be said that the involvement of members of the Bugarama *Interahamwe* in the CIMERWA attack is incapable of raising some concern about evidence that, on the same day, the group was involved in another attack at a distant location.

154. The Appeals Chamber recalls that the Trial Chamber has the main responsibility to resolve any inconsistencies that may arise within or among witnesses' testimonies.[424] Although it would

[416] Munyakazi Response Brief, para. 63.
[417] Munyakazi Response Brief, paras. 56, 64-76, 86.
[418] Munyakazi Response Brief, paras. 76, 88-106.
[419] *Kalimanzira* Appeal Judgement, para. 186.
[420] Trial Judgement, para. 302.
[421] Trial Judgement, para. 304.
[422] Trial Judgement, para. 304.
[423] Trial Judgement, paras. 296-300.
[424] *Renzaho* Appeal Judgement, para. 269; *Rukundo* Appeal Judgement, para. 207; *Simba* Appeal Judgement, para. 103.

have been reasonable for the Trial Chamber to prefer the credible and reliable first-hand evidence of Witnesses LAY and BWP, the Appeals Chamber cannot conclude that no reasonable trier of fact could have reasonable doubt as to Munyakazi's participation in an attack on Nyamasheke parish on 16 April 1994, in light of the competing Defence evidence.

155. Accordingly, the Prosecution has not demonstrated that the Trial Chamber's assessment of the totality of the evidence was unreasonable. For the foregoing reasons, the Appeals Chamber dismisses the Prosecution's First Ground of Appeal.

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UNITED NATIONS

International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law committed in the territory of Rwanda and Rwandan Citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994

Case No. ICTR-96-13-A

Date: 16 November 2001

ENGLISH

Original: FRENCH

APPEALS CHAMBER

Before Judges: Claude Jorda, presiding
Lal Chand Vohrah
Mohamed Shahabuddeen
Rafael Nieto-Navia
Fausto Pocar

Registry: Adama Dieng

Judgement of: 16 November 2001

JUDICIAL RECORDS
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ALFRED MUSEMA
(Appellant)
v.

THE PROSECUTOR
(Respondent)

JUDGEMENT

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ICTR-96-13-A
25 Oct. 2002
(2479/A - 2335/A)

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18. The Appeals Chamber recalls that in determining whether or not a Trial Chamber's finding was reasonable, it "will not lightly disturb findings of fact by a Trial Chamber."[25] In the first place, the task of weighing and assessing evidence lies with the Trial Chamber. Furthermore, it is for the Trial Chamber to determine whether a witness is credible or not. Therefore, the Appeals Chamber must give a margin of deference to a finding of fact reached by a Trial Chamber.[26] But the Trial Chamber's discretion in weighing and assessing evidence is always limited by its duty to provide a "reasoned opinion in writing,"[27] although it is not required to articulate every step of its reasoning for each particular finding it makes.[28] The question arises as to the extent that a Trial Chamber is obliged to set out its reasons for accepting or rejecting a particular testimony.[29] There is no guiding principle on this point and, to a large extent, testimony must be considered on a case by case basis. The Appeals Chamber of ICTY held that:[30]

> [t]he right of an accused under Article 23 of the Statute to a reasoned opinion is an aspect of the fair trial requirement embodied in Articles 20 and 21 of the Statute. The case-law that has developed under the European Convention on Human Rights establishes that a reasoned opinion is a component of the fair hearing requirement, but that "the extent to which this duty . . . applies may vary according to the nature of the decision" and "can only be determined in the light of the circumstances of the case."[31] The European Court of Human Rights has held that a "tribunal' is not obliged to give a detailed answer to every argument.[32]

19. In addition, the Appeals Chamber of ICTY has stated that although the evidence produced may not have been referred to by a Trial Chamber, based on the particular circumstances of a given case, it may nevertheless be reasonable to assume that the Trial Chamber had taken it into account.[33]

20. It does not necessarily follow that because a Trial Chamber did not refer to any particular evidence or testimony in its reasoning, it disregarded it. This is particularly so in the evaluation of witness testimony, including inconsistencies and the overall credibility of a witness. A Trial Chamber is not required to set out in detail why it accepted or rejected a particular testimony. Thus, in the

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[25] *Furundžija* Appeal Judgement, para. 37; *Tadić* Appeal Judgement, para. 35; *Aleksovski* Appeal Judgement, para. 63.
[26] *Akayesu* Appeal Judgement, para. 232; *Tadić* Appeal Judgement, para. 64; *Furundžija* Appeal Judgement, para. 37; *Aleksovski* Appeal Judgement, para. 63; *Serushago* Appeal Judgement, para 22.
[27] Article 22(2) of the Statute and Rule 88(C) of the Rules.
[28] *Čelebići* Appeal Judgement, para. 481.
[29] In particular, the Prosecution has submitted that the "parameters of what constitutes a 'reasoned opinion' have yet to be articulated by any Trial Chamber of this Tribunal or ICTY, or by the Appeals Chamber." Prosecution's Response, footnote 59 and para. 4.108.
[30] *Furundžija* Appeal Judgement, para. 69.
[31] Footnote reference: "See the case of *Ruiz Torija v. Spain,* Judgement of 9 December 1994, Publication of the European Court of Human Rights ("Eur. Ct. H. R."), Series A, vol. 303, para. 29."
[32] Footnote reference: "Case of *Van de Hurk v. The Netherlands,* Judgement of 19 April 1994, Eur. Ct. H. R., Series A, vol. 288, para. 61."
[33] *Čelebići* Appeal Judgement, para. 483.

Čelebići case, the Appeals Chamber of ICTY found that it is open to the Trial Chamber to accept what it described as the "fundamental features" of testimony.[34] It also stated that:

> [t]he Trial Chamber is not obliged in its Judgement to recount and justify its findings in relation to every submission made during trial. It was within its discretion to evaluate the inconsistencies highlighted and to consider whether the witness, when the testimony is taken as a whole, was reliable and whether the evidence was credible. Small inconsistencies cannot suffice to render the whole testimony unreliable.[35]

21. It is for an appellant to show that the finding made by the Trial Chamber is erroneous and that the Trial Chamber indeed disregarded some item of evidence, as it did not refer to it. In Čelebići, the Appeals Chamber found that the Appellant had "failed to show that the Trial Chamber erred in disregarding the alleged inconsistencies in its overall evaluation of the evidence as being compelling and credible, and in accepting the totality of the evidence as being sufficient to enter a finding of guilt beyond reasonable doubt on these grounds."[36]

B. The Burden and Standard of Proof at Trial: General principles governing assessment of evidence by the Trial Chamber

22. Musema has raised six preliminary points largely based on what he alleges to be errors in the Trial Chamber's observations as to how it intended to or did assess the evidence at trial. He claims that the Trial Chamber consistently committed the said errors in its assessment of the evidence and that the failure of the Trial Chamber to apply the correct burden and standard of proof to the facts before it meant that he was wrongly convicted.[37]

23. Before examining the Trial Chamber's precise factual findings, the Appeals Chamber will first briefly consider these general allegations.

1. Burden and standard of proof

(a) Arguments of the parties

24. Musema alleges that the Trial Chamber "consistently erred in its statements of the law regarding the burden and standard of proof."[38] He maintains that the Trial Chamber failed to apply the correct test in assessing evidence, whereby it is the duty of the Prosecution, save in certain cases, to prove the

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[34] *Ibid.*, para. 485.
[35] *Ibid.*, para. 498.
[36] *Ibid.*,
[37] Appellant's Brief, para. 23.
[38] *Ibid.*, para. 101.

It is clear from the above findings of the Trial Chamber, that the alleged inconsistency between Witness R's testimony that he treated his wound with cow butter and his earlier testimony that he treated it with penicillin was satisfactorily explained to the Trial Chamber.[152] There remains the allegation of inconsistency as to whether Witness R had the wound treated in Rwirambo or not. In the opinion of the Appeals Chamber, this allegation is not such as would cause a reasonable Trial Chamber to reject Witness R's testimony. Considering Witness R's testimony, when taken as a whole and specifically in relation to Musema's involvement in the attack, the Appeals Chamber holds that the Trial Chamber had the discretion to find the alleged inconsistency inadequate to substantially cast doubt on Witness R's testimony. Thus, although not specifically mentioned in the Trial Judgement, it was not unreasonable for the Trial Chamber to find Witness R credible.

90. With regard to Musema's challenge to his identification by Witness R,[153] the Appeals Chamber first recalls that neither the Statute nor the Rules oblige the Trial Chamber to require evidence of any particular kind for purposes of identification. Pursuant to Rule 89 of the Rules, a Chamber "may admit any relevant evidence which it deems to have probative value". The Appeals Chamber has previously acknowledged that a Trial Chamber is best placed to assess the evidence presented at trial; whether it will rely on a single witness testimony as proof of a material fact will depend on various factors that have to be assessed in the circumstances of each case.[154] In the same vein, it is for the Trial Chamber to assess the evidence of identification given by witnesses and to determine whether it is reliable in the light of the circumstances of the case. Unless it is shown that the Trial Chamber's assessment was wholly erroneous, the Appeals Chamber will defer thereto.

91. In this regard, the Appeals Chamber notes that, while stating that he was at a "rather lengthy distance" from Musema, the witness also testified that he had known Musema previously;[155] that

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testimony about the date of his injury. During the *Kayishema and Ruzindana* trial, he testified on 13 November 1997, stating that his injury occurred on 29 April. More than a year later, he testified before the Trial Chamber in the instant case on 25 February 1999 and stated the date to be "between the 27th of April and the 3rd or 4th of May". See T, 25 February 1999, p. 104.

[152] The Appeals Chamber observes that during his testimony in the *Kayishema and Ruzindana* trial, Witness R was examined in relation to events occurring on 13 and 14 May 1994. Witness R explained that he was still suffering from his wound on those dates and added that he was able to purchase penicillin to treat the wound. See *The Prosecutor v. Clement Kayishema and Obed Ruzindana,* Case No. ICTR-95-1-T, 13 November 1997, pp. 109-110. Accordingly, Witness R's explanation that he was not able to obtain penicillin soon after his injury (i.e between 27 April and 4 May) but much later (i.e 13 and 14 May), is not necessarily inconsistent.

[153] Musema refers to para. 62 of the Defence Closing Argument, filed 28 June 1999, "Therefore, examine carefully the circumstances in which the identification by each eyewitness was made. What was the witness doing at the time? What were the circumstances? Was the situation one in which he was capable of making his own identification, or is the identification based on information from someone else? Could there be grounds for an association with the accused rather than a viewing of the accused himself? How long did the witness have the person he says was the Defendant under observation? At what distance? In what light? Did anything interfere with the observation? Had the witness ever seen the accused before? If so, how often? If only occasionally, had he any special reason for remembering him?". (See Appellant's Brief, para. 144).

[154] *Kayishema/Ruzindana* Appeal Judgement, para. 187; *Akayesu* Appeal Judgement, para. 132; *Aleksovski* Appeal Judgement, para. 63; *Tadić* Appeal Judgement, para. 65; *Celebići* Appeal Judgement, para. 506.

[155] T, 25 February 1999, p. 70.

Furthermore, upon review of the Trial Judgement on this issue, the Appeals Chamber also notes that most of the matters raised in Musema's arguments concerning the credibility of Witness AC were noted by the Trial Chamber.[241]

134. The Trial Chamber's factual findings[242] based, though not entirely, on Witness AC's testimony reveal that a large-scale attack occurred on 14 May 1994 on Muyira Hill; that AC saw Musema arrive in his red Pajero; that the attack was led by Musema and Ndimbati; that Musema, who was carrying a firearm and a belt of ammunition, fired gunshots, which, according to AC, hit an old man by the name of Ntambiye and another called Iamuremye,[243] that, on being attacked by the assailants led by Musema and Ndimbati, the refugees defended themselves with stones, but that the military fired tear gas at them; and that the attackers left the scene at 18:00hrs. As was observed by the Trial Chamber on two occasions, there was no cross-examination of Witness AC specific to this attack.[244] Various aspects of Witness AC's testimony were also corroborated by the testimony of Witnesses F, T and D in material respects.[245] On the question of corroboration of testimony, the Appeals Chamber recalls its earlier statements with regard to the Trial Chamber's discretion to assess the evidence and testimony before it. Thus, although not bound to do so, a Trial Chamber may require that the testimony of a witness be corroborated. The Appeals Chamber finds that it was within the discretion of the Trial Chamber to accept the evidence of AC to the extent that it was corroborated by other testimony. In this regard, the Appeals Chamber also recalls that "a tribunal of fact must never look at the evidence of each witness, as if it existed in a hermetically sealed compartment; it is the accumulation of *all* the evidence in the case which must be considered. The evidence of one witness, when considered by itself, may appear to be of poor quality, but it may gain strength from other evidence of the case."[246]

135. Consequently, the Appeals Chamber finds that the Trial Chamber did not err in accepting the evidence of Witness AC on condition that it was corroborated by other testimony. Furthermore, Musema's submissions on the alleged unreliable features of Witness AC's testimony do not, in the view of the Appeals Chamber, directly challenge the material aspects of AC's evidence. Thus, notwithstanding Musema's arguments, Witness AC's evidence concerning Musema's participation in the 14 May 1994 attack which is corroborated by the evidence of Witnesses F, T and D, remains credible.

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[241] See for example, Trial Judgement, para. 450 (concerning AC not being able to remember the names of his wife and children); paras. 452-453 (concerning the inconsistent account of AC's statement dated 12 June 1996 regarding a meeting in Kibuye and AC's refusal to answer questions relating to an incident concerning the fact that AC did not mention Bagosora) and para. 476 (concerning the fact that Witness AC did not mention Musema in the *Kayishema and Ruzindana* trial and did not mention having seen Prime Minister Jean Kambanda at Nyakavumu cave).

[242] Trial Judgement, paras 711 to 712.

[243] The Trial Chamber, however, did not find that it was established beyond a reasonable doubt that Musema shot a certain Ntambiye and a certain Iamuremye during the attack. See Trial Judgement, para. 752.

[244] Trial Judgement, para. 448 and para. 713.

[245] *Ibid.*, paras. 714 to 717.

[246] *Tadic* Judgement (on Allegations of Contempt), para. 92. Also, see generally, *Attorney General of Hong Kong v. Wong Muk Ping* [1987] 2 All ER 488, PC, where the court found it "dangerous to assess the credibility of the evidence given by any witness in isolation from other evidence in the case which is capable of throwing light on its reliability."

209. In considering the manner in which the Trial Chamber applied the burden and standard of proof, the Appeals Chamber must start off by assuming that the words used in the Trial Judgement accurately describe the approach adopted by the Trial Chamber.

210. It is apparent from the above examples that, *prima facie,* the Trial Chamber appears to have used, on several occasions, different terms in relation to the question of alibi. The issue is whether, in doing so, the Trial Chamber applied a burden and/or standard of proof that was inconsistent with its own statement of the relevant law. The Appeals Chamber will therefore seek to discover the Trial Chamber's intention when it used such wording.

211. Hence, the Appeals Chamber will carry out below an in-depth analysis of the findings of the Trial Chamber with respect to each location. The consequences of any erroneous application of the law or unreasonable interpretation of a fact must be considered on a case-by-case basis.

(c) Errors in the assessment of the alibi with regard to specific locations

212. Having found that the Trial Chamber did not err in its findings as to the credibility of each of the witnesses on whose testimonies it relied to convict, the Appeals Chamber will now consider whether the Trial Chamber erred in rejecting Musema's alibi and, as a result, failed to acquit him.

213. However, before considering each of the locations in question, the Appeals Chamber notes that although, for reasons stated in the Trial Judgement, the Trial Chamber rejected the alibi raised by Musema in relation to the sites considered, it has found, in relation to four incidents, that the alibi *was* such as to cast doubt on the Prosecution's allegations.

214. First, with regard to Karongi Hill (18 April 1994), the Trial Chamber expressed the opinion that, taking into account Musema's alibi (the testimonies of Musema and Claire Kayuku), the documentary evidence (Exhibit D45), and the arguments of the Prosecution on this point, the sole testimony of Witness M was insufficient to prove beyond reasonable doubt that Musema was present at the location.[390] Second, with regard to Biyiniro Hill (31 May 1994), the Trial Chamber found that the alibi (Musema's testimony) and the documents tendered in support thereof (Musema's passport, Exhibit D56, entitled "*Autorisation de sortie de fonds*" and Exhibit D54, cast doubt on the Prosecution's allegations.[391] Third, with regard to the attack of 5 June 1994, near Muyira Hill, the Trial Chamber found that the alibi (the testimonies of Musema and Claire Kayaku, together with Exhibits D57, 58 and 59) cast a reasonable doubt on the Prosecution's allegations.[392] Lastly, with regard to Nyarutovu *cellule* (22 June 1994), the Trial Chamber found that the alibi (the testimonies of Musema

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[390] Trial Judgement, paras. 659 and 660.

[391] *Ibid.*, paras. 783 and 784.

[392] *Ibid.*, paras. 787 and 788.

alibi to escape responsibility, why would he state in the calendar and interviews with the Swiss authorities that he was in Gisovu on those dates. He maintains that the fact that he did so suggests that he did not know the dates in question and that "[t]he logic employed by the Trial Chamber is therefore circular."[526]

315. The Trial Chamber found:

> Musema, throughout his testimony, affirmed that his handwritten calendar and the Swiss statements were inaccurate, and that any errors therein were subsequently corrected as documents were uncovered during investigations from, amongst other places, Gisovu Tea Factory. In some instances, such an explanation is valid. However, as regards the present period, the Chamber cannot accept such an explanation. In the said calendar and the 16 March 1995 Swiss statement, Musema clearly remembers being in Gisovu between 4 and 14 May 1994, and recalls that he was present the day the tea factory started up production. To remember such an occasion and one's presence thereat, is not, in the opinion of the Chamber, something one forgets and recalls only after seeing newly uncovered documents. Rather, it is an event which, as Director of the tea factory, Musema would beyond any doubt not have forgotten.[527]

316. The Appeals Chamber reiterates that, the task of weighing and assessing the evidence lies primarily with the Trial Chamber. Furthermore, it is for the Trial Chamber to determine whether a witness is credible or not. The Appeals Chamber will not lightly disturb findings of fact by a Trial Chamber, but rather will always accord the Trial Chambers a margin of deference with respect to findings of fact.[528] Musema has failed to show that no reasonable tribunal of fact could have reached the conclusion of guilt beyond a reasonable doubt. Hence, Musema has demonstrated neither that an error of fact has been committed nor that if such an error did occur, it occasioned a miscarriage of justice. Therefore, the appeal must fail on this point.

General conclusion

317. Given that the Trial Chamber, in its analysis, referred to the appropriate standard and burden of proof for the evaluation of alibi evidence,[529] and given also that it was careful to summarize Musema's alibi evidence with respect to each crime scene and that a trial judgement must be read holistically rather than as a series of independent watertight compartments, the Appeals Chamber has come to the conclusion that the alibi evidence was insufficient to cast reasonable doubt on the Prosecution case. Consequently, Musema's attempts to establish a defence of alibi failed in the face of the Prosecution case which, *prima facie*, proved beyond reasonable doubt that the Accused was present at the Muyira Hill and Mumataba Hill crime scenes at all relevant times in mid-May.

318. The Appeals Chamber concludes that Musema has failed to establish that the Trial Chamber

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[526] *Ibid.*, para. 290.

[527] Trial Judgement, para. 738.

[528] Appeal Judgement, para. 18, *supra.*

[529] Trial Judgment, para. 108.



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

Original: ENGLISH

Trial Chamber I

Before Judges:
Judge Lennart Aspegren, President
Judge Laïty Kama
Judge Navanethem Pillay

Registry: Mr. Agwu U. Okali

Judgement of: 27 January 2000

THE PROSECUTOR
v.
ALFRED MUSEMA

Case No. ICTR-96-13-A

JUDGEMENT AND SENTENCE

Office of the Prosecutor:
Ms Carla Del Ponte
Ms Jane Anywar Adong
Mr Charles Adeogun-Philips
Ms Holo Makwaia

Counsel for the Defence:
Mr Steven Kay, QC
Prof Michaïl Wladimiroff

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49. The admissibility of such evidence shall, as shall all other evidence, be determined through reference to the criteria of relevance and probative value, under Rule 89(C) of the Rules. Relevance is to be assessed through reference to the nexus between the evidence and the existence and/or commission of the conspiracy. As Judge Pal said in the *Tokyo Judgement*, speaking only of declarations and not acts:

> "In order to be competent as evidence the declaration must have been made in furtherance of the prosecution of the common object, or must constitute a part of the *res gestae* of some act done for the accomplishment of the object of the conspirators, otherwise such a statement should not be competent evidence against the others."[23]

50. The extent to which such evidence will prove merely the existence of a conspiracy, rather than the participation of the Accused in that conspiracy, will be a matter of assessment by the Chamber.

Hearsay evidence

51. The Chamber notes that hearsay evidence is not inadmissible *per se*, even when it cannot be examined at its source or when it is not corroborated by direct evidence. Rather, the Chamber has considered such hearsay evidence, with caution, in accordance with Rule 89. The Chamber further notes that, where it has relied upon such evidence, that evidence has, as with all other evidence, been subject to the tests of relevance, probative value and reliability discussed above.

Evidence not presented

[23] The International Military Tribunal for the Far East (29 April 1946 - 12 November 1948). *See* Röling, B.V.A and Rüter, C.F. (eds), *The Tokyo Judgment*, vol. II (Amsterdam, APA-University Press Amsterdam BV, 1977), p. 630.

proper motion form, under Rule 91(B)."[92] He argues that the Defence would be put in "an untenable position" if it had to file a motion in order to seriously allege false testimony.[93] Musema asserts that the Defence is only required to cast reasonable doubt on the Prosecution evidence, and is not required to institute proceedings against one or the other Prosecution witness in order to prove that they are lying.[94] On the contrary, under Rule 91(B), only the Trial Chamber has the power to initiate such proceedings.[95] Musema submits that the Trial Chamber's misapplication of the law placed an extra burden on him and implied that no allegation of false testimony would be considered unless proceedings in respect thereof were instituted under Rule 91.[96]

52. In the Prosecution's opinion, Musema's allegations reveal a misinterpretation both of the Trial Judgement and of Rule 91(B).[97] First, the Prosecution submits that under case-law, an accused may bring an allegation of false testimony before the Chamber,[98] and that once proceedings are instituted under the above-mentioned provision, the onus is on the party raising the allegation to satisfy the Chamber that there are strong grounds for believing that a witness has given false testimony.[99] Secondly, the Prosecution states that Musema fails to distinguish "between testimony that is incredible and testimony that constitutes false testimony."[100] It submits that the Trial Chamber simply meant to state that "challenges that go beyond an attack on credibility and implicate averments that a witness has committed perjury must be initiated and pursued consistently with Rule 91(B).[101] The Prosecution further submits that at no point, did the Trial Chamber impose on the Defence the additional burden alleged.[102]

(b) Discussion

53. Musema has not provided any instances in which he suffered prejudice as a result of the Trial Chamber's alleged error of law. On the contrary, he seems to be making a general allegation concerning his entire case, that "[b]y its misapplication of the law [the Trial Chamber] has misjudged the challenges to evidence made by the Defence."[103]

54. His allegation relates to paragraphs 98 and 99 of the Trial Judgement, where the Trial Chamber stated:

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[92] Appellant's Brief, paras. 67 and 68, referring to Trial Judgement, para. 98.
[93] *Ibid.*, para. 68.
[94] *Ibid.*, para. 68. T(A), pp. 71 and 72.
[95] *Ibid.*, paras. 69 and 70.
[96] *Ibid.*, paras. 71 and 72.
[97] Prosecution's Response, para. 4.47.
[98] *Ibid.*, para. 4.48.
[99] *Ibid.*, para. 4.51.
[100] *Ibid.*, para. 4.53. See also, T(A), p. 156.
[101] *Ibid.*, para. 4.54.
[102] T(A), p. 157.
[103] Appellant's Brief, para. 72.

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Tribunal pénal international pour le Rwanda
International Criminal Tribunal for Rwanda

IN THE APPEALS CHAMBER

Before:	**Judge Patrick Robinson, Presiding** **Judge Fausto Pocar** **Judge Liu Daqun** **Judge Theodor Meron** **Judge Carmel Agius**
Registrar:	**Mr. Adama Dieng**
Judgement of:	**1 April 2011**

THARCISSE MUVUNYI

v.

THE PROSECUTOR

Case No. ICTR-2000-55A-A

JUDGEMENT

Counsel for Tharcisse Muvunyi:

Mr. William E. Taylor III

The Office of the Prosecutor:

Mr. Hassan Bubacar Jallow
Ms. Deborah Wilkinson
Mr. Alphonse Van
Mr. Alfred Orono Orono
Mr. Thembile Segoete
Ms. Jane Mukangira
Mr. Leo Nwoye

II. STANDARDS OF APPELLATE REVIEW

7. The Appeals Chamber recalls the applicable standards of appellate review pursuant to Article 24 of the Statute. The Appeals Chamber reviews only errors of law which have the potential to invalidate the decision of the Trial Chamber and errors of fact which have occasioned a miscarriage of justice.[13]

8. Regarding errors of law, the Appeals Chamber has stated:

> Where a party alleges that there is an error of law, that party must advance arguments in support of the submission and explain how the error invalidates the decision. However, if the appellant's arguments do not support the contention, that party does not automatically lose its point since the Appeals Chamber may step in and, for other reasons, find in favour of the contention that there is an error of law.[14]

9. Where the Appeals Chamber finds an error of law in the trial judgement arising from the application of an incorrect legal standard, the Appeals Chamber will articulate the correct legal standard and review the relevant factual findings of the Trial Chamber accordingly.[15] In so doing, the Appeals Chamber not only corrects the legal error, but, when necessary, also applies the correct legal standard to the evidence contained in the trial record and determines whether it is itself convinced beyond reasonable doubt as to the factual finding challenged by the appellant before that finding may be confirmed on appeal.[16]

10. Regarding errors of fact, it is well established that the Appeals Chamber will not lightly overturn findings of fact made by the Trial Chamber:

> Where the Defence alleges an erroneous finding of fact, the Appeals Chamber must give deference to the Trial Chamber that received the evidence at trial, and it will only interfere in those findings where no reasonable trier of fact could have reached the same finding or where the finding is wholly erroneous. Furthermore, the erroneous finding will be revoked or revised only if the error occasioned a miscarriage of justice.[17]

11. A party cannot merely repeat on appeal arguments that did not succeed at trial, unless it can demonstrate that the Trial Chamber's rejection of those arguments constituted an error warranting

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[13] *Kalimanzira* Appeal Judgement, para. 6; *Rukundo* Appeal Judgement, para. 7. *See also Haradinaj et al.* Appeal Judgement, para. 9.
[14] *Ntakirutimana* Appeal Judgement, para. 11 (internal citation omitted). *See also Kalimanzira* Appeal Judgement, para. 7; *Rukundo* Appeal Judgement, para. 8; *Haradinaj et al.* Appeal Judgement, para. 10.
[15] *Kalimanzira* Appeal Judgement, para. 8; *Rukundo* Appeal Judgement, para. 9. *See also Haradinaj et al.* Appeal Judgement, para. 11.
[16] *Kalimanzira* Appeal Judgement, para. 8; *Rukundo* Appeal Judgement, para. 9. *See also Haradinaj et al.* Appeal Judgement, para. 11.
[17] *Krstić* Appeal Judgement, para. 40 (internal citations omitted). *See also Kalimanzira* Appeal Judgement, para. 9; *Rukundo* Appeal Judgement, para. 10; *Haradinaj et al.* Appeal Judgement, para. 12.

the intervention of the Appeals Chamber.[18] Arguments which do not have the potential to cause the impugned decision to be reversed or revised may be immediately dismissed by the Appeals Chamber and need not be considered on the merits.[19]

12. In order for the Appeals Chamber to assess arguments on appeal, the appealing party must provide precise references to relevant transcript pages or paragraphs in the decision or judgement to which the challenge is made.[20] Moreover, the Appeals Chamber cannot be expected to consider a party's submissions in detail if they are obscure, contradictory, vague, or suffer from other formal and obvious insufficiencies.[21] Finally, the Appeals Chamber has inherent discretion in selecting which submissions merit a detailed reasoned opinion in writing, and it will dismiss arguments which are evidently unfounded without providing detailed reasoning.[22]

[18] *Kalimanzira* Appeal Judgement, para. 10; *Rukundo* Appeal Judgement, para. 11. *See also Boškoski and Tarčulovski* Appeal Judgement, para. 16.
[19] *Kalimanzira* Appeal Judgement, para. 10; *Rukundo* Appeal Judgement, para. 11. *See also Boškoski and Tarčulovski* Appeal Judgement, para. 16.
[20] Practice Direction on Formal Requirements for Appeals from Judgement, 15 June 2007, para. 4(b). *See also Kalimanzira* Appeal Judgement, para. 11; *Rukundo* Appeal Judgement, para. 12; *Boškoski and Tarčulovski* Appeal Judgement, para. 17.
[21] *Kalimanzira* Appeal Judgement, para. 11; *Rukundo* Appeal Judgement, para. 12; *Boškoski and Tarčulovski* Appeal Judgement, para. 17.
[22] *Kalimanzira* Appeal Judgement, para. 11; *Rukundo* Appeal Judgement, para. 12; *Boškoski and Tarčulovski* Appeal Judgement, para. 17.

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Tribunal pénal international pour le Rwanda
International Criminal Tribunal for Rwanda

IN THE APPEALS CHAMBER

Before: **Judge Fausto Pocar, Presiding**
Judge Mohamed Shahabuddeen
Judge Liu Daqun
Judge Theodor Meron
Judge Wolfgang Schomburg

Registrar: **Mr. Adama Dieng**

Judgement of: **29 August 2008**

THARCISSE MUVUNYI

v.

THE PROSECUTOR

Case No. ICTR-2000-55A-A

JUDGEMENT

Counsel for Tharcisse Muvunyi:

Mr. William E. Taylor III
Ms. Abbe Jolles
Mr. Dorian Cotlar

The Office of the Prosecutor:

Mr. Hassan Bubacar Jallow
Mr. Alex Obote Odora
Mr. Neville Weston
Ms. Linda Bianchi
Ms. Renifa Madenga
Mr. François Nsanzuwera
Ms. Evelyn Kamau

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analysis the evidence of Witness MO38 in favour of Witness TQ who had been accused of genocide.[162]

78. The Prosecution responds that the Trial Chamber correctly inferred that Muvunyi tacitly approved of the participation of ESO Camp soldiers in the attack at the *Groupe scolaire* from the order given to save the Bicunda family, his attempts to save a child of this family who was mistakenly taken, his refusal to come to the assistance of the other refugees, and his overall conduct in allowing a contingent of armed soldiers to leave the camp to participate in the attack.[163] The Prosecution contends that Muvunyi has not demonstrated that it was unreasonable to rely on the evidence of Witness TQ.[164] The Prosecution also notes that the Trial Chamber's conclusion that Muvunyi knew about the attack is reasonable in light of the proximity of the camp to the *Groupe scolaire* and the repeated nature of the attacks.[165]

79. The Appeals Chamber has explained that an aider and abettor carries out acts specifically directed to assist, encourage, or lend moral support to the perpetration of a certain specific crime, which have a substantial effect on the perpetration of the crime.[166] The requisite mental element of aiding and abetting is knowledge that the acts performed assist the commission of the specific crime of the principal perpetrator.[167]

80. An accused may be convicted of aiding and abetting when it is established that his conduct amounted to tacit approval and encouragement of the crime and that such conduct substantially contributed to the crime.[168] In cases where tacit approval or encouragement has been found to be the basis for criminal responsibility, it has been the authority of the accused combined with his presence at or very near the crime scene, especially if considered together with his prior conduct, which allows the conclusion that the accused's conduct amounted to official sanction of the crime and thus substantially contributed to it.[169] The question of whether a given act constitutes substantial assistance to a crime requires a fact-based inquiry.[170]

81. The Trial Chamber refers only to limited circumstantial evidence suggesting that Muvunyi tacitly approved the criminal conduct of the principal perpetrators. It is well established that, as a

[162] Muvunyi Appeal Brief, para. 63.
[163] Prosecution Response Brief, para. 142.
[164] Prosecution Response Brief, paras. 143, 144.
[165] Prosecution Response Brief, para. 149.
[166] *Blagojević and Jokić* Appeal Judgement, para. 127; *Ntagerura et al.* Appeal Judgement, para. 370.
[167] *Blagojević and Jokić* Appeal Judgement, para. 127; *Ntagerura et al.* Appeal Judgement, para. 370.
[168] *Brđanin* Appeal Judgement, paras. 273, 277.
[169] *Brđanin* Appeal Judgement, para. 277
[170] *Blagojević and Jokić* Appeal Judgement, para. 134.

even though it did not find credible his evidence that no meeting occurred.[285] The Prosecution highlights that a Trial Chamber has the discretion to accept some parts of a witness's testimony and to reject others.[286]

128. The Appeals Chamber has previously held that reliance upon evidence of accomplice witnesses *per se* does not constitute a legal error.[287] The Appeals Chamber noted, however, that "considering that accomplice witnesses may have motives or incentives to implicate the accused person before the Tribunal, a Chamber, when weighing the probative value of such evidence, is bound to carefully consider the totality of circumstances in which it was tendered."[288] In addition, the Appeals Chamber recalls that a Trial Chamber has the discretion to rely on uncorroborated, but otherwise credible, witness testimony and that it is not unreasonable for a trier of fact to accept some, but reject other parts of a witness's testimony.[289]

129. Nevertheless, the Appeals Chamber is not convinced that a reasonable trier of fact could have accepted Witness YAQ's evidence concerning Muvunyi's speech in Gikonko in May or June 1994, given its rationale for rejecting the witness's evidence in relation to a similar event in Rumba cellule. In assessing Witness YAQ's evidence implicating Muvunyi in inciting genocide at the Rumba cellule roadblock, the Trial Chamber expressly noted that he was an accomplice and that it viewed his evidence with caution.[290] In particular, the Trial Chamber stated that "[Witness] YAQ was an *Interahamwe* militiaman and had reason to enhance Muvunyi's participation in the genocidal campaign and in that way attempt to diminish his own role therein."[291] The Trial Chamber ultimately rejected his testimony concerning Rumba cellule because "in the circumstances of the present case, the evidence of Witness YAQ is not sufficiently reliable or credible to ground a finding of fact beyond reasonable doubt that a meeting took place at the roadblock in Rumba *cellule* on 24 April 1994 at which the Accused incited the population to kill Tutsis."[292]

130. While the Prosecution contends that Muvunyi failed to show that Witness YAQ had a reason to lie, such a motive plainly follows from the Trial Chamber's own assessment of the witness's account in other parts of the Trial Judgement. The Trial Chamber's reasons for rejecting

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[284] Prosecution Response Brief, para. 197.
[285] Prosecution Response Brief, paras. 200-203.
[286] Prosecution Response Brief, para. 203.
[287] *Niyitegeka* Appeal Judgement, para. 98. *See also Ntagerura et al.* Appeal Judgement, para. 204.
[288] *Niyitegeka* Appeal Judgement, para. 98. *See also Ntagerura et al.* Appeal Judgement, paras. 204, 206.
[289] *Muhimana* Appeal Judgement, para. 101; *Gacumbitsi* Appeal Judgement, para. 72; *Niyitegeka* Appeal Judgement, para. 92; *Ntagerura et al.* Appeal Judgement, para. 214.
[290] Trial Judgement, paras. 156, 180.
[291] Trial Judgement, para. 156.
[292] Trial Judgement, para. 181.

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International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

IN THE APPEALS CHAMBER

Before: Judge Fausto Pocar, presiding
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Andrésia Vaz
Judge Theodor Meron

Registrar: Adama Dieng

Judgement of: 28 November 2007

Ferdinand NAHIMANA
Jean-Bosco BARAYAGWIZA
Hassan NGEZE
(*Appellants*)

v.

THE PROSECUTOR
(Respondent)

Case No. ICTR-99-52-A

JUDGEMENT

Counsel for Ferdinand Nahimana
Jean-Marie Biju-Duval
Diana Ellis

Counsel for Jean-Bosco Barayagwiza
Donald Herbert
Tanoo Mylvaganam

Counsel for Hassan Ngeze
Bharat B. Chadha
Dev Nath Kapoor

The Office of the Prosecutor
Hassan Bubacar Jallow
James Stewart
Neville Weston
George Mugwanya
Abdoulaye Seye
Linda Bianchi
Alfred Orono Orono

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came to be addressed.[51] The Government of Rwanda filed its *Amicus Curiae* Brief on 15 February 2000[52] and the Prosecutor's Request for Review and Reconsideration was heard in Arusha on 22 February 2000.

26. On 31 March 2000 the Appeals Chamber reviewed its Decision of 3 November 1999 in light of the new facts, which diminished the role played by the Prosecution's failings and the extent of the violation of the rights of Appellant Barayagwiza,[53] although such violation was confirmed by the Chamber.[54] It considered that the new facts presented by the Prosecutor could have been decisive in the decision, in particular as regards the remedy which had been ordered.[55] As a consequence, the Appeals Chamber replaced the Disposition in the Decision of 3 November 1999, rejecting the Appellant's application for his release and deciding to modify the remedy ordered by providing either for financial compensation if the Appellant was found not guilty, or for reduction of his sentence if he was convicted.[56]

27. Thereafter, Appellant Barayagwiza filed a motion for review or reconsideration of the Decision of 31 March 2000,[57] and that motion was dismissed on 14 September 2000 without examination of the merits.[58] On 23 June 2006, the Appeals Chamber dismissed a further motion by Appellant Barayagwiza which *inter alia* requested the reconsideration and annulment of the Decision of 31 March 2000, as well as examination of the abuse of process allegedly committed by the Trial Chamber since the Decision of 3 November 1999; the Chamber held that the proper place for such requests was in an appeal against the Judgement on the merits.[59] The Appeals Chamber will consider below the arguments in this respect developed by the Appellant in his submissions on appeal.[60]

2. Examination of the Appellant's arguments

28. The right of an accused to be tried before an independent tribunal is an integral component of his right to a fair trial as provided in Articles 19 and 20 of the Statute.[61] Article 11(1) of the Statute provides that "[t]he Chambers shall be composed of sixteen permanent independent judges, no two of whom may be nationals of the same State, and a maximum at any one time of nine *ad litem* independent judges appointed in accordance with article 12 *ter*,

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[51] Order of 8 December 1999, p. 3.
[52] *The Prosecutor v. Jean-Bosco Barayagwiza,* Case No. ICTR-97-19-AR72, *Amicus Curiae* Brief of the Government of the Republic of Rwanda, filed pursuant to Rule 74 of the Rules of Procedure and Evidence, 15 February 2000.
[53] Decision of 31 March 2000, para. 71.
[54] *Ibid.*, para. 74.
[55] *Ibid.*, para. 71.
[56] *Ibid.*, para. 75.
[57] *Jean-Bosco Barayagwiza v. Prosecutor*, Case No. ICTR-97-19-AR72, Appellant's Extremely Urgent Motion for Review and/or Reconsideration of the Appeals Chamber's Decision rendered on 31 March 2000 and Stay of Proceedings, 28 July 2000.
[58] *Jean-Bosco Barayagwiza v. Prosecutor*, Case No. ICTR-97-19-AR72, Decision on Motion for Review and/or Reconsideration, 14 September 2000 ("Decision of 14 September 2000").
[59] Decision on Appellant Jean-Bosco Barayagwiza's Motion Requesting Examination of Defence Motion dated 28 July 2000 and Remedy for Abuse of Process, 23 June 2006, as amended by the Corrigendum to the Decision on Appellant Jean-Bosco Barayagwiza's Motion Requesting Examination of Defence Motion dated 28 July 2000 and Remedy for Abuse of Process, 28 June 2006.
[60] See *infra* II. B. 2. and III.
[61] *Galić* Appeal Judgement, para. 37; *Kayishema and Ruzindana* Appeal Judgement, paras. 51 and 55; *Furundžija* Appeal Judgement, para. 177.

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paragraph 2, of the present Statute, no two of whom may be nationals of the same State". The independence of the Judges of the Tribunal is guaranteed by the standards for their selection,[62] the method of their appointment,[63] their conditions of service[64] and the immunity they enjoy.[65] The Appeals Chamber further notes that the independence of the Tribunal as a judicial organ was affirmed by the Secretary-General at the time when the Tribunal was created,[66] and the Chamber reaffirms that this institutional independence means that the Tribunal is entirely independent of the organs of the United Nations[67] and of any State or group of States.[68] Accordingly, the Appeals Chamber considers that there is a strong presumption that the Judges of the Tribunal take their decisions in full independence,[69] and it is for the Appellant to rebut this presumption.

29. The Appeals Chamber observes that the Appellant provides various illustrations of what he terms "pressures", which allegedly prevented the Judges from reaching their decision in full independence; it will set these out, and then consider each of them in turn.

(a) Pressures exerted by the Government of Rwanda

30. The Appellant includes in the pressures allegedly exerted by Rwanda following the Decision of 3 November 1999: the official and public condemnation of this Decision by the Government of Rwanda; the subsequent suspension of its cooperation with the Tribunal;[70] the refusal to allow the Prosecutor to visit her office in Kigali;[71] the refusal to receive her and the

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[62] See Article 12 of the Statute, which provides that the Judges of the Tribunal "shall be persons of high moral character, impartiality and integrity, who possess the qualifications required in their respective countries for appointment to the highest judicial offices".

[63] See Articles 12 *bis* and 12 *ter* of the Statute. In particular, the Judges of the Tribunal shall be elected by the General Assembly from a list submitted by the Security Council, which prevents abusive or discriminatory nominations and ensures that no State or group of States shall play a dominating role in the nomination of Judges.

[64] The conditions of service and compensation for Judges of the Tribunal are established by the General Assembly (see for example, *Questions relating to the programme budget for the biennium 1998–1999*, UN Doc. A/RES/53/214, 11 February 1999, section VIII). These ensure that Judges have financial security during and after their mandate.

[65] The Judges' privileges and immunities set out in Article 29(2) of the Statute guarantee their independence by protecting them from personal civil suits for improper acts or omissions in the exercise of their judicial functions.

[66] Report of the Secretary-General pursuant to paragraph 5 of Security Council Resolution 955 (1994), 13 February 1995 (U.N. Doc S/1995/134) ("UN Secretary-General's Report, 13 February 1995"), para. 8.

[67] *Kayishema and Ruzindana* Appeal Judgement, para. 55.

[68] UN Secretary-General's Report, 13 February 1995, para. 8.

[69] The Appeals Chamber notes that the European Court of Human Rights ruled in the case of *Naletilić v. Croatia* (European Court of Human Rights, Decision as to the Admissibility of Application No. 51891/99, 4 May 2000, para. (1) on the impartial and independent character of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 ("ICTY"), and found that ICTY was "an international court which, in view of the content of its Statute and Rules of Procedure, offers all the necessary guarantees including those of impartiality and independence, in view of the content of its Statute and Rules of Procedure". It should be emphasised that these same guarantees were reproduced in the Statute and Rules of the Tribunal, the Statute of the Tribunal being an adaptation of that of ICTY and the Rules of the Tribunal being based on those of ICTY (see paragraphs 9 and 18 of the UN Secretary-General's Report of 13 February 1995 and Article 14 of the Statute which provides that the Judges would adopt the Rules of Evidence and Procedure of ICTY ("ICTY Rules") with such changes as they deemed necessary).

[70] Barayagwiza Appellant's Brief, para. 23.

[71] *Ibid.*, para. 24. Barayagwiza refers in the footnote to a sentence which has as its sole reference: "World Africa. Thursday, November 11, 1999".

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continued suspension of its cooperation after the filing of the Prosecutor's Request for Review and Reconsideration,[72] and the statements – akin to threats according to the Appellant – made by the Attorney General of Rwanda at the hearing of 22 February 2000.[73]

31. The Appellant submits that the political pressures exerted by the Government of Rwanda resulted in the refusal by the Registrar, in violation of the Decision of 3 November 1999, to release him,[74] and in the subsequent decisions rendered by the Appeals Chamber: (1) the stay of execution of the Decision of 3 November 1999, and the continued detention of the Appellant;[75] (2) the leave to appear as *amicus curiae* granted to the Government of Rwanda;[76] and (3) the review, on 31 March 2000, of its Decision of 3 November 1999. He further alleges that this review and the prior proceedings violated his right to a fair hearing or amounted to an abuse of process.[77]

32. The Appeals Chamber notes that certain official statements from Rwanda, following the Decision of 3 November 1999, may be regarded as an attempt to exert pressure on the Tribunal in order to prevent the release of the Appellant as ordered by that Decision. The same applies to the suspension of cooperation of Rwanda with the Tribunal. However, the Appeals Chamber considers that the fact that pressures were exerted is not enough to establish that the Judges who ruled in this context on the Prosecutor's Request for Review or Reconsideration were influenced by those pressures.

33. Concerning the release of Appellant Barayagwiza ordered by the Decision of 3 November 1999, the Appeals Chamber observes that such release could only have taken place after the Registrar had taken the necessary measures for delivering him to the Cameroonian authorities.[78] The Appeals Chamber notes that the Appellant produces no evidence capable of convincing the Appeals Chamber that the Registrar violated the terms of the Decision of 3 November 1999.[79]

34. As to the decision to order a stay of execution of the Decision of 3 November 1999, the Appeals Chamber observes that the Appellant merely makes a vague allegation without demonstrating how the Government of Rwanda influenced that order. The Appeals Chamber therefore rejects this contention.

35. Lastly, the Appeals Chamber recalls that the purpose of the request by the Government of the Republic of Rwanda for leave to appear as *amicus curiae* was to state Rwanda's position as to the choice of location for the release of the Appellant.[80] The Appeals

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[72] *Ibid.*, para. 28. The Appellant further contends that Rwanda maintained this attitude until the Appeals Chamber reviewed the Decision of 3 November 1999, and that the Tribunal failed to issue any official protest against this.
[73] *Ibid.*, paras. 29-30.
[74] *Ibid.*, para. 25.
[75] *Ibid.*, para. 26.
[76] *Ibid.*, para. 31.
[77] *Ibid.*, paras. 31-32.
[78] This condition had in fact been expressly reaffirmed in the Order of 25 November 1999.
[79] Moreover, Appellant Barayagwiza can hardly argue that the Registrar violated the Decision of 3 November 1999, since on 5 November 1999 he himself filed a "Notice for Review and Stay of Dispositive Order No. 4 of the Decision of the Appeals Chamber dated 3 November 1999" (Dispositive Order No. 4 instructed the Registrar to take the necessary measures to transfer the Appelant to the Cameroon authorities), and only withdrew this on 18 November 1999.
[80] Request by Rwanda for leave to appear as *amicus curiae*, para. 2.

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arrangements for more time with Counsel for one of the other two Accused.[459] Mr. Barletta-Calderera chose to come to an arrangement with a colleague and requested an additional 15 minutes at the beginning of the next hearing,[460] which was granted by the Trial Chamber.[461] The Appeals Chamber accordingly concludes that the Appellant's appeal on this point is totally without merit.

192. For the above reasons, the Appeals Chamber finds that Appellant Barayagwiza has failed to show that the Trial Chamber abused its discretionary power by violating the right of the Appellant to examine Prosecution witnesses. The allegation of bias is also rejected.

B. Appellant Barayagwiza's submissions concerning the Trial Chamber's assessment of evidence

1. Assessment of the credibility of certain Prosecution witnesses

193. In his fortieth ground of appeal, Appellant Barayagwiza contends generally that the Trial Chamber erred in presuming that the Prosecution witnesses were credible unless proven otherwise in cross-examination, thus reversing the burden of proof.[462] He stresses that it is for the Prosecutor to establish that its witnesses are credible, that the accused should always be presumed innocent and that the testimony against him should therefore be "treated critically and sceptically".[463] He further contends that it was particularly dangerous to proceed as the Trial Chamber did in a case where the accused was to be tried *in absentia* and had given no instructions to Counsel, since the latter were restricted in the material they could deploy in order to challenge the witnesses' evidence.[464] The Appellant argues that this error of law invalidated the Trial Chamber's findings of credibility in the case of several Prosecution witnesses and seeks reversal of the Trial Chamber's findings based on their testimony.[465]

194. The Appeals Chamber recalls that statements made by witnesses in court are presumed to be credible at the time they are made; the fact that the statements are taken under oath and that witnesses can be cross-examined constitute at that stage satisfactory indicia of reliability.[466] However, the Trial Chamber has full discretionary power in assessing the appropriate weight and credibility to be accorded to the testimony of a witness.[467] This assessment is based on a number of factors, including the witness's demeanour in court, his role in the events in question, the plausibility and clarity of his testimony, whether there are contradictions or inconsistencies in his successive statements or between his testimony and other evidence, any prior examples of false testimony, any motivation to lie, and the witness's responses during cross-examination. Appellant Barayagwiza is therefore wrong in

[459] T. 3 July 2002, p. 243.
[460] *Idem.*
[461] T. 4 July 2002, pp. 21-22.
[462] Barayagwiza Appellant's Brief, paras. 74, 75, 91, 322-324; Barayagwiza Brief in Reply, para. 86.
[463] *Ibid.*, para. 324.
[464] *Ibid.*, para. 325. See also paras. 74-75 and 91, where the Appellant contends that the Trial Chamber undermined the fairness of trial by finding certain Prosecution witnesses credible simply because their testimonies had not been successfully challenged in cross-examination, whereas several witnesses were not cross-examined because of the incompetence of Counsel or as a result of a decision by the Trial Chamber.
[465] Barayagwiza Appellant's Brief, para. 326. As to the findings of fact which should be reversed, the Appellant refers to the "relevant sections" in his Brief, but without identifying them.
[466] *Ntagerura et al.* Appeal Judgement, para. 388.
[467] *Idem.*

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invoking the principle of the presumption of innocence in order to contend that it was for the Prosecutor to establish that its witnesses were credible.[468]

195. Even though, in the sections of the Judgement entitled "Credibility of witnesses", the Trial Chamber *inter alia* discussed the responses of witnesses during cross-examination, it cannot be inferred that this was the only factor considered by the Trial Chamber in determining whether or not the witnesses were credible. Thus the Trial Chamber undoubtedly assessed the credibility of Prosecution witnesses by observing their demeanour in court and by evaluating their testimonies, even though it does not always mentioned this expressly.[469] Furthermore, the Appeals Chamber notes that, in assessing the credibility of several of the witnesses mentioned by the Appellant, the Trial Chamber did not confine itself to discussing the impact of cross-examination, but also expressly considered other factors relating to their credibility.[470] This ground of appeal therefore cannot succeed.

2. Assessment of expert witness testimonies

196. In his forty-first ground of appeal, Appellant Barayagwiza submits that the Trial Chamber erred in admitting the reports and testimonies of Expert Witnesses Des Forges, Chrétien and Kabanda.[471] Before considering the specific submissions advanced by the Appellant, it is necessary to recall certain principles that are applicable to expert witness testimonies.

197. Rule 94 *bis* of the Rules lays down specific rules for the disclosure of expert witness reports or statements and for the attendance of experts at hearings. Until its amendment on 27 May 2003, this Rule read as follows:

> (A) Notwithstanding the provisions of Rule 66 (A) (ii), Rule 73 *bis* (B) (iv) (b) and Rule 73 *ter* (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:
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> (i) It accepts the statement of the expert witness;
>
> (ii) It wishes to cross-examine the expert witness;

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[468] Barayagwiza Appellant's Brief, para. 324.

[469] In this regard, the Appeals Chamber recalls that the Trial Chamber's duty to provide a reasoned decision does not require that it articulate every step of its reasoning for each particular finding it makes: *Kvočka et al.* Appeal Judgement, para. 23; *Rutaganda* Appeal Judgement, footnote 43.

[470] See, for example, Judgement, para. 465 (where the Trial Chamber considered the consistency of Witness BI's previous statements with his testimony and found generally that his testimony was clear and consistent), 547 (where the Trial Chamber, in assessing Witness X's credibility, took into account the fact that he had agreed to testify on condition that he receive immunity from prosecution), 608 (where the Trial Chamber notes that Witness GO's testimony was supported by documentary evidence), 711 (where the Trial Chamber takes into consideration Witness AAM's previous statements), 775 (where the Trial Chamber takes into account that Witness AHI is imprisoned in Gisenyi and that his case is on appeal), 812 (where the Trial Chamber considers certain previous statements by Witness EB and finds that he was clear and consistent in his account of events, that he was careful to distinguish what he saw from what he was reporting), 813 (where the Trial Chamber finds that Witness AGX's testimony was clear and consistent).

[471] Barayagwiza Notice of Appeal, p. 3; Barayagwiza Appellant's Brief, paras. 327-338.

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> evidence other than hearsay that Ngeze was arrested at all. Their sources of information were vague, with the exception of three witnesses who learned of the arrest from Ngeze himself.

427. The Trial Chamber summarized the Defence witnesses' testimonies in support of the alibi as follows:

> A number of Defence witnesses testified to the date of Ngeze's arrest in April 1994. Witness BAZ2, Witness RM1, Witness RM5, Witness BAZ6, Witness RM19, Witness BAZ9 and Witness BAZ15 testified that Ngeze was arrested on 6 April 1994. Witnesses RM13 and Witness BAZ3 testified that Ngeze was arrested just after Habyarimana's death. Witness RM2 testified that Ngeze was arrested on 6-7 April 1994. Witness BAZ1 testified that Ngeze was arrested the day before 6 April 1994 and was detained for three days. Witness RM117 testified that Ngeze was arrested on 7 April 1994. Witness RM112 testified that he found out on 7 April 1994 that Ngeze had been arrested. As to the date of Ngeze's release from prison, Witness RM5 and Witness RM2 testified that Ngeze was released on 9 April 1994. Witness BAZ2, Witness RM112 and Witness RM1 testified that Ngeze was released on 10 April 1994. Witness BAZ15 testified that Ngeze was released after about six days in custody. Witness BAZ9 testified that she saw Ngeze on 10 April 1994. Witness BAZ31 testified that Ngeze went into hiding from 6 April 1994. All of these witnesses learned of Ngeze's arrest from other people. Witness RM112, Witness RM19 and Witness BAZ15 testified that they heard about the arrest from Ngeze himself. The other witnesses heard about the arrest from people on the street or other Muslims, or knew of it as a matter of common knowledge.[1000]

428. The Appeals Chamber considers that the Trial Chamber could validly conclude that "none of the Defence witnesses had evidence other than hearsay that Ngeze was arrested at all" and that in most cases their sources of information were vague.[1001] However, the Appeals Chamber is of the view that an analysis of Defence witnesses testimonies relating to the alibi from 6 to 9 April 1994 does not demonstrate that those testimonies are "thoroughly inconsistent" (in the words of the authentic, English, text of the Judgement).[1002] From the outset, the Appeals Chamber is of the view that two testimonies corroborate one another when one *prima facie* credible testimony is compatible with the other *prima facie* credible testimony regarding the same fact or a sequence of linked facts. It is not necessary that both testimonies be identical in all aspects or describe the same fact in the same way. Every witness presents what he has seen from his own point of view at the time of the events, or according to how he understood the events recounted by others. It follows that corroboration may exist even when some details differ between testimonies, provided that no credible testimony describes the facts in question in a way which is not compatible with the description given in another credible testimony.

429. Here, the testimonies of Witnesses BAZ-2,[1003] RM-1,[1004] RM-5,[1005] BAZ-6,[1006] RM-19[1007] and BAZ-15[1008] are consistent regarding the allegation that the Appelant Ngeze was

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[1000] Judgement, para. 808 (footnotes omitted).
[1001] *Ibid.*, para. 828.
[1002] *Idem.*
[1003] T. 29 January 2003, p. 4.
[1004] T. 14 March 2003, p. 62.
[1005] T. 21 March 2003, p. 4.
[1006] T. 15 March 2003, p. 25.
[1007] T. 3 March 2003, p. 6.
[1008] *Ibid.*, p. 23.

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478. The Appeals Chamber recalls that commission covers, primarily, the physical perpetration of a crime (with criminal intent) or a culpable omission of an act that is mandated by a rule of criminal law, but also participation in a joint criminal enterprise.[1153] However, it does not appear that the Prosecutor charged the Appellants at trial with responsibility for their participation in a joint criminal enterprise,[1154] and the Appeals Chamber does not deem it appropriate to discuss this mode of participation here.[1155]

479. The *actus reus* of "planning" requires that one or more persons design the criminal conduct constituting one or more statutory crimes that are later perpetrated.[1156] It is sufficient to demonstrate that the planning was a factor substantially contributing to such criminal conduct.[1157] The *mens rea* for this mode of responsibility entails the intent to plan the commission of a crime or, at a minimum, the awareness of substantial likelihood that a crime will be committed in the execution of the acts or omissions planned.[1158]

480. The *actus reus* of "instigating" implies prompting another person to commit an offence.[1159] It is not necessary to prove that the crime would not have been perpetrated without the involvement of the accused; it is sufficient to demonstrate that the instigation was a factor substantially contributing to the conduct of another person committing the crime.[1160] The *mens rea* for this mode of responsibility is the intent to instigate another person to commit a crime or at a miminum the awareness of the substantial likelihood that a crime will be committed in the execution of the act or omission instigated.[1161]

481. With respect to ordering, a person in a position of authority[1162] may incur responsibility for ordering another person to commit an offence,[1163] if the person who received the order actually proceeds to commit the offence subsequently. Responsibility is also incurred when an individual in a position of authority orders an act or omission with the awareness of the substantial likelihood that a crime will be committed in the execution of that

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[1153] *Tadić* Appeal Judgement, para. 188.
[1154] Even if such a charge could possibly be inferred from certain paragraphs of the Indictments, for example: *Nahimana* Indictment, para. 6.27; *Barayagwiza* Indictment, para. 7.13; *Ngeze* Indictment, para. 7.15.
[1155] For a more detailed discussion of this form of participation, see *Brđanin* Appeal Judgement, paras. 389-432; *Stakić* Appeal Judgement, paras. 64-65; *Kvočka et al.* Appeal Judgement, paras. 79-119; *Ntakirutimana* Appeal Judgement, paras. 461-468; *Vasiljević* Appeal Judgement, paras. 94-102; *Krnojelac* Appeal Judgement, paras. 28-33, 65 *et seq.*; *Tadić* Appeal Judgement, paras. 185-229.
[1156] *Kordić and Čerkez* Appeal Judgement, para. 26.
[1157] *Kordić and Čerkez* Appeal Judgement, para. 26. Although the French version of the Judgement uses the terms "*un élément determinant*", the English version – which is authoritative – uses the expression "factor substantially contributing to".
[1158] *Kordić and Čerkez* Appeal Judgement, paras. 29 and 31.
[1159] *Ndindabahizi* Appeal Judgement, para. 117; *Kordić and Čerkez* Appeal Judgement, para. 27.
[1160] *Gacumbitsi* Appeal Judgement, para. 129; *Kordić and Čerkez* Appeal Judgement, para. 27. Once again, although the French version of the *Kordić and Čerkez* Judgement reads "*un élément déterminant*", the English version – which is authoritative – reads "factor substantially contributing to".
[1161] *Kordić and Čerkez* Appeal Judgement, paras. 29 and 32.
[1162] It is not necessary to demonstrate the existence of an official relationship of subordination between the accused and the perpetrator of the crime: *Galić* Appeal Judgement, para. 176; *Gacumbitsi* Appeal Judgement, para. 182; *Kamuhanda* Appeal Judgement, para. 75; *Semanza* Appeal Judgement, para. 361; *Kordić and Čerkez* Appeal Judgement, para. 28.
[1163] *Galić* Appeal Judgement, para. 176; *Ntagerura et al.* Appeal Judgement, para. 365; *Kordić and Čerkez* Appeal Judgement, paras. 28-29.

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order, and if that crime is effectively committed subsequently by the person who received the order.[1164]

482. The *actus reus* of aiding and abetting[1165] is constituted by acts or omissions[1166] aimed specifically at assisting, furthering or lending moral support to the perpetration of a specific crime, and which substantially contributed to the perpetration of the crime.[1167] Contrary to the three modes of responsibility discussed above (which require that the conduct of the accused precede the perpetration of the crime itself), the *actus reus* of aiding and abetting may occur before, during or after the principal crime.[1168] The *mens rea* for aiding and abetting is knowledge that acts performed by the aider and abettor assist in the commission of the crime by the principal.[1169] It is not necessary for the accused to know the precise crime which was intended and which in the event was committed,[1170] but he must be aware of its essential elements.[1171]

483. The Appeals Chamber concludes by recalling that the modes of responsibility under Article 6(1) of the Statute are not mutually exclusive and that it is possible to charge more than one mode in relation to a crime if this is necessary in order to reflect the totality of the accused's conduct.[1172]

B. Responsibility under Article 6(3) of the Statute

484. The Appeals Chamber recalls that, for the liability of an accused to be established under Article 6(3) of the Statute, the Prosecutor has to show that: (1) a crime over which the Tribunal has jurisdiction was committed; (2) the accused was a *de jure* or *de facto* superior of the perpetrator of the crime and had effective control over this subordinate (*i.e.*, he had the material ability to prevent or punish commission of the crime by his subordinate); (3) the accused knew or had reason to know that the crime was going to be committed or had been

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[1164] *Galić* Appeal Judgement, paras. 152 and 157; *Kordić and Čerkez* Appeal Judgement, para. 30; *Blaškić* Appeal Judgement, para. 42.

[1165] The French version of some Appeal and Trial Judgements of this Tribunal and of the ICTY mention the term "*complicité*" ("complicity") rather than "*aide et encouragement*" ("aiding and abetting"). The Appeals Chamber prefers "*aide et encouragement*" because these terms are the ones used in Article 6(1) of the Statute. Furthermore, the Statute uses the word "*complicité*" in a very specific context (see Article 2(3)(e) of the Statute); it should thus be reserved for that context.

[1166] *Ntagerura et al.* Appeal Judgement, para. 370; *Blaškić* Appeal Judgement, para. 47.

[1167] *Blagojević and Jokić* Appeal Judgement, para. 127; *Ndindabahizi* Appeal Judgement, para. 117; *Simić* Appeal Judgement, para. 85; *Ntagerura et al.* Appeal Judgement, para. 370 and footnote 740; *Blaškić* Appeal Judgement, paras. 45 and 48; *Vasiljević* Appeal Judgement, para. 102.

[1168] *Blagojević and Jokić* Appeal Judgement, para. 127; *Simić* Appeal Judgement, para. 85; *Blaškić* Appeal Judgement, para. 48. See also *Čelebići* Appeal Judgement, para. 352, citing with approval the conclusion of the Trial Chamber in that case that it is not necessary that the assistance in question be given at the time of the commission of the crime.

[1169] *Blagojević and Jokić* Appeal Judgement, para. 127; *Brđanin* Appeal Judgement, para. 484; *Simić* Appeal Judgement, para. 86; *Ntagerura et al.* Appeal Judgement, para. 370; *Blaškić* Appeal Judgement, paras. 45 and 49; *Vasiljević* Appeal Judgement, para. 102; *Aleksovski* Appeal Judgement, para. 162.

[1170] *Simić* Appeal Judgement, para. 86; *Blaškić* Appeal Judgement, para. 50.

[1171] *Brđanin* Appeal Judgement, para. 484; *Simić* Appeal Judgement, para. 86; *Blaškić* Appeal Judgement, para. 50; *Aleksovski* Appeal Judgement, para. 162.

[1172] *Ndindabahizi* Appeal Judgement, para. 122; *Kamuhanda* Appeal Judgement, para. 77.

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The Trial Chamber also referred to instances of RTLM broadcasting information designed to facilitate the killing of Tutsi. Thus Charles Kalinjabo was killed at a roadblock after RTLM called on all Tutsi who were not *Inkotanyi* to join their Hutu comrades at the roadblocks.[1240] The neighbours of Witness FW, including "Rubayiza Abdallar" and "Sultan", were killed on 11 April 1994, when they returned home after an RTLM broadcast aired on the same day telling all the Tutsi who had fled their homes to return because a search for guns was to be conducted and the houses of all those who were not home would be destroyed.[1241] The Appeals Chamber is of the opinion that it has not been demonstrated that it was unreasonable for the Trial Chamber to find that the RTLM broadcasts after 6 April 1994 substantially contributed to the killing of these individuals.[1242]

(ii) Link between articles in *Kangura* and the commission of acts of genocide

516. Paragraph 950 of the Trial Judgement reads as follows:

> 950. The Chamber found, as set forth in paragraphs 245 and 246, that *The Appeal to the Conscience of the Hutu* and *The Ten Commandments*, published in *Kangura* No. 6 in December 1990, conveyed contempt and hatred for the Tutsi ethnic group, and for Tutsi women in particular as enemy agents, and called on readers to take all necessary measures to stop the enemy, defined to be the Tutsi population. Other editorials and articles published in *Kangura* echoed the contempt and hatred for Tutsi found in The *Ten Commandments* and were clearly intended to fan the flames of ethnic hatred, resentment and fear against the Tutsi population and Hutu political opponents who supported the Tutsi ethnic group. The cover of *Kangura* No. 26 promoted violence by conveying the message that the machete should be used to eliminate the Tutsi, once and for all. This was a call for the destruction of the Tutsi ethnic group as such. Through fear-mongering and hate propaganda, *Kangura* paved the way for genocide in Rwanda, whipping the Hutu population into a killing frenzy.

The Trial Chamber thus found that *Kangura* contributed, at least in part, to the killing of Tutsi civilians,[1243] and that Appellant Ngeze must be held responsible on this account.[1244]

517. The Appeals Chamber is of the view that these findings are problematic in several respects. First, the Appeals Chamber recalls that the provisions on the temporal jurisdiction of the Tribunal precluded the Trial Chamber from relying on acts of instigation dating from before 1 January 1994 in convicting Appellant Ngeze.[1245] The Appeals Chamber has also held that the Appellant could not be convicted on the basis of publications of *Kangura* prior to 1 January 1994, allegedly re-circulated or repeated as a result of the competition organized in 1994.[1246] Thus the question which should have been addressed by the Trial Chamber was whether the *Kangura* articles published in 1994 (and not all of the articles published in *Kangura*) did in effect substantially contribute to the commission of acts of genocide in 1994.

[1240] Judgement, para. 482; see also para. 449.
[1241] *Ibid.*, paras. 449 and 482.
[1242] As held above (*supra* IV. A. 2. (c) (iii)), the testimony of Witness FS has been excluded with respect to Appellant Barayagwiza. The Appeals Chamber is however of the view that the finding that the RTLM broadcasts after 6 April 1994 substantially contributed to the commission of acts of genocide should be upheld on the basis of other evidence mentioned here.
[1243] Judgement, para. 953.
[1244] *Ibid.*, para. 977A.
[1245] See *supra* VIII. B. 2.
[1246] See *supra* IX. E. 3.

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518. Further, the Trial Chamber considered that, even though "the evidence does not establish a specific link between the publication and subsequent events, [...] a link was clearly perceived by many witnesses such as Witness AHI, Witness ABE and Nsanzuwera, suggesting that *Kangura* greatly contributed to the climate leading to these events, if not causing them directly".[1247] The Trial Chamber then adds that "[a]t times *Kangura* called explicitly on its readers to take action. More generally, its message of prejudice and fear paved the way for massacres of the Tutsi population".[1248] The Appeals Chamber emphasizes, however, that the specific examples given by Witness Nsanzuwera and Witness ABE of attacks on individuals following the publication of *Kangura* articles date back to 1990 and 1991 and do not fall within the temporal jurisdiction of the Tribunal. Moreover, none of the testimonies makes explicit reference to the impact of *Kangura* issues published after 1 January 1994.

519. While there is probably a link between the Appellant's acts, because of his role in *Kangura*, and the genocide, owing to the climate of violence to which the publication contributed and the incendiary discourse it contained,[1249] the Appeals Chamber considers that there was not enough evidence for a reasonable trier of fact to find beyond reasonable doubt that the *Kangura* publications in the first months of 1994 susbstantially contributed to the commission of acts of genocide between April and July 1994. Therefore, the Appeals Chamber is of the opinion that the Trial Chamber erred in finding Appellant Ngeze guilty of the crime of genocide under Article 6(1) of the Statute for having "instigated" the killing of Tutsi civilians as founder, owner and editor of *Kangura*.[1250]

(iii) Link between CDR activities and the acts of genocide

520. Appellant Barayagwiza contends that no causal link was established between the activities of the CDR and the acts of genocide.[1251]

521. The Trial Chamber explained in paragraph 951 of the Judgement that:

> [t]he Hutu Power movement, spearheaded by CDR, created a political framework for the killing of Tutsi and Hutu political opponents. The CDR and its youth wing, the *Impuzamugambi*, convened meetings and demonstrations, established roadblocks, distributed weapons, and systematically organized and carried out the killing of Tutsi civilians. The genocidal cry of "*tubatsembatsembe*" or "let's exterminate them", referring to the Tutsi population, was chanted consistently at CDR meetings and demonstrations. As well as orchestrating particular acts of killing, the CDR promoted a Hutu mindset in which ethnic hatred was normalized as a political ideology. The division of Hutu and Tutsi entrenched fear and suspicion of the Tutsi and fabricated the perception that the Tutsi population had to be destroyed in order to safeguard the political gains that had been made by the Hutu majority.

[1247] Judgement, para. 242.
[1248] *Ibid.*, para. 243.
[1249] See *Kangura* publications mentioned in paragraphs 136-243 of the Judgement. See also the Trial Chamber's findings in paragraphs 245, 246, 950 and 1036 of the Judgement, which make specific reference to "The Appeal to the Conscience of the Hutu" and "The Ten Commandments", and to *Kangura* No. 26.
[1250] Judgement, para. 977A.
[1251] Barayagwiza Appellant's Brief, paras. 194-195.

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exclusively on Expert Witness Des Forges' report and testimony, according to which the French Ambassador Yannick Gérard told the Appellant around the end of June or the beginning of July 1994 that the RTLM broadcasts attacking General Dallaire and UNAMIR must cease, that the Appellant promised to intervene with the RTLM journalists, and that the attacks ceased shortly thereafter.[1904]

830. The Appeals Chamber has already recalled that the role of expert witnesses is to assist the Trial Chamber in assessing the evidence before it and not to testify to facts in dispute as would ordinary witnesses.[1905] However, the Appellant does not appear to have objected at trial to this part of Expert Witness Des Forges' testimony.[1906] The Appeals Chamber recalls that, in principle, a party cannot refrain from raising an objection on an issue that was evident at trial, with a view to raising it on appeal if it has lost the case at first instance.[1907] In these circumstances, the Appeals Chamber considers that the Appellant waived his right to raise an objection to this portion of Expert Witness Des Forges' report and testimony.

831. Turning to the argument that the information received from Expert Witness Des Forges was secondary hearsay collected more than five years after the event, the Appeals Chamber recalls that trial chambers may admit and rely on hearsay testimony if they consider it to have probative value.[1908] In the instant case, the Trial Chamber noted that "Des Forges specifies in detail that her source of information about Nahimana's interaction with the French Government is a diplomat who was himself present in meetings between Nahimana and French Ambassador Yannick Gérard, who had a documentary record of the interaction in the form of a diplomatic telegram", and it considered that this piece of information was reliable.[1909] The Appeals Chamber finds that this conclusion was reasonable.

832. The Appellant further submits that, even if the matters reported by Expert Witness Des Forges were true, they could not constitute evidence that the Appellant effectively intervened with RTLM journalists to halt the attacks on UNAMIR and General Dallaire. The Appeals Chamber notes that, according to Expert Witness Des Forges' report and testimony, the said attacks ceased "immediately"[1910] or within two days[1911] after the Appellant met Ambassador Gérard. In these circumstances, the Appeals Chamber is of the view that the Trial Chamber could reasonably conclude that it was the Appellant's intervention that put an end to these attacks. The fact that the Appellant and Witness Bemeriki denied that there was

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[1904] *Ibid.*, para. 543, referring to Exhibit P158A (Des Forges Expert Report), pp. 52-53, and to T. 23 May 2002, pp. 211-213. However, contrary to what the Chamber appears to be saying in paragraph 543 of the Judgement, Expert Witness Des Forges did not rely solely on her conversation of 28 February 2000 with Jean-Christophe Belliard at the French Ministry of Foreign Affairs; in her report, she also cites a press report by Anne Chaon of 7 July 2002.

[1905] See *supra* IV. B. 2. (b) and XII. B. 3. (b) (i) a.

[1906] Nahimana Appellant's Brief does not refer to any specific objection raised at trial. The Appeals Chamber notes that Appellant Nahimana submitted a written motion objecting generally to the scope of Witness Des Forges' testimony (see Motion to Restrict the Testimony of Alison Desforges [*sic*] to Matters Requiring Expert Evidence, 10 May 2002), but this motion did not specifically object to that aspect of Expert Witness Des Forges' report. Moreover the Appellant's motion was submitted prior to Witness Des Forges' testimony on this issue.

[1907] See, for example, *Niyitegeka* Appeal Judgement, para. 199; *Kayishema and Ruzindana* Appeal Judgement, para. 91.

[1908] See *supra*, para. 215 (footnote 519).

[1909] Judgement, para. 563.

[1910] Exhibit P158A, p. 53.

[1911] T. 23 May 2002, p. 212.

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details provided in cross-examination undermined the credibility of the witness;[2157] (7) the Trial Chamber wrongly shifted the burden of proof onto the Appellant by asking him to prove the date on which an RTLM antenna was installed;[2158] (8) the fact, according to the witness, that the Appellant allegedly took part in a CDR meeting in 1991 is incorrect, since the CDR was only formed in 1992, and there is no evidence that a preliminary meeting may have taken place in 1991.[2159]

949. The Appeals Chamber recalls that the jurisprudence of the Tribunal does not require the corroboration of the testimony of a sole witness,[2160] and that the trial Judges are in the best position to assess the credibility of a witness and the reliability of the evidence adduced.[2161]

950. The Appeals Chamber considers at the outset that the Appellant's claim that Witness AHB committed many errors in his testimony concerning names of persons and locations and distances between locations[2162] should be dismissed without further consideration, in the complete absence of any details in this regard in the Appellant's Brief. Similarly, the Appeals Chamber will not examine the argument that the many inconsistencies in the witness' testimony should have impelled the Trial Chamber to find that the explanations provided by Witness AHB in cross-examination had the effect of undermining, not strengthening, his credibility,[2163] since this argument is not substantiated. Furthermore, the Appeals Chamber considers that the arguments as to the origin of the weapons distributed by the Appellant[2164] do not demonstrate that Witness AHB's testimony was unreliable, and cannot invalidate the finding of the Trial Chamber. Lastly, the allegation that the Appellant did not own a red vehicle[2165] does not show that Witness AHB's testimony was unreliable. These arguments are therefore summarily dismissed.

951. As to the allegation that Witness AHB gave several different versions of the events, the Appeals Chamber notes that, according to Appellant Barayagwiza, the witness "initially said that the Appellant contributed to the killings which started on 7th April 1994 because the Appellant delivered arms to Gisenyi. The second version of his evidence was that there were arms delivered by the army which were used on 7 April to kill Tutsi. In a third version the witness stated that the arms delivered by the Appellant were used to kill people who were not killed in the first phase."[2166] The Appeals Chamber observes that, contrary to what the Appellant claims, the extracts from Witness AHB's testimony at the hearing show that the witness had always asserted that the arms brought by Appellant Barayagwiza were used to kill Tutsi who were not killed in the attacks which took place on 7 April 1994.[2167]

[2157] *Ibid.*, para. 214.
[2158] *Idem.*
[2159] Barayagwiza Appellant's Brief, paras. 215-216.
[2160] See the case-law cited *supra*, footnote 1312.
[2161] *Rutaganda* Appeal Judgement, para. 188; *Akayesu* Appeal Judgement, para. 132; *Furundžija* Appeal Judgement, para. 37; *Aleksovski* Appeal Judgement, para. 63; *Tadić* Appeal Judgement, para. 64.
[2162] Barayagwiza Appellant's Brief, para. 213.
[2163] *Ibid.*, para. 214.
[2164] *Ibid.*, para. 211.
[2165] *Idem.*
[2166] Barayagwiza Appellant's Brief, para. 210, referring to T. 28 November 2001, pp. 46-48, 54-55, 111-117.
[2167] T. 28 November 2001, pp. 47-48, 52, 54-55.

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the accused and the gravity of the crime.[2351] Generally, the Appeals Chamber will not substitute its own sentence for that imposed by the Trial Chamber unless it has been shown that the latter committed a manifest error in exercising its discretion, or failed to follow the applicable law.[2352]

1038. The factors that a Trial Chamber is obliged to take into account in sentencing a defendant are set out in Article 23 of the Statute and in Rule 101 of the Rules. They are:

> (1) the general practice regarding prison sentences in the courts of Rwanda. However, Trial Chambers are not obliged to conform to that practice but need only to take account of it;[2353]
>
> (2) the gravity of the offences (*i.e.* the gravity of the crimes of which the accused has been convicted, and the form or degree of responsibility for these crimes). It is well established that this is the primary consideration in sentencing;[2354]
>
> (3) the individual circumstances of the accused, including aggravating and mitigating circumstances. Aggravating circumstances must be proved by the Prosecutor beyond reasonable doubt;[2355] the accused bears the burden of establishing mitigating factors based on the most probable hypothesis (or according to the term of art used in certain jurisdictions, "on a balance of probabilities").[2356] While the Trial Chamber is legally required to take into account any mitigating circumstances, what constitutes a mitigating circumstance and the weight to be accorded thereto is a matter for the Trial Chamber to determine in the exercise of its discretion.[2357] In particular, the existence of mitigating circumstances does not automatically imply a reduction of sentence or preclude the imposition of a sentence of life imprisonment;[2358]
>
> (4) the extent to which any sentence imposed on the defendant by a court of any State for the same act has already been served.

[2351] *Ntagerura et al.* Appeal Judgement, para. 429; *Naletilić and Martinović* Appeal Judgement, para. 593; *Kajelijeli* Appeal Judgement, para. 291; *Semanza* Appeal Judgement, para. 312; *Čelebići* Appeal Judgement, para. 717.

[2352] *Ntagerura et al.* Appeal Judgement, para. 429; *Naletilić and Martinović* Appeal Judgement, para. 593; *Jokić* Appeal Judgement, para. 8; *Kajelijeli* Appeal Judgement, para. 291; *Semanza* Appeal Judgement, para. 312; *Musema* Appeal Judgement, para. 379; *Tadić* Judgement on Sentencing Appeal, para. 22.

[2353] *Jokić* Appeal Judgement, para. 38; *D. Nikolić* Appeal Judgement, para. 69; *Kordić and Čerkez* Appeal Judgement, para. 1085; *Čelebići* Appeal Judgement, paras. 813, 816; *Serushago* Appeal Judgement, para. 30.

[2354] *Muhimana* Appeal Judgement, paras. 233, 234; *Ndindabahizi* Appeal Judgement, para. 138; *Gacumbitsi* Appeal Judgement, para. 204; *Kamuhanda* Appeal Judgement, para. 357; *Musema* Appeal Judgement, para. 382; *Kayishema and Ruzindana* Appeal Judgement, para. 352; *Čelebići* Appeal Judgement, paras. 731, 847-849; *Aleksovski* Appeal Judgement, para. 182.

[2355] *Kajelijeli* Appeal Judgement, para. 294; *Blaškić* Appeal Judgement, paras. 686, 688; *Čelebići* Appeal Judgement, para. 763.

[2356] *Muhimana* Appeal Judgement, para. 231; *Babić* Appeal Judgement, para. 43; *Kajelijeli* Appeal Judgement, paras. 294, 299; *Blaškić* Appeal Judgement, para. 697; *Čelebići* Appeal Judgement, para. 590.

[2357] *Zelenović* Appeal Judgement, para. 18; *Ntagerura et al.* Appeal Judgement, para. 430; *Niyitegeka* Appeal Judgement, para. 266; *Musema* Appeal Judgement, paras. 395, 396; *Kupreškić et al.* Appeal Judgement, para. 430; *Čelebići* Appeal Judgement, para. 775; *Kambanda* Appeal Judgement, para. 124.

[2358] *Muhimana* Appeal Judgement, para. 234; *Kajelijeli* Appeal Judgement, para. 299; *Niyitegeka* Appeal Judgement, para. 267; *Musema* Appeal Judgement, para. 396.

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The Appeals Chamber further recalls that credit shall be given for any period of detention of the defendant prior to final judgement.[2359]

1039. Having found the three Appellants guilty of conspiracy to commit genocide, genocide, direct and public incitement to commit genocide, persecution and extermination as crimes against humanity, the Trial Chamber imposed on each Appellant a single sentence of life imprisonment.[2360] However, the Trial Chamber reduced the sentence of Appellant Barayagwiza to 35 years to take account of the violation of his rights, as instructed by the Appeals Chamber in its Decision of 31 March 2000.[2361] The Appellants raise a number of grounds of appeal against the sentences imposed by the Trial Chamber.[2362]

B. Single sentence

1040. Appellants Nahimana[2363] and Ngeze[2364] argue that the Trial Chamber committed an error of law in failing to impose a separate sentence in respect of each offence, as required under Rule 87(C) of the Rules.

1041. Paragraph 1104 of the Judgement reads as follows:

> The Chamber notes that in the case of an Accused convicted of multiple crimes, as in the present case, the Chamber may, in its discretion, impose a single sentence or one sentence for each of the crimes. The imposition of a single sentence will usually be appropriate in cases in which the offences may be recognized as belonging to a single criminal transaction.[2365]

1042. The Appeals Chamber notes that, under Rule 87(C) of the Rules, "if the Trial Chamber finds the accused guilty on one or more of the counts contained in the indictment, it shall also determine the penalty to be imposed in respect of each of the counts". However, the Appeals Chamber has held that Trial Chambers may impose a single sentence in respect of multiple convictions in the following circumstances:

> Where the crimes ascribed to an accused, regardless of their characterisation, form part of a single set of crimes committed in a given geographic region during a specific time period, it is appropriate for a single sentence to be imposed for all convictions, if the Trial Chamber so decides. [2366]

1043. The Appeals Chamber has further held that, when the acts of the accused are linked to the systematic and widespread attack which occurred in 1994 in Rwanda against the Tutsi, this requirement is fulfilled and a single sentence for multiple convictions can be imposed.[2367] The Appeals Chamber reaffirms the position stated in the *Kambanda* Appeal Judgement. In

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[2359] Rule 101(D) of the Rules.
[2360] Judgement, paras. 1105-1106, 1108.
[2361] *Ibid.*, paras. 1106, 1107.
[2362] Nahimana Notice of Appeal, p. 17; Nahimana Appellant's Brief, paras. 651-652; Nahimana Brief in Reply, paras. 164-174; Barayagwiza Notice of Appeal, p. 3; Barayagwiza Appellant's Brief, paras. 339-379; Ngeze Notice of Appeal, para. 191; Ngeze Appellant's Brief, paras. 484-494; Ngeze Brief in Reply, paras. 108-112.
[2363] Nahimana Brief in Reply, para. 164.
[2364] Ngeze Appellant's Brief, para. 485.
[2365] Judgement, para. 1104, citing *Blaškić* Trial Judgement, para. 807, and *Krstić* Trial Judgement, para. 725.
[2366] *Kambanda* Appeal Judgement, para. 111.
[2367] *Ibid.*, para. 112.

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1063. The Appeals Chamber recalls that, while the Trial Chamber must take account of the general practice regarding sentences in the Rwandan courts,[2406] it is well established in the jurisprudence that the Trial Chamber is not bound by that practice.[2407] The Trial Chamber is therefore "entitled to impose a greater or lesser sentence than that which would have been imposed by the Rwandan courts".[2408]

1064. The Appeals Chamber notes that, in reaching its decision, the Trial Chamber made it clear that it had had regard to Rwandan law.[2409] The Trial Chamber was not obliged to follow Articles 35 and 83 of the Rwandan Penal Code. In any event, the Appeals Chamber notes that, contrary to what the Appellant alleges, the maximum term of imprisonment in Rwanda is not 20 years but life.[2410] Regarding the Rwandan Organic Law of 30 August 1996, the Appellant has produced no evidence that it was applied by the Trial Chamber. The Appellant's appeal on this point is dismissed.

(ii) Practice of international criminal tribunals

1065. Appellant Barayagwiza argues that the sentence of 35 years imposed at first instance is not in conformity with the jurisprudence of the Tribunal or of the ICTY.[2411] In support of this claim, he cites the prison sentences imposed on Elizaphan and Gérard Ntakirutimana, Obed Ruzindana and Laurent Semanza, and notes that the length of the sentences pronounced by the Tribunal varies between 10 and 25 years.[2412] The Appellant further points out that the accused in the *Ruggiu* and *Serushago* cases received sentences of 12 and 15 years respectively, despite the fact that their fundamental rights had not been violated.[2413]

1066. As recalled above, Trial Chambers are under an obligation to tailor penalties to fit the gravity of the crime and the individual circumstances of the case and of each accused; a comparison of cases is thus often of limited assistance.[2414] In the present case, the Appellant has done nothing to show how his case was so similar to those of Elizaphan and Gérard Ntakirutimana, Obed Ruzindana and Laurent Semanza as to require a similar sentence. As to the *Ruggiu* and *Serushago* cases, the Appeals Chamber notes that the sentences imposed in these cases relied on mitigating circumstances capable of justifying a reduction of the sentence, namely: a guilty plea, expressions of remorse and substantial cooperation with the Prosecution,[2415] which is not the case here. The Appeals Chamber dismisses the appeal on this point.

(iii) The Statute of the International Criminal Court

[2406] Article 23(1) of the Statute; Rule 101(B)(iii) of the Rules.
[2407] *Semanza* Appeal Judgement, paras. 377, 393; *Akayesu* Appeal Judgement, para. 420; *Serushago* Appeal Judgement, para. 30. See also *Stakić* Appeal Judgement, para. 398; *D. Nikolić* Appeal Judgement, para. 69; *Ćelebići* Appeal Judgement, para. 813;
[2408] *Semanza* Appeal Judgement, para. 393. See also *Krstić* Appeal Judgement, para. 262.
[2409] Judgement, paras. 1095, 1097.
[2410] Rwandan Penal Code, Article 34 ("Imprisonment may be either for life or for a fixed period"). Article 35 moreover provides that imprisonment can exceed 20 years "in cases of repeated or other offences where the law has fixed other limits".
[2411] Barayagwiza Appellant's Brief, paras. 344, 377-379.
[2412] *Ibid.*, para. 344.
[2413] *Ibid.*, paras. 377-379.
[2414] See *supra* XVII. C. 1.
[2415] *Serushago* Trial Judgement, paras. 31-35, 38, 40-41; *Ruggiu* Trial Judgement, paras. 53-58, 69-72.

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1086/H

Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

ICTR-01-63-A
18th March 2010
{1086/H – 926/H}

IN THE APPEALS CHAMBER

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME
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NAME / NOM: ROSETTE MUZIGO-MORRISON
SIGNATURE:
DATE: 18/03/10

Before:	**Judge Patrick Robinson, Presiding** **Judge Fausto Pocar** **Judge Liu Daqun** **Judge Theodor Meron** **Judge Carmel Agius**
Registrar:	**Mr. Adama Dieng**
Judgement of:	**18 March 2010**

SIMÉON NCHAMIHIGO

v.

THE PROSECUTOR

Case No. ICTR-2001-63-A

JUDGEMENT

Counsel for the Appellant

Mr. Denis Turcotte
Ms. Nathalie Leblanc

Office of the Prosecutor

Mr. Hassan Bubacar Jallow
Mr. Alex Obote-Odora
Mr. George Mugwanya

ICTR Appeals Chamber
Date: 18th March 2010
Action:
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contends that in *Muvunyi* the Appeals Chamber found it necessary for the Trial Chamber to consider whether the testimony of an accomplice was corroborated.[106]

41. The Prosecution responds that the Trial Chamber did not err. It asserts that a Trial Chamber has the "discretion to rely on uncorroborated accomplice witness testimony, as long as it carefully evaluates the totality of the circumstances in which it is tendered and finds it credible".[107] It asserts, relying on the *Krajišnik* Appeal Judgement, that the Trial Chamber exercised appropriate caution in assessing accomplice evidence, in compliance with the Appeals Chamber's jurisprudence.[108]

42. The Appeals Chamber has held that nothing in the Statute or the Rules prohibits a Trial Chamber from relying upon the testimony of accomplice witnesses.[109] However, such evidence is to be treated with caution, "the main question being to assess whether the witness concerned might have motives or incentives to implicate the accused".[110] Nevertheless, a Trial Chamber retains discretion to rely on uncorroborated, but otherwise credible, witness testimony[111] because it is best placed to evaluate the probative value of evidence.[112] Acceptance of and reliance upon uncorroborated evidence does not in itself constitute an error of law.[113] The Appeals Chamber notes that the Appeals Chamber of the Special Court for Sierra Leone has extended this proposition to accomplice witnesses, stating that a Trial Chamber "may convict on the basis of the evidence of a single witness, even an accomplice, provided such evidence is viewed with caution."[114]

43. Similarly, in a number of domestic jurisdictions, judges and jurors can rely on the uncorroborated evidence of an accomplice witness provided they assess such evidence with caution. For example, the Indian judiciary has recognized that corroboration is not lawfully required but that

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[106] Appellant's Brief, para. 38, *citing Muvunyi* Appeal Judgement, para. 131.
[107] Respondent's Brief, para. 34, *citing Muvunyi* Appeal Judgement, para. 128. *See also* Respondent's Brief, para. 39.
[108] Respondent's Brief, para. 35, *citing Krajišnik* Appeal Judgement, para. 146.
[109] *Niyitegeka* Appeal Judgement, para. 98.
[110] *Nahimana et al.* Appeal Judgement, para. 439, *citing Ntagerura et al.* Appeal Judgement, paras. 203-206. *See also Niyitegeka* Appeal Judgement, para. 98 ("However, considering that accomplice witnesses may have motives or incentives to implicate the accused person before the Tribunal, a Chamber, when weighing the probative value of such evidence, is bound to carefully consider the totality of the circumstances in which it was tendered."). The Appeals Chamber notes that the Appeals Chamber of the Special Court for Sierra Leone similarly stated in *Brima et al.* that "in assessing the reliability of an accomplice, the main consideration for the Trial Chamber should be whether or not the accomplice has an ulterior motive to testify as he did." *Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu*, Case SCSL-2004-16-A, Appeal Judgement, 3 March 2008 ("*Brima et al.* Appeal Judgement"), para. 128. In some instances a situation may arise where Rule 95 of the Rules is applicable. *See Karera* Appeal Judgement, para. 234 and fn. 498, *referring to Nahimana et al.* Appeal Judgement, para. 545.
[111] *Muvunyi* Appeal Judgement, para. 128. *See Karera* Appeal Judgement, para. 46 ("a Trial Chamber has the discretion to decide, in the circumstances of each case, whether corroboration of evidence is necessary and to rely on uncorroborated, but otherwise credible, witness testimony.").
[112] *See Rutaganda* Appeal Judgment, para. 29 ("It is possible for one Trial Chamber to prefer that a witness statement be corroborated, but neither the jurisprudence of the International Tribunal nor of the ICTY makes this an obligation."); *Musema* Appeal Judgment, paras. 36-38; *Kayishema and Ruzindana* Appeal Judgement, paras. 154, 187, 320, 322; *Čelebići* Appeal Judgment, para. 506; *Aleksovski* Appeal Judgment, paras. 62, 63; *Tadić* Appeal Judgment, para. 65; *Kupreškić et al.* Appeal Judgement, para. 33.
[113] *Niyitegeka* Appeal Judgement, para. 92.

it is wise to assess accomplice evidence with caution.[115] Moreover, corroboration requirements for accomplices have been abolished in Canada,[116] the United Kingdom,[117] and Australia.[118] The Appeals Chamber further recalls the discussion in *Tadić* of corroboration requirements in civil law countries, which concluded that "there is no ground for concluding that this requirement of corroboration is any part of customary international law and should be required by [the ICTY]."[119]

44. The *Nahimana et al.* and *Muvunyi* Appeal Judgements upon which the Appellant relies do not represent a different proposition. When the Appeals Chamber stated in *Muvunyi* that it was necessary for the Trial Chamber to consider whether the testimony of a particular accomplice witness was corroborated, it did so because the Trial Chamber had already found that the witness had a general motive to enhance Muvunyi's role in the crimes and to diminish his own.[120] Contrary to the Appellant's argument, this does not evidence a categorical rule requiring Trial Chambers to search for corroboration when evaluating the testimony of an accomplice witness. Rather, the Appeals Chamber simply found that corroboration was necessary in those circumstances because the accomplice witness had a motive to enhance the accused's role in the crimes.

45. In the passage from the *Nahimana et al.* Appeal Judgement upon which the Appellant relies, the Appeals Chamber considered whether the Trial Chamber erred when it relied on the testimony of an accomplice witness only to the extent that it was corroborated.[121] The *Nahimana* Trial Chamber had concluded that it could only rely on the witness's evidence to the extent that it was corroborated because, in addition to being an accomplice, the witness gave testimony that was confusing and inconsistent.[122] The *Nahimana* Appeal Judgement found that there was no error in this approach.[123] This reflects the fact that Trial Chambers are endowed with the discretion to require corroboration, but does not mean that corroboration is required when evaluating the testimony of all accomplice witnesses.

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[114] *Brima et al.* Appeal Judgement, para. 129.
[115] *See Dagdu & Others Etc. v. State of Maharashtra* (1977) 3 S.C.R. 636, 643 (India) (explaining that section 133 of the Evidence Act permits a conviction to be based on uncorroborated accomplice testimony but given that such evidence may be "hazardous," a judge should dispense with corroboration "only if the peculiar circumstances of a case make it safe to" do so); *Rameshwar v. State of Rajasthan* (1952) S.C.R. 377, 385 (India) (clarifying that in cases tried by a judge, the judge should indicate that he considered the rule of caution and "explain why he considered it safe to convict without corroboration in the particular case").
[116] *R. v. Vetrovec*, [1982] 1 S.C.R. 811, 830 (Canada) (holding "that there is no special category for accomplices" but cautioning that a jury warning may sometimes be appropriate).
[117] *See* Criminal Justice and Public Order Act 1994, s. 32 (Untited Kingdom) (abolishing any requirement for a corroboration warning).
[118] Evidence Act 1995 (Cth), s. 164(1). *See, e.g., Conway v. The Queen* (2002) 209 C.L.R. 203, 223-224 (Australia) (applying section 164(1) of the Evidence Act 1995, in the context of a case involving testimony from accomplice witnesses, and affirming that the corroboration requirement has been abolished in such circumstances).
[119] *Tadić* Trial Judgement, para. 539.
[120] *Muvunyi* Appeal Judgement, paras. 129-131.
[121] *Nahimana et al.* Appeal Judgement, para. 439.
[122] *Nahimana et al.* Trial Judgement, para. 824.
[123] *Nahimana et al.* Appeal Judgement, para. 439.

46. In support of his proposition, the Appellant also points to a passage from the *Krajišnik* Appeal Judgement.[124] There, the ICTY Appeals Chamber stated that a Trial Chamber should briefly explain why it accepted the evidence of witnesses who may have had motives or incentives to implicate the accused to show its cautious assessment of such evidence.[125] This passage does not mean that corroboration is required. It simply stresses that Trial Chambers cannot merely state that they exercised caution when assessing the evidence of an accomplice witness, but must establish that they in fact did so.

47. The Appeals Chamber recalls that a Trial Chamber has full discretion to assess the appropriate weight and credibility to be accorded to the testimony of a witness.[126] In so doing, a Trial Chamber has to consider relevant factors on a case-by-case basis, including the witness's demeanour in court; his role in the events in question; the plausibility and clarity of his testimony; whether there are contradictions or inconsistencies in his successive statements or between his testimony and other evidence; any prior examples of false testimony; any motivation to lie; and the witness's responses during cross-examination.[127] Some factors are particularly relevant for the assessment of accomplice witnesses, including: the extent to which discrepancies in the testimony were explained;[128] whether the accomplice witness has made a plea agreement with the Prosecution; whether he has already been tried and, if applicable, sentenced for his own crimes or is still awaiting the completion of his trial;[129] and whether the witness may have any other reason for holding a grudge against the accused.[130] Corroboration is also one of many potential factors relevant to the Trial Chamber's assessment of a witness's credibility.[131] The application of these factors, and the positive or negative impact they may have on the witness's credibility, varies according to the specific circumstances of each case.

48. In light of the above, the Appeals Chamber considers that the proposition that a Trial Chamber retains the discretion to rely on uncorroborated, but otherwise credible, witness testimony applies equally to the evidence of accomplice witnesses provided that the trier of fact applies the appropriate caution in assessing such evidence.

[124] Brief in Reply, paras. 3, 6.
[125] *Krajišnik* Appeal Judgement, para. 146.
[126] *Nahimana et al.* Appeal Judgement, para. 194.
[127] *See Nahimana et al.* Appeal Judgement, para. 194.
[128] *See Simba* Appeal Judgement, para. 129; *Kordić and Čerkez* Appeal Judgement, para. 266.
[129] *See Blagojević and Jokić* Trial Judgement, para. 24.
[130] *See Kajelijeli* Trial Judgement, para. 151.
[131] *Simba* Appeal Judgement, para. 24, *quoting Ntakirutimana* Appeal Judgement, para. 132.

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49. The Appeals Chamber therefore dismisses the Appellant's contention that the Trial Chamber erred in law in holding that it was not obliged to seek evidence in corroboration of accomplice witness testimony.

recalls that Witness BRJ's evidence was corroborated by that of Witness LDC.[399] The Appeals Chamber therefore dismisses the Appellant's argument.

C. Alleged Failure to Provide a Reasoned Opinion in Relation to Defence Witnesses

163. In discussing the allegations of the Appellant's political connections, the Trial Chamber explicitly noted that several Defence witnesses testified that they never saw the Appellant carry a weapon or wear military attire between 6 April 1994 and 18 July 1994.[400] The Appellant submits that the Trial Chamber erred by failing to provide reasons for not accepting their testimony.[401]

164. While the Appellant does not specifically identify the witnesses to whom he is referring, the Appeals Chamber understands that they are Witnesses SBM, ZSA, Colette Uwubuheta, and the Appellant himself, as they are referred to in the relevant section of the Trial Judgement.[402]

165. The Appeals Chamber recalls that a Trial Chamber is required to provide a reasoned opinion under Article 22(2) of the Statute and Rule 88(C) of the Rules.[403] A reasoned opinion ensures that the accused can exercise his right of appeal and that the Appeals Chamber can carry out its statutory duty under Article 24 of the Statute.[404] However, this requirement relates to the Trial Judgment as a whole, not to each submission made at trial.[405] In addition, a Trial Chamber "is not required to set out in detail why it accepted or rejected a particular testimony."[406]

166. Furthermore, although certain evidence may not have been referred to by a Trial Chamber, in the particular circumstances of a given case it may nevertheless be reasonable to assume that the Trial Chamber took it into account.[407] A Trial Chamber need not refer to every witness testimony or every piece of evidence provided there is no indication that the Trial Chamber completely disregarded any particular piece of evidence; such disregard is shown where evidence that is clearly relevant to the findings is not addressed by the Trial Chamber's reasoning.[408]

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[399] *See* Trial Judgement, paras. 42, 50-53.
[400] Trial Judgement, para. 45, *citing* T. 29 August 2007 p. 21 (Witness SBM); T. 18 September 2007 p. 29 (Siméon Nchamihigo); T. 24 April 2007 p. 56 (Witness ZSA); T. 26 April 2007 pp. 30, 31 (Colette Uwubuheta).
[401] Appellant's Brief, para. 151.
[402] Trial Judgement, para. 45 and fn. 43.
[403] *Muvunyi* Appeal Judgement, para. 144, *citing Simba* Appeal Judgement, para. 152; *Kamuhanda* Appeal Judgement, para. 32; *Kajelijeli* Appeal Judgement, para. 59; *Semanza* Appeal Judgement, paras. 130, 149.
[404] *Karera* Appeal Judgement, para. 20. *See also Musema* Appeal Judgement, para. 18 (noting that the Trial Chamber is not required to articulate every step of its reasoning for each particular finding it makes).
[405] *Karera* Appeal Judgement, para. 20. *See also Limaj et al.* Appeal Judgement, para. 81; *Kvočka et al.* Appeal Judgement, para. 23.
[406] *Musema* Appeal Judgement, para. 20.
[407] *Musema* Appeal Judgement, para. 19.
[408] *See also Limaj et al.* Appeal Judgement, para. 86, *citing Kvočka et al.* Appeal Judgement, para. 23.

reasonable doubt".[535] He argues that the standard of proof of beyond reasonable doubt should not be applied to the assessment of witness credibility. Rather than employing this standard to review individual pieces of evidence, proof beyond reasonable doubt should be sought only in relation to the ultimate question of guilt.[536]

213. The Appeals Chamber notes that the Trial Chamber correctly stated the applicable burden of proof.[537] However, in its assessment of Witness LAG's testimony it stated that it "believe[d] [Witness] LAG beyond reasonable doubt".[538] The Appeals Chamber recalls that triers of fact should render reasoned opinions on the basis of the entire body of evidence and without applying the "beyond reasonable doubt" standard in a piecemeal approach.[539] However, the Appeals Chamber finds that, when stating that it believed Witness LAG beyond reasonable doubt, the Trial Chamber was simply expressing that, after having considered Witness LAG's evidence and a number of factors relevant to his credibility, including Defence evidence, no reasonable doubt remained as to the Appellant's involvement in encouraging killings on that day, as testified to by Witness LAG. The Trial Chamber's use of this language does not demonstrate any shift of the burden of proof given that it provided a reasoned opinion based on the entire body of evidence. This argument is accordingly dismissed.

(e) Karangwa's Wife

214. The Appellant contends that Witness LAG demonstrated his unreliability as a witness when he stated that Karangwa's wife had been killed, when in fact she was still alive at the time.[540]

215. The Appeals Chamber notes that Karangwa's wife was indeed alive when Witness LAG testified, a fact that the Trial Chamber learned during the course of the proceedings. The Appeals Chamber further notes that Witness LAG did not claim to have witnessed the death of Karangwa's wife but simply stated that he "was not present [...] when Karangwa's wife was killed."[541] He had no opportunity to explain his statement, as he was not confronted with information to the contrary. The Appeals Chamber finds that the Appellant has not demonstrated that the Trial Chamber erred in relying on Witness LAG despite the fact that he erroneously stated that Karangwa's wife was dead.

[535] AT. 29 September 2009 pp. 12-13; Appellant's Brief, para. 220, *referring to* Trial Judgement, para. 95.
[536] AT. 29 September 2009 pp. 12-13.
[537] Trial Judgement, para. 12.
[538] Trial Judgement, para. 95. The Trial Chamber used similar language with respect to other witnesses. *See, e.g.*, Trial Judgment, paras. 53, 203, 261, 291.
[539] *Mrkšić and Šljivančanin* Appeal Judgement, para. 217. *See also Milošević* Appeal Judgement, para. 20.
[540] Appellant's Brief, para. 188.
[541] T. 17 January 2007 p. 57.

XXV. PARTLY DISSENTING OPINION OF JUDGE POCAR

1. In this Judgement, based on the Trial Chamber's erroneous assessment of Witness BRK's credibility, the Appeals Chamber allows the Appellant's 24th to 26th, 32nd and 33rd grounds of appeal, reversing the Appellant's conviction for: (i) genocide for instigating the killings of several Tutsi refugees at the Gendarmerie of Cyangugu on 16 April 1994;[1] (ii) genocide and extermination as a crime against humanity for instigating the massacres perpetrated against the Tutsi refugees at Mibilizi parish and hospital on 18 April 1994;[2] and (iii) genocide and extermination as a crime against humanity for instigating the massacre of Tutsi refugees at Nyakanyinya school on 12 April 1994.[3] To my regret, for the reasons expressed below, I respectfully disagree with both the reasoning and the conclusions of the Majority of the Appeals Chamber and the consequent reversal of the Appellant's convictions for these events based on the lack of credibility of Witness BRK. Without prejudice to further grounds for dissent, I will confine myself here to one question that appears to me to be of particular significance – the extent to which the Appeals Chamber must give deference to a Trial Chamber's assessment of witnesses' credibility. In the present case, this is a question with regard to which I radically disagree with the Majority's reasoning and, therefore, wish to set out my approach to the matter.

2. I recall that the Trial Chamber has full discretionary power in assessing the appropriate weight and credibility to be accorded to the testimony of a witness.[4] Furthermore, as already stated in this Judgement,[5] a Trial Chamber also has full discretion to rely on uncorroborated, but otherwise credible, accomplice witness testimony, provided it assesses such testimony with caution. In its analysis, under the Appellant's 4th and part of 5th grounds of appeal, the Appeal Chamber correctly states that:

> In so doing, a Trial Chamber has to consider relevant factors on a case-by-case basis, including the witness's demeanour in court; his role in the events in question; the plausibility and clarity of his testimony; whether there are contradictions or inconsistencies in his successive statements or between his testimony and other evidence; any prior examples of false testimony; any motivation to lie; and the witness's responses during cross-examination. Some factors are particularly relevant for the assessment of accomplice witnesses, including: the extent to which discrepancies in the testimony were explained; whether the accomplice witness has made a plea agreement with the Prosecution; whether he has already been tried and, if applicable, sentenced for his own crimes or

[1] Appeal Judgement, paras. 313-314. *See* also Appeal Judgement, paras. 301-314.
[2] Appeal Judgement, para. 322. *See* also Appeal Judgement, paras. 315-322.
[3] Appeal Judgement, para. 326. *See* also Appeal Judgement, paras. 323-326.
[4] *Nahimana et al.* Appeal Judgement, para. 194; *Ntagerura et al.* Appeal Judgement, para. 388.
[5] Appeal Judgement, paras. 42-48.

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> is still awaiting the completion of his trial; and whether the witness may have any other reason for holding a grudge against the accused.[6]

It is in light of this standard that the Trial Chamber's assessment of the evidence has to be considered.

3. In the present case, the Trial Chamber considered with prudence the above-mentioned relevant factors. More specifically, in relying on the evidence of Witness BRK, the Trial Chamber considered Witness's BRK demeanour in court and his responses during cross-examination. The Trial Chamber found that: (i) "[Witness] BRK's testimony was direct and forthright";[7] (ii) he "provided detailed evidence";[8] and (iii) he "responded fully" when asked the relevant questions by the Defence.[9]

4. Similarly, the Trial Chamber further examined Witness BRK's role in the events in question, and whether there were any prior examples of false testimony and any motivation to lie. In particular, the Trial Chamber noted that he was "an accomplice"[10] and "an active participant in the massacre".[11] It further considered in detail that:

> BRK was arrested in 1994 on charges relating to burning houses during the genocide, to which he pleaded guilty in 1999. He received a 9-year prison sentence. Having been released provisionally in 2003 he subsequently pleaded guilty in 2005 before the Gacaca courts to further crimes during attacks in Nyakanyinya, Mibilizi and at Kamarampaka Stadium after being confronted by witnesses who had accused him. He has been charged as a Category I offender and his case is still pending. He is also charged with forgery. He explained that he had initially pleaded guilty to the offences in relation to which he had been charged and did not volunteer confessions for other crimes. When he was confronted with further charges, he decided to tell the truth. It is in relation to the events about which he confessed in 2005 that he testified against Nchamihigo.[12]

Consequently, in accordance with established jurisprudence, the Trial Chamber "cautiously considered the circumstances under which [Witness BRK testified] in this case and his evidence".[13] The Trial Chamber also considered the Appellant's submission that "[Witness] BRK's failure to have confessed fully to his crimes earlier than he did [...] was [...] affecting his credibility",[14] but rejected this argument. In doing so, the Trial Chamber explained that "[a]n initial failure for a

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[6] Appeal Judgement, para. 47 (*referring* to *Nahimana et al.* Appeal Judgement, para. 194; *Simba* Appeal Judgement, para. 129; *Kajelijeli* Trial Judgement, para. 151; *Kordić and Čerkez* Appeal Judgement, para. 266; *Blagojević and Jokić* Trial Judgement, para. 24).
[7] Trial Judgement, para. 285.
[8] Trial Judgement, para. 285.
[9] Trial Judgement, para. 304.
[10] Trial Judgement, paras. 214, 302. *See* also Trial Judgement, para. 181, where the Trial Chamber found that Witness BRK participated in killings at Gendarmerie of Cyangugu. *See* also, Trial Judgement, para. 305, where the Trial Chamber stated that Witness "BRK participated in the attack on the [Nyakanyinya] school".
[11] Trial Judgement, para. 285.
[12] Trial Judgement, para. 284 (footnote omitted). *See* also T. 22 January 2007 pp. 4, 5.
[13] Trial Judgement, para. 214. *See* also Trial Judgement, para. 285, where the Trial Chamber states that it "cautiously evaluated the totality of [Witness BRK] evidence and the circumstances in which it was tendered when weighing its probative value".

witness to incriminate himself is not a reason to disbelieve a subsequent confession".[15] In addition to exercising caution when examining Witness BRK's evidence, the Trial Chamber was "mindful of [Witness] BRK's thought that he could benefit from lenienc[y] if he gives evidence for the Prosecution".[16] While the Trial Chamber conceded that part of Witness BRK testimony "could have been exaggerated or invented to further implicate [the Appellant]"[17], it ultimately concluded that Witness BRK "[did] not have any motive or incentive to falsely incriminate [the Appellant]".[18] In addition, the Trial Chamber found that Witness "BRK did not minimise his own responsibility and openly testified about events for which he will suffer penal consequences".[19] The Trial Chamber concluded that it "believes [Witness] BRK's account of the killings at the Gendarmerie on16 April 1994".[20] Similarly, with regard to the massacres at Mibilizi Parish and Hospital and the attack on Nyakanyinya school, the Trial Chamber explicitly states that it "believes" Witness BRK.[21] Finally, when weighing the probative value of Witness BRK's evidence, the Trial Chamber stressed that it "cautiously evaluated the totality of his evidence and the circumstances in which it was tendered".[22] In sum, the Trial Chamber examined Witness BRK's testimony "with great care"[23] and provided thoughtful reasoning. I find no error in this approach.

5. With similar prudence, the Trial Chamber carefully assessed whether there were any discrepancies with prior statements, especially with regard to the exact dates of the events in question. Despite Witness BRK's uncertainty about dates, the Trial Chamber clearly explained why, in these circumstances, it accepted Witness BRK's testimony.[24] The Trial Chamber concluded that it "[did] not view [Witness] BRK's uncertainty with dates as indicating any lack of credibility or reliability".[25] In my view, it was not unreasonable for the Trial Chamber to find Witness BRK's evidence credible notwithstanding his inability to recall dates. More importantly, the Trial Chamber was satisfied from Witness BRK's description of the sequence of events, when viewed in context with other evidence.

[14] Trial Judgement, para. 304.
[15] Trial Judgement, para. 304.
[16] Trial Judgement, para. 285.
[17] Trial Judgement, para. 215.
[18] Trial Judgement, para. 214.
[19] Trial Judgement, para. 285. *See* also Trial Judgement, para. 218, where the Trial Chamber found that "BRK had confessed to the judicial authorities in Rwanda that he was one of th[e] killers [at the Gendarmerie of Cyangugu], quite independently of any prosecution against Nchamihigo, and accepts the penal consequences of his conduct".
[20] Trial Judgement, para. 218.
[21] Trial Judgement, paras. 285, 305.
[22] Trial Judgement, para. 285.
[23] Trial Judgement, para. 302.
[24] Trial Judgement, paras. 179, 291, 302, 305.
[25] Trial Judgement, para. 291.

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6. In addition, with regard to the events at the Gendarmerie of Cyangugu on 16 April 1994, while there were no other witnesses to the actual killings, the Trial Chamber found that Witness "BRK's evidence was supported in several aspects".[26] The Trial Chamber made similar findings with regards to the massacres at Mibilizi parish and hospital.[27]

7. In other words, the Trial Chamber fulfilled its obligations to carefully assess Witness BRK's credibility in light of his status as an accomplice. In these circumstances, deference must be accorded to the Trial Chamber's assessment of Witness BRK's credibility.

8. A Trial Chamber, as the primary trier of fact, is better placed than the Appeals Chamber to evaluate the probative value of witnesses' testimonies. In my view, the Appeals Chamber should not overturn or reassess Trial Chamber's findings regarding witnesses' credibility unless the Trial Chamber did not treat such evidence with caution and/or failed to consider the relevant factors in the case of uncorroborated accomplice witness testimony. In the present case, the Trial Chamber exercised extreme prudence in relying on Witness BRK and, therefore, correctly applied the legal standard. In contrast, the Majority is *de novo* assessing Witness BRK's credibility without having heard his testimony and partly bases its reasoning on discrepancies in Witness BRK's testimony. I believe this is an incorrect intrusion in the assessment correctly made by the Trial Chamber and is in violation of the applicable standard of review on appeal. According to such standard, deference must be accorded to the Trial Chamber's assessment of witnesses' credibility. While, as a matter of first impression, Witness BRK could reasonably be discredited, I am convinced that, given our deferential standard of review, we cannot conclude that the Trial Chamber acted unreasonably in crediting Witness BRK's testimony. I also find the Majority's reasoning difficult to reconcile with the general conclusions in paragraphs 42 to 48 of this Judgement, which emphasize that the Trial Chamber has discretionary power to rely on uncorroborated witness testimony.

9. In light of the above, I also dissent on the reduction in the sentence decided by the Appeals Chamber. I would leave the sentence imposed by the Trial Chamber undisturbed.

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[26] Trial Judgement, para. 218. *See* also Trial Judgement, para. 215.

[27] Trial Judgement, para. 286, where the Trial Chamber states that "[Witness] BRF said he often saw Nchamihigo go towards Mibilizi with *Interahamwe* who would boast about where they were going and where they had been. The Chamber believes BRF and views his evidence as supporting BRK's". *See* also Trial Judgement, para. 288, where the Trial Chamber found that "[Witness] LDB's knowledge of detail allows a clear inference that he was present at the attack. LDB's testimony supports BRK's". *See* also Trial Judgement, para. 289, where the Trial Chamber further relied on Witness LDC.

Done in English and French, the English text being authoritative

Judge Fausto Pocar

Dated this eighteenth day of March 2010,
At Arusha,
Tanzania.

[Seal of the Tribunal]

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UNITED NATIONS
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Tribunal pénal international pour le Rwanda
International Criminal Tribunal for Rwanda

IN THE APPEALS CHAMBER

Before:	**Judge Wolfgang Schomburg, Presiding** **Judge Mohamed Shahabuddeen** **Judge Mehmet Güney** **Judge Liu Daqun** **Judge Theodor Meron**
Registrar:	**Mr. Adama Dieng**
Judgement of:	**16 January 2007**

EMMANUEL NDINDABAHIZI
(Appellant)

v.

THE PROSECUTOR
(Respondent)

Case No. ICTR-01-71-A

JUDGEMENT

Counsel for the Appellant:

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Ms. Magali Pirard

The Office of the Prosecutor:

Mr. Hassan Bubacar Jallow
Mr. James K. Stewart
Mr. George Mugwanya
Ms. Inge Onsea
Mr. Abdoulaye Seye
Mr. Alfred Orono Orono

unverifiable hearsay. While hearsay evidence is not *per se* inadmissible, it is well established that a Trial Chamber must be cautious in considering such evidence.[257] Hence, the Appeals Chamber finds, by majority, Judge Shahabuddeen dissenting, that the Trial Chamber failed to adhere to this principle and that no reasonable trier of fact could have reached the conclusion beyond reasonable doubt that Mr. Nors was killed shortly after the Appellant's visit on or about 20 May 1994.

116. In relation to the question whether the Appellant's actions on 20 May 1994 substantially contributed to the killing of Mr. Nors on 26 May 1994 – if Witness DB and Exh. D.34 were to be believed – the Appeals Chamber notes that Witness CGC testified that people were killed at the roadblock even before the Appellant's visit, that is, without his contribution.[258] Also, it is not established whether the persons who were instigated by the Appellant on 20 May 1994 were those who killed Mr. Nors on 26 May 1994. Thus, it is unclear whether the Appellant's acts substantially contributed to Mr. Nors's killing had it occurred six days after these acts or even later.

117. Also, the Trial Chamber did not make a finding on any criminal act of the Appellant during mid-April 1994 (*see* paragraph 25 of the Indictment) that could have substantially contributed to the murder of Mr. Nors in late May 1994 (*see* paragraph 11 of the Indictment). Thus, the Prosecution failed to establish a link between the murder of Mr. Nors at the Gaseke roadblock and a substantial contribution of the Appellant. Without that crime being committed, the Appellant cannot be held liable for instigating and aiding and abetting genocide for the murder of Mr. Nors pursuant to Article 6 of the Statute.[259] Instigating means prompting another person to commit an offence, thus requiring a subsequent criminal action.[260] Similarly, a conviction for aiding and abetting presupposes that the support of the aider and abetter has a substantial effect upon the perpetrated crime.[261] No reasonable trier of fact could have concluded beyond reasonable doubt that the killing of Mr. Nors was a result attributable to the Appellant's acts. In this context, the Appeals Chamber recalls that the Prosecution had withdrawn the charge of direct and public incitement to commit

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[257] *Rutaganda* Appeal Judgement, para. 34; *Akayesu* Appeal Judgement, paras 286-92; *Niyitegeka* Trial Judgement, para. 43; *Ntakirutimana* Trial Judgement, para. 33; *Bagilishema* Trial Judgement, para. 25; *Musema* Trial Judgement, para. 51. *See also Naletilić and Martinović* Appeal Judgement, para. 516; *Kordić and Čerkez* Appeal Judgement, para. 281. This principle was recognized by the Trial Chamber in this case: *see* Trial Judgement, para. 23. In this context, the Appeals Chamber notes that the Trial Chamber held in para. 216 of the Trial Judgement that "Rwandans do not always express clearly the difference between what they have seen with their own eyes and what they have heard". The Appeals Chamber does not accept this characterization as being specific to Rwandans. Rather, it interprets the Trial Chamber's finding as a general reference to inaccuracies which often occur in the testimony of witnesses, regardless of their nationality.

[258] T. 29 September 2003, p. 33.

[259] The modes of liability as regulated under Article 6(1) of the Statute are also applicable to the crime of genocide pursuant to Article 2 of the Statute, *Ntakirutimana* Appeal Judgement, para. 500. *See also Krstić* Appeal Judgement, para. 138.

[260] *Kordić and Čerkez* Appeal Judgement, para. 27.

[261] *Blaškić* Appeal Judgement, para. 48.

genocide.[262] Hence, the Trial Chamber erroneously convicted the Appellant for instigating and aiding and abetting the murder of Mr. Nors as a crime against humanity.

118. In this context, the Appeals Chamber notes that the pleadings of the parties have to be clear and unambiguous. On the basis of ambiguous submissions made by the Prosecution during closing arguments, the Appeals Chamber might have come to the conclusion that the Prosecution had abandoned its case in relation to the killing of Mr. Nors.

2. Conclusion

In light of the above, the Appellant's eleventh ground of appeal is granted.

IX. ALLEGED VAGUENESS OF THE INDICTMENT (SUB-GROUND OF APPEAL 1 - GASEKE ROADBLOCK)

119. As the eleventh ground of appeal is granted on the basis of the reasoning set out above, it is not necessary for the Appeals Chamber to consider under the first sub-ground of appeal relating to the Gaseke roadblock whether the case concerning Mr. Nors was withdrawn by the Prosecution.[263] By the same token, it is not necessary to consider allegations of the vagueness of the Indictment relating to Mr. Nors[264] as both issues are rendered moot.

X. ALLEGED ERROR IN FINDING A LEGAL BASIS FOR THE GENOCIDE CONVICTION (GROUND OF APPEAL 7)

120. In addition, for the reasons set out above under the eleventh ground of appeal, it is not necessary for the Appeals Chamber to consider whether the Appellant was erroneously convicted of instigating and aiding and abetting genocide at the Gaseke roadblock on the basis of the killing of Mr. Nors. Consequently, the seventh ground of appeal has become moot.

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[262] *See supra* note 4. As the offence of direct and public incitement to commit genocide is an inchoate offence, the legal assessment of such a charge may have been different.
[263] Appellant's Brief, paras 22, 172-77, referring to closing arguments, T. 1 March 2004, pp. 14-15, Appellant's Reply, paras 41-42.
[264] Appellant's Brief, paras 21-29. This argument was also raised during the appeal hearing: the Defence argued that ambiguity must be resolved in favour of the Appellant, at T. 6 July 2006, p. 18, *see also* T. 6 July 2006, pp. 26-27, 34, 64. The Prosecution argued that the act of instigation was not limited to Mr. Nors, T. 6 July 2006, p. 52.

XI. GROUND OF APPEAL 12 – WITHDRAWN

XII. ALTERNATIVE CONVICTIONS

121. The Appeals Chamber *proprio motu* raises the issue of alternative convictions arising from paragraph 485 of the Trial Judgement:[265]

> [T]he Chamber finds that the Accused himself committed the crime of extermination. He participated in creating, and contributed to, the conditions for the mass killing of Tutsi on Gitwa Hill on 26 April 1994, by distributing weapons, transporting attackers, and speaking words of encouragement that would have reasonably appeared to give official approval for an attack. **Alternatively**, the Chamber finds that by these words and deeds, the Accused directly and substantially contributed to the crime of extermination committed by the attackers at Gitwa Hill, and is thereby guilty of both instigating, and of aiding and abetting, that crime. (emphasis added).

122. While an accused can be convicted for a single crime on the basis of several modes of liability, alternative convictions for several modes of liability are, in general, incompatible with the principle that a judgement has to express unambiguously the scope of the convicted person's criminal responsibility. This principle requires, *inter alia*, that the sentence corresponds to the totality of guilt incurred by the convicted person. This totality of guilt is determined by the *actus reus* and the *mens rea* of the convicted person. The modes of liability may either augment (*e.g.*, commission of the crime with direct intent) or lessen (*e.g.*, aiding and abetting a crime with awareness that a crime will probably be committed[266]) the gravity of the crime.[267] Thus, the criminal liability of a convicted person has to be established unequivocally.

123. However, the Appeals Chamber finds, by majority, Judge Güney dissenting, that the Trial Chamber did not convict the Appellant in the alternative. Rather, the Trial Chamber was seeking to provide a further characterisation of the Appellant's criminal conduct. The Trial Chamber was convinced beyond a reasonable doubt that the Appellant committed acts constituting extermination,[268] namely by distributing weapons, transporting attackers and speaking words of

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[265] Upon invitation of the Appeals Chamber, this issue was discussed at the Appeals Hearing: T. 6 July 2006, pp. 53, 54, 58: the Prosecution argued that although conviction in the alternative is incorrect, it is not sufficient grounds to overturn the Trial Judgement, and suggested the term "additionally" would have been more appropriate. The Defence replied that it is not permissible to substitute language for the Trial Chamber, T. 6 July 2006, p. 67.

[266] *See Blaškić* Appeal Judgement, para. 50.

[267] In this context, the Appeals Chamber recalls that in *Krstić*, the ICTY Appeals Chamber stated that it had taken into account the sentencing practice of the courts of the former Yugoslavia applicable in that case, in particular the practice that "the sentence of a person who aided a principal perpetrator to commit a crime can be reduced to a sentence less than the one given to the principal perpetrator", *Krstić* Appeal Judgement, para. 270 (note omitted).

[268] The Trial Chamber stated that "[e]xtermination may be committed less directly than murder, as by participation in measures intended to bring about the deaths of a large number of individuals, but without actually committing a killing of any person" (Trial Judgement, para. 479). The words "without actually committing a killing" could mean, in the ordinary sense of the word, "without causing death". The Appeals Chamber finds, however, that the word "actually" in this context rather describes what other judgements have referred to as "indirectly" causing death, in particular as these

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Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

Or. : Eng.

TRIAL CHAMBER I

Before Judges: Navanethem Pillay, presiding
Erik Møse
Andrésia Vaz

Registrar: Adama Dieng

Judgement of: 16 May 2003

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ICTR
ARCHIVES

THE PROSECUTOR

V.

ELIÉZER NIYITEGEKA

Case No. ICTR-96-14-T

JUDGEMENT AND SENTENCE

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he helped save some persons therefore carries limited weight.

496. The Chamber has also considered in mitigation the fact that the Accused was a person of good character prior to the events. As a public figure and a member of the MDR, he advocated democracy and opposed ethnic discrimination. As such, he proved courageous, despite threats to his life and property.

497. However, after 6 April 1994, when faced with the choice between participating in massacres of civilians or holding fast to his principles, he chose the path of ethnic bias and participated in the massacres committed in Rwanda at the time. The fact that he was formerly a good man is accordingly of little weight.

498. Finally, the Chamber has given credit to the Accused for the extent to which his Counsel co-operated with it and with the Prosecution in the efficient conduct of the trial.

499. The Chamber considers as aggravating, in the Accused's case, the following circumstances:

(i) That the Accused was a well-known and influential figure in his native prefecture of Kibuye, where his crimes were committed. As such, the Accused abused the trust placed in him by the population;

(ii) That, at the time of the events, the Accused held an official position at the national level, as a member of the Interim Government. The Chamber considers it particularly aggravating that instead of promoting peace and reconciliation in his capacity as Minister of Information, he turned to violence and actively participated in the commission of the massacres in Bisesero and influenced others to commit crimes while, in some instances, he gave instructions to attackers or acted as one of their leaders;

(iii) The callous nature of the murders of a girl of 13-15 years of age in Bisesero by the Gisovu-Kibuye road on 20 May 1994, of an old man and a young boy on 18 June 1994 at Kiziba;

(iv) The fact that the Accused joined in the jubilation over the killing, decapitation and castration of Kabanda, and the piercing of his skull through the ears with a spike;

(v) The cruel and insensitive disregard for human life and dignity shown by the order given by the Accused to Interahamwe to insert a sharpened piece of wood into the genitalia of the dead Tutsi woman on the road in Kibuye near the ENT on, and after, 28 June 1994;

(vi) The prolonged nature of his participation in widespread and systematic attacks against defenceless civilians.

500. Having reviewed both mitigating and aggravating circumstances, the Chamber finds that the aggravating circumstances outweigh the mitigating circumstances in the Accused's case.

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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

APPEALS CHAMBER

Case No. ICTR-99-46-A

ENGLISH
Original: FRENCH

Before: Judge Fausto Pocar, presiding
Judge Mehmet Güney
Judge Andrésia Vaz
Judge Theodor Meron
Judge Wolfgang Schomburg

Registrar: Adama Dieng

Date: 7 July 2006

THE PROSECUTOR
(Appellant and Respondent)

v.

ANDRÉ NTAGERURA
(Respondent)
EMMANUEL BAGAMBIKI
(Respondent)
SAMUEL IMANISHIMWE
(Appellant and Respondent)

JUDGEMENT

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54. In the Trial Judgement, however, imprecise date ranges were enumerated as one of the defects in the Ntagerura Indictment.[144] Moreover, having dismissed Ntagerura's preliminary motion with regard to the lack of specificity concerning the locations and the description of the alleged events, his personal participation in the events, as well as the identity of his subordinates and his *mens rea* under Article 6(3) of the Statute, the Trial Chamber nevertheless found in the Trial Judgement that the Ntagerura Indictment was defective in these respects.[145]

55. It is apparent from the foregoing that the Trial Chamber reconsidered in the Trial Judgement some of the findings it had made in certain pre-trial decisions on the form of the Indictments. This does not in itself constitute an error, as it is within the discretion of a Trial Chamber to reconsider a decision it has previously made[146] if a clear error of reasoning has been demonstrated or if it is necessary to do so to prevent an injustice.[147] However, the Appeals Chamber emphasises that "where such a decision is changed, there will be a need in every case for the Trial Chamber to consider with great care and to deal with the consequences of the change upon the proceedings which have in the meantime been conducted in accordance with the original decision".[148] In the present case, the Appeals Chamber considers that, once the Trial Chamber decided to reconsider its pre-trial decisions relating to the specificity of the Indictments at the stage of deliberations, it should have interrupted the deliberation process and reopened the hearings. At such an advanced stage of the proceedings, after all the evidence had been heard and the parties had made their final submissions, the Prosecution could not move to amend the Indictment. On the other hand, reopening the hearings would have allowed the Prosecution to try to convince the Trial Chamber of the correctness of its initial pre-trial decisions on the form of the Indictment, or to argue that any defects had since been remedied. The Appeals Chamber finds that the Trial Chamber erred in remaining silent on its decision to find the abovementioned parts of the Indictments defective until the rendering of the Trial Judgement.

56. The question of whether this error invalidated the decision will be examined below, in the light of the Appeals Chamber's conclusions as to the other errors alleged by the Prosecution under this ground of appeal. The Appeals Chamber will first address the question of whether the two Indictments should have been read together.

2. Alleged failure to read the Indictments together as a whole

57. The Prosecution submits that the Trial Chamber erred in not reading the two Indictments together because, as per the Decision on Joinder, the Indictments "became, in law, a single Indictment".[149] It further submits that the Trial Chamber in that Decision "expressly accepted arguments in support of reading the two Indictments as one

[144] Trial Judgement, paras. 41, 43, 45 and 46.
[145] Trial Judgement, paras. 41, 43, 45 (location of the events); ibid., paras. 41, 42, 45, 47 (description of the events); ibid., paras. 41, 43, 44, 46 (Ntagerura's personal participation); ibid., paras. 42, 47 (Ntagerura's responsibility under Article 6 (3) of the Statute, in particular in relation to Count 6).
[146] *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-AR73, Decision on Application by Prosecution for Leave to Appeal, 14 December 2001, at para. 13.
[147] Kajelijeli Appeal Judgement, paras. 203 and 204.
[148] *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-AR73, Decision on Application by Prosecution for Leave to Appeal, 14 December 2001, at para. 13.
[149] Prosecution Appeal Brief, paras. 173-174.

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them to do so".[735] The Prosecution submits that the *actus reus* of aiding and abetting in this instance is established by Imanishimwe's omission to prevent his soldiers from going to Gashirabwoba, and that this omission had a decisive effect on their ability to participate in the attack.[736] It further contends that Imanishimwe possessed the requisite knowledge to be an aider and abettor in the Gashirabwoba massacre,[737] given that the Trial Chamber found that he knew or should have known about the participation of his soldiers in the attack.[738]

368. The Appeals Chamber notes that the Trial Chamber did not expressly rule on the issue as to whether Imanishimwe could have incurred criminal responsibility for aiding and abetting the crimes committed at the Gashirabwoba football field on 12 April 1994. This notwithstanding, the Appeals Chamber does not conclude that the Trial Chamber failed to consider this form of responsibility. It indeed transpires from the legal findings made by the Trial Chamber that this form of responsibility was considered and even accepted when the facts lent themselves to it. The Appeals Chamber understands the Trial Chamber's silence with respect to aiding and abetting as an indication that it was not established that the Accued's conduct could in this particular instance be characterized as aiding and abetting.[739]

369. Accordingly, the issue is for the Appeals Chamber to inquire into whether this finding is one which a reasonable trier of fact could have made.

370. To establish the material element (or *actus reus*) of aiding and abetting under Article 6(1) of the Statute, it must be proven that the aider and abettor committed acts specifically aimed at assisting, encouraging, lending moral support[740] for the perpetration of a specific crime, and that the said support had a substantial effect on the perpetration of the crime. The Appeals Chamber adds that the *actus reus* of aiding and abetting may, in certain circumstances, be perpetrated through an omission.[741] The requisite *mens rea* is the fact that the aider and abettor knows that his acts assist in the commission of the specific crime of the principal.[742]

371. In the instant case, the Trial Chamber considered that it was not established that the Accused had ordered or was present during the attack launched at Gashirabwoba on 12 April 1994.[743] On the other hand, it found that the soldiers responsible for the attack could not have

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[735] *Ibid.*, para. 407.
[736] *Ibid.*, para. 408. In support of its line of reasoning, the Prosecution cites the *Blaškić* Trial Judgement, para. 284: "the *actus reus* of aiding and abetting may be perpetrated through an omission, provided this failure to act had a decisive effect on the commission of the crime and that it was coupled with the requisite *mens rea*." (footnote omitted).
[737] Prosecution Appeal Brief, paras. 409-410, referring to *Tadić* Appeal Judgement, para. 229 and *Krstić* Appeal Judgement, para. 140.
[738] *Ibid.*, para. 410, citing Trial Judgement, para. 654.
[739] See *supra*, para. 359.
[740] The Appeals Chamber notes that the phrase "assist, encourage or lend no support" originally used by the Appeals Chamber in the *Tadić* (para. 229), *Aleksovski* (para. 163), *Vasiljević* (para. 102) and *Blaškić* (para. 45) Appeal Judgements has been translated as "*aider, encourager ou fournir un soutien moral*" in the French versions of the said Judgements. The Appeals Chamber considers that this translation may mislead the reader, given that "aided and abetted" is rendered in the French text of the Statute by "*aidé et encourage*".
[741] See *Blaskić* Appeal Judgement, para. 47.
[742] *Vasiljević* Appeal Judgement, para. 102; *Blaskić* Appeal Judgement, para. 45; *Kvočka et al.* Appeal Judgement, paras. 89-90, 188.
[743] Trial Judgement, paras. 439 and 653.

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International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

IN THE APPEALS CHAMBER

Before:	**Judge Theodor MERON, Presiding** **Judge Florence MUMBA** **Judge Mehmet GÜNEY** **Judge Wolfgang SCHOMBURG** **Judge Inés Mónica WEINBERG DE ROCA**
Registrar:	**Mr. Adama Dieng**
Date:	**13 December 2004**

THE PROSECUTOR

v.

ELIZAPHAN NTAKIRUTIMANA AND GÉRARD NTAKIRUTIMANA

Cases Nos. ICTR-96-10-A and ICTR-96-17-A

JUDGEMENT

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conclusion, the *Krstić* Appeals Chamber derived aiding and abetting as a mode of liability from Article 7(1) of the ICTY Statute, but also considered that aiding and abetting constitutes a form of complicity, suggesting that complicity under Article 2 of the ICTR Statute and Article 4 of the ICTY Statute would also encompass aiding and abetting, based on the same *mens rea*, while other forms of complicity may require proof of specific intent.

501. The Appeals Chamber endorses this view and finds that a conviction for aiding and abetting genocide upon proof that the defendant knew about the principal perpetrator's genocidal intent is permitted by the Statute and case-law of this Tribunal. Accordingly, the Trial Chamber erred in determining that the *mens rea* for aiding and abetting genocide requires intent to commit genocide. It is not disputed that the above-mentioned error did not invalidate the Trial Chamber's verdict in the present case.

502. It is now possible to go back to the Prosecution's allegation that the Trial Chamber erred in confining Gérard Ntakirutimana's conviction for genocide to the acts of killing or serious bodily harm that he personally inflicted on Tutsi at the Mugonero Complex and Bisesero. The issue before the Appeals Chamber is whether the Trial Chamber's findings which have not been reversed on appeal support a conviction for aiding and abetting genocide.

503. In the part of the Judgement dealing with Gérard Ntakirutimana's legal errors the Appeals Chamber has upheld a number of his grounds of appeal arguing that he and Elizaphan Ntakirutimana were given insufficient notice of the material facts of the Prosecution's case and that the Trial Chamber erred in basing a conviction on those material facts.

504. As a result of the errors committed by the Trial Chamber, the Appeals Chamber has quashed the findings of the Trial Chamber supporting Gérard Ntakirutimana's convictions under the Bisesero Indictment that: "on or about 18 April 1994 Gérard Ntakirutimana was with *Interahamwe* in Murambi Hill pursuing and attacking Tutsi refugees" and "in the last part of April or possibly in May, Gérard Ntakirutimana was with attackers in Gitwe Hill where he shot at refugees;"[857] "sometime between April and June 1994, Gérard Ntakirutimana was in Kidashya Hill transporting armed attackers, and he participated in chasing and shooting at Tutsi refugees in the hills;"[858] "sometime in June 1994, Gérard Ntakirutimana was in an attack at Mutiti Hill with *Interahamwe*,

Chamber to supply adequate proof that Radislav Krstić possessed the genocidal intent. Krstić, therefore, is not guilty of genocide as a principal perpetrator."

[857] Trial Judgement, para. 543, *see also id.* para. 832 (i)-(ii).

[858] *Id.*, paras., 832(vi), *see also id.* para.586.

attack at Mubuga Primary School in June 1994 and shooting at Tutsi refugees; under the Mugonero Indictment, a conviction of aiding and abetting genocide is supported by the procurement of gendarmes and ammunition for the attack on Mugonero Complex on 16 April 1994.

508. As established above, intent to commit genocide is not required for an accused to be found guilty for aiding and abetting genocide. However, a finding by the Trial Chamber that the accused had the intent to commit genocide and did so by killing and causing harm to members of the group does not per se prevent a finding that he also knowingly aided and abetted other perpetrators of genocide. Accordingly to establish that Gérard Ntakirutimana aided and abetted genocide requires proof that (i) by his acts and conduct Gérard Ntakirutimana assisted, encouraged or lent moral support to the perpetration of genocide by others which had a substantial effect upon the perpetration of that crime, and (ii) Gérard Ntakirutimana knew that the above acts and conduct assisted the commission of genocide by others.

509. It is clear from the Trial Chamber's findings at paragraphs 785 and 826 of the Trial Judgement that it found that the attacks were carried out with intent to destroy, in its whole, the Tutsi population at the Mugonero Complex and in Bisesero. It results further from the Trial Chamber findings at paragraphs 793 and 834 that it found that by his conduct and participation in the attacks Gérard Ntakirutimana had the intent to destroy, in whole, the Tutsi ethnic group. The only reasonable inference from the circumstances described by the Trial Chamber to support the above findings is that Gérard Ntakirutimana had knowledge that his acts and conduct had a substantial effect upon the commission of genocide by others. Accordingly, the Appeals Chamber finds that by the other acts of assistance identified by the Trial Chamber Gérard Ntakirutimana incurred criminal responsibility as an aider and abettor to genocide.

1994, where he pursued and shot at Tutsi refugees, his killing of Charles Ukobizaba by shooting him in the chest, from a short distance, in Mugonero Hospital courtyard around midday on 16 April 1994, and his procurement of gendarmes and ammunition for the attack on the Mugonero Complex, are, taken as a whole, extremely grave. The Trial Chamber's finding that Gérard Ntakirutimana committed these crimes with the intent to destroy in whole or in part the Tutsi group is still applicable.[961] So is the Trial Chamber's finding that these acts were committed with the knowledge that they were part of a widespread and systematic attack against the civilian Tutsi population.[962]

563. The Appeals Chamber has also considered the mitigating and aggravating factors discussed by the Trial Chamber, and concurs with the Trial Chamber that the aggravating factors outweigh the mitigating factors in Gérard Ntakirutimana's case.[963] In particular, the Appeals Chamber has considered the following aggravating factors, namely that Gérard Ntakirutimana (i) abused his personal position in the community to commit the crimes, (ii) personally shot at Tutsi refugees, including Charles Ukobizaba, and (iii) participated in attacks at the Mugonero Complex, where he was a doctor, as well as in other safe havens in which refugees had sought shelter.

564. The Appeals Chamber finds that the revision of the verdict in respect of both the acquittals and the new convictions does not affect the validity of the elements which form the basis of the sentence of 25 years' imprisonment imposed by the Trial Chamber. Accordingly, the Appeals Chamber maintains the sentence of 25 years' imprisonment handed down by the Trial Chamber.

C. Convictions and Sentence for Elizaphan Ntakirutimana

565. Elizaphan Ntakirutimana was sentenced to ten years' imprisonment. He was arrested at the request of the Tribunal on 29 September 1996 and initially detained in Texas, USA. Having petitioned against his arrest and transfer to the International Tribunal, he was released on 17 December 1997 by a US Magistrate on constitutional grounds.[964] The US State Department petitioned against that decision, and he was ultimately re-arrested on 26 February 1998 and transferred to the United Nations Detention Facilities in Arusha on 24 March 2000.

566. As a result of the errors committed by the Trial Chamber in basing convictions on unpleaded material facts, Elizaphan Ntakirutimana's conviction under the Mugonero Indictment, for

[960] *Rutaganda* Appeal Judgement, para. 591; *Vasiljević* Appeal Judgement, para. 156, referring to *Furundžija* Appeal Judgement, para. 249; *Aleksovski* Appeal Judgement, para. 182; *Kupreškić et al.* Appeal Judgement, para. 852.
[961] Trial Judgement, paras. 793, 834,
[962] *Id.* paras. 808, 848.
[963] *Id.*, paras. 908-913.
[964] In the Matter of Surrender of Elizaphan Ntakirutimana, U.S. Dist. Ct. Southern Dist. of TX, Laredo Div., Misc. No. L-96-5 (Dec. 17, 1997).

UNITED NATIONS
NATIONS UNIES

Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

Or. : Eng.

TRIAL CHAMBER I

Before Judges: Erik Møse, Presiding
Navanethem Pillay
Andrésia Vaz

Registrar: Adama Dieng

Judgement of: 21 February 2003

THE PROSECUTOR

V.

ELIZAPHAN and GÉRARD NTAKIRUTIMANA

Cases No. ICTR-96-10 & ICTR-96-17-T

JUDGEMENT AND SENTENCE

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David Jacobs

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Charles Adeogun-Phillips
Wallace Kapaya
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(i) That Elizaphan Ntakirutimana or Gérard Ntakirutimana killed or caused serious bodily or mental harm to members of an ethnic or racial group;[1147] and

(ii) That the killing or causing of serious bodily or mental harm was committed with intent to destroy, in whole or in part, that ethnic or racial group, as such.

675. The Chamber found that a large number of men, women and children, the majority unarmed Tutsi, sought shelter from violence and attacks around Mugonero in the days following 6 April 1994 and that many assembled at the Mugonero Complex for that purpose. The Chamber further found that the attack of 16 April at the Complex, which lasted throughout the day and into the night, claimed hundreds of lives among the refugees at the Complex and left many wounded. It further found that the attack specifically targeted the Tutsi population -- irrespective of age or sex -- for the sole reason of their ethnicity. In the Chamber's view, the massive and systematic character of the attack and ensuing onslaught, as described above, leaves no doubt as to the fact that the violent assault proceeded on the basis of an intent to destroy, in its whole, the Tutsi population at the Complex.[1148]

Elizaphan Ntakirutimana

676. Article 6(1) of the Statute provides that:

> "A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 4 of the present Statute, shall be individually responsible for the crime."

677. The elements of "aiding and abetting" within the meaning of Article 6(1) are well established.[1149] In order for the Chamber to enter a conviction on this count, it must find that the following three elements have been proved beyond a reasonable doubt:

(i) That Elizaphan Ntakirutimana provided to persons practical assistance ("aiding"), or facilitated the commission of the crime by being sympathetic thereto ("abetting");[1150]

(ii) That the act of aiding or abetting contributed substantially to the commission of the crime of genocide; and

(iii) That the Accused provided such assistance or encouragement with the intent to commit genocide, that is, the intent to destroy, in whole or in part, an ethnic or racial group, as such.

678. At para. 310 in Section II.3.8.3 (e) above (see also paras. 283-285 in II.3.8.3(c)),

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[1147] Other acts are deliberately inflicting conditions of life calculated to bring about the group's physical destruction, preventing births within the group, and forcibly transferring children of the group to another. The Statute also includes "national" or "religious" groups, but this is not part of the Prosecution's case.

[1148] See in particular II.3.2 paras. 69-77, II.3.9.3 paras. 334-339, II.3.10.3 para. 350.

[1149] See *Akayesu* (TC) paras. 484-485; *Furundzija* (AC) paras. 124-127.

[1150] Either "aiding" or "abetting" alone would suffice for this count, see *Akayesu* (TC) para. 484.

the Chamber found that Elizaphan Ntakirutimana conveyed armed attackers to the Mugonero Complex in his vehicle on the morning of 16 April 1994, and that these attackers proceeded to kill Tutsi refugees at the Complex. Considering his position of authority in the community as a senior pastor, the Chamber finds that his act of personally driving armed attackers in his own vehicle to the scene of the attack, his association with these armed attackers, and his presence at the scene of the attack at the Complex, constituted practical assistance and encouragement to these attackers, which substantially contributed to the commission of the crime of genocide by these attackers.

679. From his presence and actions in relation to the attack at the Complex, from the letter he received on the eve of the attack, in which the Tutsi Pastors plead for his assistance adding, "tomorrow we shall die with our families", Elizaphan Ntakirutimana knew that Tutsi, in particular, were being targeted for attack, and that by transporting attackers to the Complex, he would be assisting in the attack against the Tutsi. The Chamber has also taken into account his actions in Bisesero, for instance, transporting armed attackers to various parts of Bisesero and pointing out Tutsi refugees to the armed attackers who then attacked these refugees, and ordering attackers to remove the roof of Murambi Church so that it could not be used as a hiding-place for Tutsi. Based on the totality of the evidence before it, the Chamber finds that Elizaphan Ntakirutimana had the requisite intent to commit genocide, that is, the intent to destroy, in whole the Tutsi ethnic group.

680. The Chamber finds that, in conveying armed attackers to the Complex, Elizaphan Ntakirutimana is individually criminally responsible for aiding and abetting in the killing and causing of serious bodily or mental harm to the Tutsi refugees at the Complex on 16 April 1994, pursuant to Article 6(1) of the Statute. Accordingly, the Chamber finds that Elizaphan Ntakirutimana is guilty of genocide as charged in Count 1A of the Mugonero Indictment.

Gérard Ntakirutimana

681. The Chamber found, in II.3.13.3 above, that Gérard Ntakirutimana participated in attacks on 16 April 1994 at the Complex and shot at refugees. Whilst participating in the attack on the refugees at the Complex, Gérard Ntakirutimana killed Charles Ukobizaba by shooting him in his chest, from a short distance, in Mugonero Hospital courtyard around midday on 16 April 1994 (see II.3.11.5 above). Gérard Ntakirutimana also procured ammunition and gendarmes for the attack on the Complex (see II.3.7.3 above). In addition, he participated in the attack on Witness SS (a refugee in the Complex), during which time he was armed and in the company of other armed attackers (see II.3.12.3 above).

682. The Chamber recalls that Charles Ukobizaba, Witness SS, and finds that the refugees whom Gérard Ntakirutimana shot at in the Complex were of the Tutsi ethnic group.

whole or in part, an ethnic or racial group as such, and have thereby committed genocide.

715. The elements of the offence were dealt with in paragraph 784 above.

716. In Section II.4 above, the Chamber found that a large number of men, women and children, who were predominantly Tutsi, sought refuge in the area of Bisesero from April through June 1994, where there was widespread violence during that period, in the form of attacks targeting this population on an almost daily basis. Witnesses heard attackers singing songs referring to the extermination of the Tutsi. The Chamber concludes that these attacks were carried out with the specific intent to destroy in whole the Tutsi population in Bisesero, for the sole reason of its ethnicity.[1160]

Elizaphan Ntakirutimana

717. The elements of Article 6(1), in relation to aiding and abetting, have been considered in paras. 786 and 787 above.

718. The Chamber has previously made the following findings:

(i) Sometime between 17 April and early May 1994, Elizaphan Ntakirutimana conveyed attackers to Murambi Church and ordered the removal of the church roof so that it could no longer be used as a hiding place for the Tutsi, and in so doing, he facilitated the hunting down and the killing of the Tutsi refugees hiding in Murambi Church in Bisesero (see II.4.23.3 (a) above);

(ii) One day in the middle of May 1994, Elizaphan Ntakirutimana brought armed attackers in the rear hold of his vehicle to Nyarutovu Hill, and the group was searching for Tutsi refugees and chasing them. Elizaphan Ntakirutimana pointed out the fleeing refugees to the attackers who then chased these refugees singing: "Exterminate them; look for them everywhere; kill them; and get it over with, in all the forests" (see II.4.12.3 above);

(iii) At the end of May 1994, Elizaphan Ntakirutimana participated in a convoy of vehicles carrying armed attackers to Kabatwa Hill, and later the same day, at neighbouring Gitwa Hill, he pointed out the whereabouts of Tutsi refugees to attackers who attacked the refugees, causing injury to Witness KK (see II.4.13.3 above);

(iv) In mid-May, Elizaphan Ntakirutimana was present in the midst of the killing of Tutsi individuals at Mubuga, the Accused was in his vehicle transporting armed attackers as part of a convoy which included two buses, all carrying armed attackers, the attackers sang "Let us exterminate them" and proceeded to kill people until the evening. (see II. 4.14.3 above);

(v) One day in May or June 1994, Elizaphan Ntakirutimana transported armed attackers who were chasing Tutsi survivors at Murambi Hill (see II.4.10.3 above);

(vi) One day in May or June 1994, Elizaphan Ntakirutimana arrived at Ku Cyapa in a vehicle followed by two buses of attackers and he was part of a convoy, which included attackers (see II.4.20.3 above).

[1160] See, II.4.4 to 4.25 in conjunction with II.4.2 *supra*.

life work was dedicated to saving souls and his son's, to healing the sick and saving lives. Furthermore, both Accused testified about their many years of dedication to church and community. Finally, it is submitted that neither of the Accused was in a position to prevent or stop the massacres, and that they were themselves victims who became refugees.[1184]

4. Discussion

780. The Chamber has already noted the gravity of the crimes of which the Accused have been found guilty. It now turns to the personal and individual circumstances of the Accused, prior to reviewing the practice of the Tribunal in respect of sentences in cases with similarities to the present one.

781. The Chamber recalls at the outset the general principle that only matters proved a beyond a reasonable doubt against the Accused are to be considered against them at the sentencing stage. This principle extends to the assessment of any aggravating factors.[1185] Another standard applies to the Chamber's assessment of mitigating factors. These shall be taken into consideration if established on a balance of probabilities.[1186] Also, the Chamber agrees with the *Vasiljevic* Trial Chamber of the ICTY that a particular circumstance shall not be retained as aggravating if it is included as an element of the crime in consideration.[1187]

4.1 Elizaphan Ntakirutimana

782. It is recalled that Elizaphan Ntakirutimana was born in 1924 in Ngoma sector, Gishyita commune, Kibuye prefecture, Rwanda.

(a) Mitigating Circumstances

782. The Chamber has found that the Accused was a highly respected personality within the Seventh-Day Adventist Church of the West-Rwanda Field and beyond, in the Kibuye prefecture. It heard and reviewed moving testimony from colleagues and supervisors of the Accused within the Seventh-Day Adventist Church. This evidence consistently described the Pastor's exemplary life as a church leader, a highly religious and tolerant person, who did not show ethnic bias, even in times of unrest and ethnic tension, for over half a century. Significantly, one such colleague praised "a faithful and honest worker who manifested courage in confronting irregularities with workers of

[1184] See T. 22 August 2002 pp. 57 and 58 and Defence Closing Brief pp. 1-12.
[1185] *Delalic* (AC) para. 763; *Vasiljevic* (TC) para. 272.
[1186] *Kunarac* (TC) para. 857, *Sikirica* (TC) para. 110; *Vasiljevic* (TC) para. 272.
[1187] Specifically, the *Vasiljevic* Trial Chamber ruled that the perpetrator's discriminatory intent in the commission of the crime "can only [constitute an aggravating factor] where the crime for which an accused is convicted does not include a discriminatory state of mind as an element." Hence, one's discriminatory intent was not deemed an aggravating factor in respect of a count of persecution considered as a crime against humanity (Article 5(h) of the ICTY Statute). It was however considered an aggravating factor in respect of a count of murder considered as a violation of the laws and customs of war (Article 3 of the ICTY Statute). *Vasiljevic* (TC) para. 277-278.

either tribal affiliation" while an other described Pastor Ntakirutimana as "a kind Christian gentleman", an outstanding worker whom he found to be fair and trustworthy, whom he never saw lose his temper, who "worked well with the Hutus and the Tutsis" and whom he never saw making any distinction in their respect. As already stated, the Chamber accepts this evidence and finds that Elizaphan Ntakirutimana was essentially a person of good moral character until the events of April to July 1994 during which he was swept along with many Rwandans into criminal conduct.[1188]

783. The family situation of the Accused has been taken into account (Elizaphan Ntakirutimana is married with eight children of whom seven were alive in 2002).

784. In respect of his conduct during the events of 1994, the Chamber has considered that Elizaphan Ntakirutimana did not play a leading role in the attacks. He did not personally participate in these killings, nor was he found to have fired on refugees or even to have carried a weapon.

785. Finally, 78 years of age at the time of sentencing, the Accused has spent more than four years in detention. His wife, among other witnesses, has testified about his frail health, due to a condition from which he has suffered for years. His poor health was evident throughout the trial proceedings. Considered together, the Chamber finds that these are important mitigating circumstances in Elizaphan Ntakirutimana's case.

(b) Aggravating Circumstances:

786. The Chamber now turns to the circumstances considered as aggravating in the Accused's case.

787. As a highly respected personality and a man wielding certain authority within the Seventh-Day Adventist Church of the West-Rwanda Field and in the Kibuye prefecture, the Accused was deemed to have abused the trust placed in him.

788. The letter written to him by the Tutsi Pastors on behalf of the refugees at the Mugonero Complex was found, among other evidence, to be a symbol of his perceived authority among the general population. It is recalled that the Mugonero refugees trusted that, on the eve of the attack, Pastor Ntakirutimana would intercede in their favor before a municipal authority such as bourgmestre Sikubwabo, and that his intervention could prove instrumental in saving their lives.

788. Many among the refugees at the Mugonero Complex on 16 April 1994 were parishioners and pastors of the West-Rwanda Field of the Seventh Day Adventist Church for which Pastor Ntakirutimana was responsible. These persons were in his care. They

[1188] In the words of, respectively, Robert Peck, former President of the Union Mission of the Seventh-Day Adventist Church in Rwanda from 1984 to 1990 and Pastor De Witt S. Williams, former President of the Central Africa Union of the Church from 1979 to 1982. This correspondence is included in Defence Exhibit 1D21. See also II.6 *supra* (Character of the Accused Prior to April 1994) and particularly the Chamber's findings at II.6.3.1.

UNITED NATIONS
NATIONS UNIES

Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

IN THE APPEALS CHAMBER

Before:	**Judge Carmel Agius, Presiding** **Judge Mehmet Güney** **Judge Liu Daqun** **Judge Arlette Ramaroson** **Judge Andrésia Vaz**
Registrar:	**Mr. Adama Dieng**
Judgement of:	**14 December 2011**

Dominique NTAWUKULILYAYO

v.

THE PROSECUTOR

Case No. ICTR-05-82-A

JUDGEMENT

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his prior good conduct is inconsistent with any possible moral support or encouragement, and that his presence at Kabuye hill would therefore have been of no consequence to the assailants.[529]

212. The Prosecution responds that the elements of aiding and abetting were clearly established beyond reasonable doubt, and that prior good conduct is not a relevant factor.[530]

213. In reply, Ntawukulilyayo contends that, contrary to the Trial Chamber's finding, Kabuye hill was not an isolated area, and that its conclusion that the transfer of refugees provided a "tactical advantage" was therefore purely speculative.[531]

214. The Appeals Chamber recalls that the *actus reus* of aiding and abetting is constituted by acts or omissions specifically aimed at assisting, encouraging, or lending moral support to the perpetration of a specific crime, and which have a substantial effect upon the perpetration of the crime.[532] Whether a particular contribution qualifies as "substantial" is a "fact-based inquiry", and need not "serve as condition precedent for the commission of the crime."[533]

215. The Trial Chamber found beyond reasonable doubt that, in the early afternoon of Saturday, 23 April 1994, Ntawukulilyayo directed mostly Tutsi refugees at Gisagara market to go to Kabuye hill, promising them food and protection there, and that the refugees complied with his instructions.[534] The Trial Chamber further found that Ntawukulilyayo arrived at Kabuye hill later that day, and left shortly after dropping off soldiers who, along with others, subsequently attacked the civilian refugees at the hill.[535] As discussed above, the Appeals Chamber has found no error in the Trial Chamber's factual findings regarding Ntawukulilyayo's instructions to refugees at Gisagara market, and his arrival at Kabuye hill with soldiers.[536] Ntawukulilyayo has also failed to demonstrate error in the Trial Chamber's conclusion that the soldiers who accompanied him, along with others, attacked the refugees.[537] As regards the number of soldiers, the Appeals Chamber observes that the Trial Chamber did not rely on the specific number of soldiers who accompanied Ntawukulilyayo but on Ntawukulilyayo's contribution to the killings by bringing armed reinforcements.[538] Ntawukulilyayo's arguments that no reasonable trier of fact could determine with

[529] Appeal Brief, para. 252, *referring to ibid.*, paras. 190-202; Reply Brief, para. 103.
[530] Response Brief, paras. 192-206.
[531] Reply Brief, para. 100.
[532] *See, e.g., Karera* Appeal Judgement, para. 321; *Nahimana et al.* Appeal Judgement, para. 482.
[533] *Kalimanzira* Appeal Judgement, para. 86; *Rukundo* Appeal Judgement, para. 52; *Blagojević and Jokić* Appeal Judgement, para. 134.
[534] Trial Judgement, paras. 12, 263, 424, 453.
[535] Trial Judgement, paras. 18, 303, 453.
[536] *See supra*, Sections III, IV.
[537] *See supra*, para. 159.
[538] *See* Trial Judgement, para. 454.

aim of ameliorating the situation at the marketplace and the belief that the protection promised would be given to the refugees.[541] Ntawukulilyayo further argues that it would also have been reasonable to find that he naively believed that the security staff he allegedly transported to the hill would protect the refugees.[542] In support of his contentions, Ntawukulilyayo argues that the tragic turn of events on Kabuye hill was not necessarily predictable as, until 23 April 1994, Gisagara was considered one of the last safe areas, and the warning signs and isolated incidents of which he was aware at the time did not involve soldiers, policemen, or gendarmes.[543]

220. Ntawukulilyayo further submits that the Trial Chamber's findings in relation to his personality and positive actions at the relevant time run counter to the idea that he could knowingly have aided and abetted the killing of Tutsis on Kabuye hill.[544] He also contends that the Trial Chamber's reliance on the planning of the attack is contradicted by its own finding that the record did not reflect that he participated in the planning of the attack.[545] Ntawukulilyayo argues that there is a complete lack of evidence that the attack was planned, and that the mere fact that he was accompanied by soldiers is insufficient to prove that he had knowledge of any planning, since nothing is known about how he met the soldiers or where they had come from.[546]

221. The Prosecution responds that the elements of aiding and abetting were clearly established beyond reasonable doubt.[547] It argues that Ntawukulilyayo's claim that he was unable to anticipate the tragic turn of events is unconvincing and that his conduct in saving Tutsis was properly assessed.[548]

222. The Appeals Chamber recalls that the *mens rea* for aiding and abetting is knowledge that the acts performed by the aider and abettor assist the commission of the specific crime of the principal perpetrator.[549] Specific intent crimes such as genocide do not require that the aider and abettor share

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[541] Appeal Brief, para. 215; AT. 26 September 2011 pp. 7-9.
[542] Appeal Brief, para. 215; AT. 26 September 2011 pp. 9-13.
[543] Appeal Brief, paras. 176, 177, 211-213, *referring to* the *Ntagerura et al.* and *Blagojević and Jokić* cases. *See also* AT. 26 September 2011 pp. 9-11.
[544] Appeal Brief, para. 214. *See also ibid.*, paras. 187, 190-202, 215, 216; Reply Brief, paras. 68, 69; AT. 26 September 2011 pp. 12, 13, 41.
[545] Appeal Brief, para. 206. Ntawukulilyayo also submits that he was not charged with planning and that, consequently, no evidence was adduced in this respect. *See ibid.*, para. 205; Reply Brief, paras. 70, 71.
[546] Appeal Brief, paras. 207-210.
[547] Response Brief, para. 192.
[548] Response Brief, paras. 118, 124-126. *See also* AT. 26 September 2011 p. 24.
[549] *See, e.g.*, *Kalimanzira* Appeal Judgement, para. 86; *Rukundo* Appeal Judgement, para. 53; *Nahimana et al.* Appeal Judgement, para. 482.

the *mens rea* of the principal perpetrator; it suffices to prove that he knew of the principal perpetrator's specific intent.[550]

223. The Appeals Chamber notes that the Trial Chamber's finding that the assailants at Kabuye hill acted with genocidal intent is not in dispute. The question before the Appeals Chamber is therefore whether the Trial Chamber reasonably found that Ntawukulilyayo had knowledge that his acts would assist the assailants in killing the refugees at Kabuye hill, and that he had knowledge of the assailants' genocidal intent.

224. The Appeals Chamber does not agree with Ntawukulilyayo's contention that the Trial Judgement contains contradictory findings with respect to planning. The Trial Chamber clearly found that, although the scale and nature of the attacks on Kabuye hill would have required planning and organization by various civilian and military officials, it was not clear that Ntawukulilyayo himself participated in the planning of the operation.[551] In the Appeals Chamber's view, this is not contradicted by the statement that "Ntawukulilyayo's arrival on Kabuye hill with soldiers would no doubt have required planning",[552] which merely implies that the Trial Chamber considered that Ntawukulilyayo could not reasonably have ignored that the transport of soldiers to the hill was part of a broader, premeditated scheme. The Appeals Chamber sees no error in this finding.

225. The Appeals Chamber also sees no error in the Trial Chamber's finding that the range of assailants and their participation in the assault just hours after Ntawukulilyayo sent refugees to Kabuye hill evinces considerable coordination.[553] In the Appeals Chamber's view, in the context of determining Ntawukulilyayo's *mens rea* it was not necessary for the Trial Chamber to consider how he met the soldiers whom he brought to Kabuye hill, or from where they came.[554]

226. The Appeals Chamber notes that Ntawukulilyayo personally observed the situation at Kabuye hill shortly before the killings took place there on such a large scale.[555] The Appeals Chamber further observes that Ntawukulilyayo issued his instructions to refugees at Gisagara market to move to Kabuye hill just hours before the attack took place, and only two days after President Sindikubwabo's public speech in Gisagara referring to the 1959 revolution, during which

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[550] *See Kalimanzira* Appeal Judgement, para. 86; *Rukundo* Appeal Judgement, para. 53; *Haradinaj et al.* Appeal Judgement, para. 58; *Blagojevi} and Joki}* Appeal Judgement, para. 127.
[551] Trial Judgement, para. 470.
[552] Trial Judgement, para. 456.
[553] *See* Trial Judgement, para. 456.
[554] *See* Appeal Brief, para. 208.
[555] Trial Judgement, paras. 303, 393, 453, 454, 456.

UNITED NATIONS
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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ORIGINAL: ENGLISH

TRIAL CHAMBER III

Before: Judge Solomy Balungi Bossa, Presiding
Judge Bakhtiyar Tuzmukhamedov
Judge Mparany Rajohnson

Registrar: Adama Dieng

Date: 31 May 2012

THE PROSECUTOR

v.

Callixte NZABONIMANA

Case No. ICTR-98-44D-T

JUDGEMENT AND SENTENCE

Office of the Prosecutor
Hassan Bubacar Jallow
Paul Ng'arua
Memory Maposa
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2.7.2 Hearsay Evidence

68. Evidence of facts outside the testifying witness's own knowledge constitutes hearsay evidence. The Chamber must closely scrutinise and cautiously consider any hearsay evidence before relying upon it,[113] as hearsay evidence may be affected by a compounding of errors of perception, memory, narration, sincerity and recall, and thus should be subjected to careful scrutiny before being relied upon.[114]

69. The Chamber has the discretion to cautiously consider hearsay evidence and to rely on it. While the weight and probative value to be afforded to hearsay evidence will usually be less than that accorded to the evidence of a witness who has given it under oath and who has been cross-examined, it will depend upon the infinitely variable circumstances which surround hearsay evidence.[115]

2.7.3 Identification of the Accused

70. In assessing a witness's identification evidence, the Chamber must proceed with caution and carefully scrutinise factors in support of the identification, factors that may impact negatively on the reliability of the identification, and any corroborating testimony.[116] The Chamber will take into account the following factors: prior knowledge of the accused, the existence of adequate opportunity in which to observe the accused, reliability of witness's testimony, the possible influence of third parties, the existence of stressful conditions at the time the event took place, the passage of time between the events and the witness's testimony and the general credibility of the witness.[117]

71. The Chamber must always, in the interests of justice, proceed with extreme caution when assessing a witness's identification of the accused made under difficult circumstances. While the Chamber is not obliged to refer to every piece of evidence on the trial record in its judgement, where a finding of guilt is made on the basis of identification evidence given by a witness under difficult circumstances, the Chamber must rigorously implement its duty to provide a "reasoned opinion." In particular, a reasoned opinion must carefully articulate the factors relied upon in support of the identification of the accused and adequately address any significant factors impacting negatively on the reliability of the identification evidence.[118] In-court identification evidence will be assigned little or no credence.[119]

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[113] *Rukundo*, Judgement (AC), para. 188.
[114] *Akayesu*, Judgement (AC), paras. 284-309; *Nyiramasuhuko et al.*, Judgement (TC), paras. 168-169; *Simić et al.*, Judgement (TC), para. 22.
[115] *Kalimanzira*, Judgement (AC), para. 96; *Karera*, Judgement (AC), para. 39.
[116] *Kalimanzira*, Judgement (AC), para. 96; *Bagilishema*, Judgement (AC), paras. 75-81; *Kupreškić et al.*, Judgement (AC), paras. 39, 135.
[117] *Niyitegeka*, Judgement (AC), paras. 100-101.
[118] *Kupreškić et al.*, Judgement (AC), para. 39; *Nyiramasuhuko et al.*, Judgement (TC), paras. 171-172.
[119] *Kalimanzira*, Judgement (AC), para. 96; *Kamuhanda*, Judgement (AC), para. 243.

2.7.4 Corroboration

72. There is no requirement that convictions be made only on evidence of two or more witnesses. The Chamber may rule on the basis of a single testimony if, in its opinion, that testimony is relevant and credible.[120] Corroboration is simply one of many potential factors in the Chamber's assessment of a witness's credibility. If the Chamber finds a witness credible, that witness's testimony may be accepted even if not corroborated. Similarly, even if the Chamber finds that a witness's testimony is inconsistent or otherwise problematic enough to warrant its rejection, it might choose to accept the evidence nonetheless because it is corroborated by other evidence.[121]

73. The ability of the Chamber to rule on the basis of testimonies and other evidence is not bound by any rule of corroboration, but rather on the Chamber's own assessment of the probative value of the evidence before it. The Chamber may freely assess the relevance and credibility of all evidence presented to it. The Chamber notes that this freedom to assess evidence extends even to those testimonies which are corroborated; the corroboration of testimonies, even by many witnesses, does not establish absolutely the credibility of those testimonies.[122]

74. When evidence of only one witness is available in relation to a certain material fact, the Chamber may rely on such evidence even in the absence of corroboration, but should carefully scrutinise all uncorroborated evidence before making any findings on the basis of such evidence.[123]

2.7.5 Circumstantial Evidence

75. The Chamber may infer the existence of a particular fact upon which the guilt of the accused depends on circumstantial evidence, but only if it is the only reasonable conclusion that could be drawn from the evidence presented. If there is another conclusion which is also reasonably open from the evidence, and which is consistent with the non-existence of that fact, the conclusion of guilt beyond reasonable doubt cannot be drawn.[124]

2.7.6 Prior Statements

76. Rule 90(A) of the Rules provides that witnesses shall be heard by the Chamber, and there is a general, though not absolute, preference for live testimony before the Tribunal.[125] Prior out-of-court witness statements are normally relevant only as necessary for the Chamber to assess credibility. While there is no absolute prohibition on accepting prior statements for the truth of

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[120] *Renzaho*, Judgement (AC), para. 556; *Musema*, Judgement (AC), para. 37.
[121] *Ntakirutimana & Ntakirutimana*, Judgement (AC), para. 132.
[122] *Musema*, Judgement (AC), para. 37.
[123] *Kayishema & Ruzindana*, Judgement (AC), para. 320; *Musema*, Judgement (AC), para. 36; *Rutaganda*, Judgement (AC), paras. 28-29; *Nyiramasuhuko et al.*, Judgement (TC), paras. 174-176.
[124] *Bagosora & Nsengiyumva*, Judgement (AC), paras. 515, 562; *Nchamihigo*, Judgement (AC), para. 80; *Karera*, Judgement (AC), para. 34; *Ntagerura et al.*, Judgement (AC), para. 306.
[125] *See Nyiramasuhuko et al.*, Decision in the Matter of Proceedings Under Rule 15*bis*(D) (AC), 24 September 2003, para. 25.

1452. Witness T133 asserted that he had no knowledge of the meeting held in Masango *commune* and that Witness CNAC did not inform him of the meeting.[1859] The Chamber observes, however, that the meeting at Masango *commune* could have been convened without Witness T133's knowledge. The Chamber further does not find as plausible Witness T133's evidence that because of his close friendship and daily contact with Witness CNAC, he would have necessarily been informed of the meeting. Moreover, the Chamber notes that Witness T133 had a family relationship with Nzabonimana, which in the Chamber's view may have motivated the witness to deny Nzabonimana's involvement in the events.

1453. Witness T134 did not know of any orders given by Nzabonimana to destroy Tutsi houses in Masango *commune* in May 1994, or that Mpamo held a meeting with MRND supporters urging them to implement Nzabonimana's orders.[1860] Again, however, the Chamber notes that the orders and the meeting could have occurred without the witness's knowledge. Furthermore, the Chamber finds that Witness T134 was not credible when he testified that he would go outside at night while he was hiding at Mpamo's, particularly as Witness T134's wife had informed him that he was being sought after. As Witness T134 was in hiding, he was therefore not necessarily aware of what was going on in the *commune* during the period in question.

1454. Nevertheless, the Chamber observes that the Prosecution relied on the uncorroborated hearsay evidence of a single witness to support this allegation. The Chamber recalls that it may find an allegation proven beyond a reasonable doubt on the basis of a single witness's testimony (2.7.4). However, in this instance, given the hearsay nature of the witness's evidence and the lack of corroborating evidence, the Chamber does not find this evidence sufficient to support this allegation. Having considered the totality of the evidence, the Chamber concludes that the Prosecution has failed to prove beyond a reasonable doubt the allegation contained in Paragraph 47 of the Indictment. In light of the foregoing, the Chamber need not address whether sufficient notice was provided for this event.

3.6.2 Destruction of Houses in Nyamabuye *Commune*

3.6.2.1 Introduction

1455. Paragraph 46 of the Indictment alleges that in April 1994, Callixte Nzabonimana visited the Nyamabuye *commune* office and told the Hutu civilians present to destroy the house of a dead Tutsi and to cover it up, so that in the event of an enquiry, the death of the Tutsi would not be known.[1861]

1456. The Prosecution submits that in May 1994, at the Nyamabuye *commune* office, Nzabonimana gave orders that Tutsi houses, including that of a man named Mpambara, should be destroyed and crops planted to cover any traces of the massacre of Tutsis. These orders were given to ensure that evidence of the massacre was destroyed in case a commission of enquiry carried out investigations. The Prosecution relies on Witness CNAA.[1862]

[1859] T. 12 May 2010 pp. 56-62 (ICS) (Witness T133).
[1860] T. 6 July 2010 pp. 35-36, 53 (ICS) (Witness T134).
[1861] Para. 46 of the Indictment.
[1862] Prosecution Closing Brief, paras. 271-272; T. 20 October 2011 p. 38 (Prosecution Closing Argument).

1806. Under Rwandan law, similar crimes as those at issue in the present case carry the possible penalty of life imprisonment, depending on the nature of the accused's participation.[2223] In this Tribunal, a sentence of life imprisonment is generally reserved for those who planned or ordered atrocities, as well as the most senior authorities.[2224]

1807. Aggravating circumstances must be proven beyond a reasonable doubt.[2225] The Chamber may only consider aggravating circumstances that are pled in the indictment.[2226] Any circumstance included as an element of the crime for which an individual is convicted will not be considered as an aggravating factor.[2227]

1808. The Appeals Chamber has listed various factors which, if proven beyond a reasonable doubt, may qualify as aggravating circumstances. These include the position of the accused, the length of time during which the crime continued, premeditation, the vulnerability of the victims, the status of the victims and the circumstances of the offences generally.[2228] The Appeals Chamber has also held that an abuse of influence by the accused may be considered as an aggravating factor.[2229]

1809. A particularly large number of victims may also be an aggravating circumstance. This is true even for extermination as a crime against humanity, which requires "killing on a large scale," so long as the extent of the killings exceeds that required for extermination.[2230]

1810. Mitigating circumstances need only be established by a balance of probabilities.[2231] Such circumstances include cooperation with the Prosecution, voluntary surrender, good character with no prior criminal convictions, comportment in detention, personal and family

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[2223] *Gatete*, Decision on Prosecutor's Request for Referral to the Republic of Rwanda (TC), 17 November 2008, paras. 22-25 (assessing Rwanda's penalty structure); *Kanyarukiga*, Decision on Prosecutor's Request for Referral to the Republic of Rwanda (TC), 6 June 2008, paras. 22-25 (same); *see also Semanza*, Judgement (AC), para. 377, quoting *Serushago*, Judgement (AC), para. 30 ("The command for Trial Chambers to 'have recourse to the general practice regarding prison sentences in the courts of Rwanda does not oblige the Trial Chambers to conform to that practice; it only obliges the Trial Chambers to take account of that practice.'"); *Dragan Nikolić*, Judgement (AC), para. 69.

[2224] *Bagosora et al.*, Judgement (TC), para. 2270, citing *Musema*, Judgement (AC), para. 383 (noting that the leaders and planners of a particular conflict should bear heavier responsibility, with the qualification that the gravity of the offence is the primary consideration in imposing a sentence). Life sentences have been imposed against senior Government and authorities in: *Ndindabahizi*, Judgement (TC), paras. 505, 508, 511 (Minister of Finance); *Niyitegeka*, Judgement (TC), paras. 499, 502 (Minister of Information); *Kambanda*, Judgement (TC), paras. 44, 61-62 (Prime Minister); *Kamuhanda*, Judgement (TC), paras. 6, 764, 770 (Minister of Higher Education and Scientific Research).

[2225] *Nahimana et al.*, Judgement (AC), para. 1038; *Kajelijeli*, Judgement (AC), paras. 82, 294.

[2226] *Renzaho*, Judgement (AC), para. 615; *Simba*, Judgement (AC), para. 82.

[2227] *Ndindabahizi*, Judgement (AC), para. 137.

[2228] *Blaškić*, Judgement (AC), para. 686.

[2229] *Simba*, Judgement (AC), paras. 284-285.

[2230] *Ndindabahizi*, Judgement (AC), para. 135.

[2231] *Nahimana et al.*, Judgement (AC), para. 1038; *Kajelijeli*, Judgement (AC), para. 294.



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Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

IN THE APPEALS CHAMBER

Before:	**Judge Carmel Agius, Presiding** **Judge Mehmet Güney** **Judge Fausto Pocar** **Judge Liu Daqun** **Judge Theodor Meron**
Registrar:	**Mr. Adama Dieng**
Judgement of:	**1 April 2011**

Tharcisse RENZAHO

v.

THE PROSECUTOR

Case No. ICTR-97-31-A

JUDGEMENT

Counsel for the Appellant

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Mr. Barnabé Nekuie

Office of the Prosecutor

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II. STANDARDS OF APPELLATE REVIEW

7. The Appeals Chamber recalls the applicable standards of appellate review pursuant to Article 24 of the Statute. The Appeals Chamber only reviews errors of law which invalidate the decision of the Trial Chamber and errors of fact which have occasioned a miscarriage of justice.[19]

8. Regarding errors of law, the Appeals Chamber has stated:

> Where a party alleges that there is an error of law, that party must advance arguments in support of the submission and explain how the error invalidates the decision. However, if the appellant's arguments do not support the contention, that party does not automatically lose its point since the Appeals Chamber may step in and, for other reasons, find in favour of the contention that there is an error of law.[20]

9. Where the Appeals Chamber finds an error of law in a trial judgement arising from the application of an incorrect legal standard, it will articulate the correct legal standard and review the relevant factual findings of the Trial Chamber accordingly. In so doing, the Appeals Chamber not only corrects the legal error, but, when necessary, also applies the correct legal standard to the evidence contained in the trial record and determines whether it is itself convinced beyond reasonable doubt as to the factual finding challenged by the appellant before that finding may be confirmed on appeal.[21]

10. Regarding errors of fact, it is well established that the Appeals Chamber will not lightly overturn findings of fact made by a Trial Chamber:

> Where the Defence alleges an erroneous finding of fact, the Appeals Chamber must give deference to the Trial Chamber that received the evidence at trial, and it will only interfere in those findings where no reasonable trier of fact could have reached the same finding or where the finding is wholly erroneous. Furthermore, the erroneous finding will be revoked or revised only if the error occasioned a miscarriage of justice.[22]

11. A party cannot merely repeat on appeal arguments that did not succeed at trial, unless it can demonstrate that the Trial Chamber's rejection of those arguments constituted an error warranting the intervention of the Appeals Chamber.[23] Arguments which do not have the potential to cause the

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[19] *Kalimanzira* Appeal Judgement, para. 6; *Nchamihigo* Appeal Judgement, para. 7; *Zigiranyirazo* Appeal Judgement, para. 8; *Karera* Appeal Judgement, para. 7. *See also D. Milo{evi}* Appeal Judgement, para. 12.
[20] *Kalimanzira* Appeal Judgement, para. 7, *referring to Ntakirutimana* Appeal Judgement, para. 11 *and Nchamihigo* Appeal Judgement, para. 8.
[21] *Kalimanzira* Appeal Judgement, para. 8; *Nchamihigo* Appeal Judgement, para. 9; *Zigiranyirazo* Appeal Judgement, para. 10; *Karera* Appeal Judgement, para. 9.
[22] *Kalimanzira* Appeal Judgement, para. 9, *referring to Krstić* Appeal Judgement, para. 40, *Nchamihigo* Appeal Judgement, para. 10, *and Zigiranyirazo* Appeal Judgement, para. 11.
[23] *Kalimanzira* Appeal Judgement, para. 10; *Nchamihigo* Appeal Judgement, para. 11; *Zigiranyirazo* Appeal Judgement, para. 12; *Karera* Appeal Judgement, para. 11. *See also D. Milo{evi}* Appeal Judgement, para. 17.

impugned decision to be reversed or revised may be immediately dismissed by the Appeals Chamber and need not be considered on the merits.[24]

12. In order for the Appeals Chamber to assess arguments on appeal, the appealing party must provide precise references to relevant transcript pages or paragraphs in the decision or judgement to which the challenge is made.[25] Further, the Appeals Chamber cannot be expected to consider a party's submissions in detail if they are obscure, vague, or suffer from other formal and obvious insufficiencies.[26] Finally, the Appeals Chamber has inherent discretion in selecting which submissions merit a detailed reasoned opinion in writing and will dismiss arguments which are evidently unfounded without providing detailed reasoning.[27]

[24] *Kalimanzira* Appeal Judgement, para. 10; *Nchamihigo* Appeal Judgement, para. 11; *Zigiranyirazo* Appeal Judgement, para. 12; *Karera* Appeal Judgement, para. 11. *See also Orić* Appeal Judgement, para. 13.
[25] Practice Direction on Formal Requirements for Appeals from Judgement, 15 June 2007, para. 4(b). *See also Kalimanzira* Appeal Judgement, para. 11; *Nchamihigo* Appeal Judgement, para. 12; *Zigiranyirazo* Appeal Judgement, para. 13.
[26] *Kalimanzira* Appeal Judgement, para. 11; *Nchamihigo* Appeal Judgement, para. 12; *Zigiranyirazo* Appeal Judgement, para. 13; *Karera* Appeal Judgement, para. 12. *See also D. Milo{evi}* Appeal Judgement, para. 16.
[27] *Kalimanzira* Appeal Judgement, para. 11; *Nchamihigo* Appeal Judgement, para. 12; *Zigiranyirazo* Appeal Judgement, para. 13; *Karera* Appeal Judgement, para. 12. *See also D. Milo{evi}* Appeal Judgement, para. 16.



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IN THE APPEALS CHAMBER

Before:	**Judge Fausto Pocar, Presiding** **Judge Mehmet Güney** **Judge Liu Daqun** **Judge Theodor Meron** **Judge Carmel Agius**
Registrar:	**Mr. Adama Dieng**
Judgement of:	**20 October 2010**

EMMANUEL RUKUNDO

v.

THE PROSECUTOR

Case No. ICTR-2001-70-A

JUDGEMENT

Counsel for Emmanuel Rukundo:

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Mr. Benoît Henry

The Office of the Prosecutor:

Mr. Hassan Bubacar Jallow
Ms. Christine Graham
Mr. Abubacarr Tambadou
Mr. Ousman Jammeh
Mr. Shamus Mangan

other forms of responsibility pleaded in the Indictment. In the course of doing so, the Appeals Chamber will consider whether there was a sufficient nexus between Rukundo's acts, which he disputes under this ground of appeal, and the perpetration of the crimes as required by the relevant form of responsibility.

51. In determining Rukundo's role in the murder of Madame Rudahunga and the beating of the four others, the Trial Chamber noted that all four of the Prosecution witnesses who testified about this event connected him to the attacks.[107] It found that Rukundo was at the scene of the abduction and that he followed the vehicle carrying Madame Rudahunga and the soldiers who abducted her.[108] It further found that these same soldiers returned to Saint Joseph's College about 20 minutes later and abducted her children and two other Tutsi civilians.[109] Rukundo's car was also observed in the area of Madame Rudahunga's house after the killing and the beatings.[110] Furthermore, the Trial Chamber noted that Witness BLC attested to hearing him boast that "[w]e entered in Rudahunga's Inyenzi's house, we killed the wife and the children, but the idiot managed to get away",[111] while Witness CCH stated that Rukundo told her that Louis Rudahunga had to be killed.[112] The Appeals Chamber finds that it was reasonable for the Trial Chamber to conclude that this evidence was sufficient to support a finding that Rukundo was involved in the killing of Madame Rudahunga and the beatings of the four others.

52. The Appeals Chamber has explained that an "aider and abettor commitFsğ acts specifically aimed at assisting, encouraging, or lending moral support for the perpetration of a specific crime, and that this support had a substantial effect on the perpetration of the crime."[113] It recalls that there is no requirement of a cause-effect relationship between the conduct of the aider and abettor and the commission of the crime nor that such conduct served as a condition precedent to the commission of the crime.[114] It is sufficient for the aider and abettor's assistance or encouragement to have had a substantial effect on the realisation of that crime,[115] the establishment of which is a "fact-based

[106] *See supra* Section III.A (Ground 1: Alleged Error Relating to the Pleading of Commission).
[107] Trial Judgement, para. 165.
[108] Trial Judgement, paras. 165, 171.
[109] Trial Judgement, para. 171.
[110] Trial Judgement, para. 166.
[111] Trial Judgement, para. 167.
[112] Trial Judgement, para. 168.
[113] *Seromba* Appeal Judgement, para. 44. *See also Karera* Appeal Judgement, para. 321; *Mrk{i} and [ljivan~anin* Appeal Judgement, para. 81; *Blagojevi} and Joki}* Appeal Judgement, para. 127.
[114] *Mrk{i} and [lijivan~anin* Appeal Judgement, para. 81; *Blagojevi} and Joki} Appeal* Judgement, para. 134; *Blaškić* Appeal Judgment, para. 48.
[115] *Mrk{i} and [ljivan~anin* Appeal Judgement, para. 81; *Ori}* Appeal Judgement, para. 43; *Nahimana et al.* Appeal Judgement, para. 482; *Blagojevi} and Joki}* Appeal Judgement, para. 134.

inquiry".[116] The Appeals Chamber is satisfied that the Trial Chamber's findings on Rukundo's role in the attacks, as set out above, demonstrate that his acts substantially contributed to the commission of the crimes.

53. With regard to the *mens rea* required for aiding and abetting, the Appeals Chamber has held that "Ftğhe requisite mental element Ł...ğ is knowledge that the acts performed assist the commission of the specific crime of the principal perpetrator."[117] Specific intent crimes such as genocide also require that "the aider and abettor must know of the principal perpetrator's specific intent."[118]

54. Bearing in mind the Trial Chamber's findings that these attacks formed part of a larger campaign of ethnic violence in the area and country,[119] the Appeals Chamber is convinced that the perpetrators acted with both genocidal intent and knowledge of the widespread and systematic attack against Tutsi civilians. In his consultation with the assailants prior to the crimes, his presence during the abduction of Madame Rudahunga, and his subsequent boasting of the killing, Rukundo would have been aware of his role in the crimes and the perpetrators' *mens rea*. Consequently, the Appeals Chamber finds that Rukundo's actions aided and abetted genocide and murder as a crime against humanity.

(c) *Chapeau* Elements of Crimes Against Humanity

55. Rukundo challenges his conviction for murder as a crime against humanity on the basis that Madame Rudahunga did not belong to a political group and it was not proven that he was aware of the existence of a widespread or systematic attack on a civilian population.[120]

56. Article 3 of the Statute requires that the crimes be committed "as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds." In the present case, the Trial Chamber found that the killing of Madame Rudahunga, a Tutsi, was part of a widespread and systematic attack against Tutsi civilians on ethnic grounds.[121]

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[116] *Blagojevi} and Joki}* Appeal Judgement, para. 134.
[117] *Muvunyi* Appeal Judgement, para. 79. *See also Karera* Appeal Judgement, para. 321; *Mrk{i} and [ljivan~anin* Appeal Judgement, para. 49.
[118] *Blagojevi} and Joki}* Appeal Judgement, para. 127; *Blagoje Simi}* Appeal Judgement, para. 86.
[119] Trial Judgement, paras. 565-568, 581-582.
[120] Rukundo Appeal Brief, paras. 75, 76.
[121] Trial Judgement, paras. 581, 582. The Appeals Chamber also recalls that the individual victim's membership in a national, political, ethnic, racial or religious group is not required for a conviction for crimes against humanity, provided that all other necessary conditions are met, in particular that the act in question is part of a widespread or systematic attack against any civilian population. *See, e.g.*, *Muhimana* Appeal Judgement, paras. 172-174 (upholding a conviction for the rape as a crime against humanity of two women whose ethnicity was unknown but which was found to be part of a widespread and systematic attack on ethnic grounds against Tutsis). *See also Mrk{i} and [ljivan~anin*

Witnesses BLP, BLJ, and BLC is contradictory with respect to the date and time of the events as well as the type of vehicle used.[177]

76. The Appeals Chamber recalls its holding in the *Nahimana et al.* Appeal Judgement that:

> two testimonies corroborate one another when one *prima facie* credible testimony is compatible with the other *prima facie* credible testimony regarding the same fact or a sequence of linked facts. It is not necessary that both testimonies be identical in all aspects or describe the same fact in the same way. Every witness presents what he has seen from his own point of view at the time of the events, or according to how he understood the events recounted by others. It follows that corroboration may exist even when some details differ between testimonies, provided that no credible testimony describes the facts in question in a way which is not compatible with the description given in another credible testimony.[178]

77. The Appeals Chamber finds no error in the Trial Chamber's finding that Witnesses BLP, BLJ, BLC, and CCH corroborated each other on the sequence of events at Saint Joseph's College, despite the fact that they did not all testify about the same fact or from the same vantage point. The Trial Chamber took into consideration that Witness BLJ corroborated Witness BLP on the fact that Madame Rudahunga was abducted from Saint Joseph's College by a group of soldiers and that the same soldiers returned about 20 minutes later and abducted two of her children and two other Tutsi civilians.[179] It also found that these two witnesses corroborated each other regarding the fact that Rukundo was acting with the soldiers.[180] While Witness BLP saw Rukundo leave Saint Joseph's College with the soldiers and Madame Rudahunga, Witness BLJ was told of "Father Emmanuel's car" still being in the vicinity of the attack, and she saw Rukundo at the hospital with the same soldiers who abducted her.[181] Although their evidence was different, both gave evidence that Rukundo was involved.

78. Similarly, the Trial Chamber noted that Witness BLC's evidence that Rukundo boasted about the killing of the Rudahunga family was consistent with the evidence of Witnesses BLP and BLJ.[182] Witness BLC's evidence was from a different perspective, as he was not present at the events but was told about them by Rukundo. However, it nonetheless supports the conclusion that Rukundo was involved in the attacks.

79. Finally, the Trial Chamber noted that Witness CCH's evidence that Rukundo told her that Louis Rudahunga had to be killed and that they had found documents at Louis Rudahunga's house

[177] Rukundo Appeal Brief, paras. 187, 192-195; Rukundo Reply Brief, paras. 83-86.
[178] *Nahimana et al.* Appeal Judgement, para. 428. *See also Karera* Appeal Judgement, para. 173.
[179] Trial Judgement, paras. 165, 166.
[180] Trial Judgement, para. 166.
[181] Trial Judgement, paras. 165, 166.
[182] Trial Judgement, para. 167.

was consistent with Witness BLC's evidence.[183] According to Witness BLC, Rukundo had said that Louis Rudahunga had escaped but that Madame Rudahunga and her children had been killed.[184]

80. The Appeals Chamber finds no error in the Trial Chamber's reasoning that this evidence is corroborative of Witness BLP's evidence despite coming from different perspectives.

81. The Appeals Chamber further recalls that minor inconsistencies commonly occur in witness testimony without rendering the testimony unreliable and that it is within the discretion of the Trial Chamber to evaluate such inconsistencies and to consider whether the evidence as a whole is credible, without explaining its decision in every detail.[185]

82. The Appeals Chamber is not convinced that the evidence of Witnesses BLP, BLJ, and BLC regarding the dates of the abductions from Saint Joseph's College is sufficiently inconsistent to render unreasonable the Trial Chamber's finding that these witnesses corroborated each other. Witnesses BLP and BLJ placed the event in late April 1994 and on 27 April 1994 respectively,[186] whereas Witness BLC testified that it was in May when Rukundo boasted that they had killed Madame Rudahunga and her children after coming from the Rudahunga home.[187] While Witness BLC's evidence about the date of the attacks varies from that of Witnesses BLP and BLJ, the latter two witnesses' testimony is consistent. As Witnesses BLP and BLJ were the two eyewitnesses to the attack, the Appeals Chamber does not consider that this minor inconsistency in Witness BLC's evidence undermines the general finding that these witnesses corroborated each other.

83. Similarly, while the Trial Chamber did not explicitly address at what time the abductions and attacks on Madame Rudahunga, her children, and the two others took place, the Appeals Chamber considers that the inconsistencies between the witnesses' evidence were minor and that their testimonies on this point were largely consistent. All the witnesses placed the abductions in the

[183] Trial Judgement, para. 168. *See also* Trial Judgement, para. 158.
[184] Trial Judgement, para. 154.
[185] *Karera* Appeal Judgement, para. 174; *Kvočka et al.* Appeal Judgement, para. 23.
[186] Trial Judgement, paras. 96, 101.
[187] T. 7 December 2006 p. 39. Witness BLC did not specify the date on which he heard Rukundo boasting about the killing of the Rudahunga family during his examination-in-chief. T. 4 December 2006 pp. 21, 22. However, during cross-examination he stated: "A. I'm talking about a particular day but not a date that I recall. I'm talking about the images that I recall, the weather. It had just rained, for example, and I did not say that it was such a date. Q. Witness, are you able to situate this event in April, May, early – early April, early May – early April, early – end of May, early April, end of May? A. It is true that it was a certain period, obviously not in April. It must have been in May, certainly. Q. (Microphones overlapping) A. It was – I believe it was around mid May, but it's certain that it was in May, not in April. That I recall." *See* T. 7 December 2006 p. 39. When confronted with the assertion that Madam Rudahunga died in the middle of April 1994, Witness BLC stated: "Of course. You can contest or question the time. You see, when I came here, I said, 'Let me not be asked questions about specific dates.'" *See* T. 7 December 2006 p. 41.

According to Rukundo, Witness BLC's testimony is inconsistent with the accounts of Witnesses CSF and CSG in relation to his location during the abductions.[470] Finally, Rukundo acknowledged that Witnesses CCH and CCG did know him.[471] However, he contends that they would have heard about his role in any of the abductions, but did not mention it.[472]

195. The Appeals Chamber recalls that a Trial Chamber must take into account the difficulties associated with identification evidence in a given case and must carefully evaluate any such evidence before accepting it as the basis for sustaining a conviction.[473] The Trial Chamber relied principally on Witness CSF's account and considered the evidence of Witnesses CSG and BLC as corroboration.[474] Although in summarizing their evidence it noted that they did not previously know Rukundo and that the basis of their identification was hearsay,[475] it did not expressly discuss this issue in its deliberations. Trial Chambers are not required to refer to every piece of evidence on the trial record.[476] However, the Appeals Chamber considers that the Trial Chamber's failure to address these points amounts to a failure to provide a reasoned opinion.

196. Nonetheless, the Appeals Chamber is not convinced that this error invalidated the Trial Chamber's reliance on these witnesses' accounts. Specifically, Witness CSF testified that he learned of Rukundo's identity from religious personnel who knew him and attended his ordination.[477] Therefore, although hearsay from unidentified sources, this additional and specific detail provides greater indicia of reliability.

197. With respect to Witness BLC's identification of Rukundo, the Appeals Chamber recalls that, in addition to observing Rukundo's role in the abductions, the witness overheard him boast of killing Madame Rudahunga.[478] This claim is similar to what Witness CCH heard Rukundo say on another occasion in relation to that killing.[479] In view of the Trial Chamber's findings on Rukundo's role in Madame Rudahunga's death,[480] the Appeals Chamber considers that this provides a reasonable basis for his identification. The Appeals Chamber also observes that Witness BLC was a seminarian, spent time near the seminary's administration building, and saw Rukundo spending

[470] Rukundo Appeal Brief, para. 131.
[471] Rukundo Appeal Brief, para. 132.
[472] Rukundo Appeal Brief, para. 132.
[473] *Limaj et al.* Appeal Judgement, para. 30; *Kamuhanda* Appeal Judgement, para. 234; *Kupre{ki} et al.* Appeal Judgement, para. 34.
[474] Trial Judgement, paras. 338, 361.
[475] Trial Judgement, paras. 278, 286, 288, 295, 296.
[476] *Nchamihigo* Appeal Judgement, para. 121; *Kajelijeli* Appeal Judgement, paras. 59, 60; *Kvo~ka et al.* Appeal Judgement, para. 23.
[477] Trial Judgement, para. 278. *See also* T. 13 February 2007 pp. 3, 9, 17.
[478] Trial Judgement, paras. 106, 297.
[479] Trial Judgement, para. 109.

time with another priest, whom the witness knew.[481] Given this background, he would have also been better placed to verify Rukundo's identity.

198. Witness CSG heard other refugees say, "[y]ou have to flee because Emmanuel Rukundo [is] coming", each time he arrived at the seminary.[482] When the witness first saw Rukundo, he specifically discussed with the other refugees why they referred to him as "Father Rukundo" given that he appeared to be a soldier.[483] The Appeals Chamber considers that, when taken together with the identification evidence of Witnesses CSF and BLC, it is clear that a number of refugees at the Saint Léon Minor Seminary were in a position to identify Rukundo.

199. The Appeals Chamber is not persuaded that the various differences between the accounts of Witnesses CSF, CSG, BLC, CCH, and CCG call into question the identification evidence of the main witnesses on this event. As discussed below, the Trial Chamber reasonably explained the discrepancies between the accounts of Witnesses CSF, CSG, and BLC. Although it did not expressly discuss the fact that Witnesses CCH and CCG did not mention Rukundo's role in the abductions, the Appeals Chamber observes that it is highly speculative to suggest that their failure to mention Rukundo's involvement meant that he had none, particularly because they only arrived at the seminary in the second half of May 1994.[484]

(b) Corroboration

200. Rukundo submits that the Trial Chamber erred in finding that Witness CSF's testimony was corroborated by the evidence of Witnesses CSG and BLC in light of the differences in their accounts related to the use of lists, the composition of the groups accompanying Rukundo who conducted the searches, Rukundo's location and active involvement during the searches, the frequency of his visits, and the timing of the abductions.[485]

201. The Appeals Chamber recalls that "corroboration may exist even when some details differ between testimonies, provided that no credible testimony describes the facts in question in a way which is not compatible with the description given in another credible testimony."[486] Although there are various differences between the accounts of Witnesses CSF, CSG, and BLC, as explained in the Trial Judgement, the Trial Chamber clearly expressed its preference for and relied principally

[480] *See supra* Section III.B (Ground 2: Alleged Errors Relating to Saint Joseph College).
[481] Trial Judgement, paras. 291-293, 302, 357.
[482] Trial Judgement, para. 288.
[483] Trial Judgement, para. 288.
[484] Trial Judgement, paras. 306, 310.
[485] Rukundo Appeal Brief, paras. 180-182, 197-211. *See also* Rukundo Reply Brief, paras. 89-94.

on the "firsthand and largely consistent account of [Rukundo's] four visits" provided by Witness CSF.[487] Moreover, it provided reasons for viewing the evidence of Witnesses CSG and BLC simply as corroboration. In reconciling the different descriptions of the events provided by Witnesses BLC and CSG, the Trial Chamber noted their varying vantage points and the impact of Witness CSG's injury, her pregnancy at the time, and the desperate living conditions at the seminary.[488] Therefore, it follows from the Trial Chamber's discussion that it accepted only the specific details of Witness CSF's account and relied only on the fundamental features of the evidence of Witnesses CSG and BLC.[489] The Appeals Chamber can identify no error in this approach since there is no legal requirement for the corroboration of evidence.[490]

202. The Appeals Chamber also finds no merit in Rukundo's suggestion that the Trial Chamber relied solely on Witness CSG to establish that Rukundo used lists to identify refugees notwithstanding its decision not to accept Witness CSG's testimony absent corroboration.[491] It follows from Witness CSF's testimony that Rukundo arrived with a list and handed it to soldiers, who then called the names of refugees.[492] Based on this evidence, the Appeals Chamber considers that it was reasonable for the Trial Chamber to determine that Rukundo identified refugees with a list. It is immaterial whether he personally called out the names or whether a soldier did.

203. Accordingly, the Appeals Chamber is not convinced that Rukundo has demonstrated that the Trial Chamber's assessment was unreasonable.

(c) Credibility

204. Rukundo submits that the Trial Chamber unreasonably considered the evidence of Witnesses CSF, CSG, and BLC as credible despite numerous inconsistencies within their accounts as well as the likelihood of collusion between Witnesses CSF and CSG.[493] In particular, Rukundo argues that Witness CSF's evidence is "implausible" because he testified that the four abductions occurred four days apart with the first around 20 April 1994 and the last around 2 June 1994.[494] In addition, Rukundo contends that Witness CSF provided no significant detail with respect to the

[486] *Nahimana et al.* Appeal Judgement, para. 428. *See also Karera* Appeal Judgement, para. 173.
[487] Trial Judgement, para. 339. *See also* Trial Judgement, paras. 338, 361.
[488] Trial Judgement, paras. 349, 357.
[489] *See Simba* Appeal Judgement, para. 103 ("It is within the discretion of the Trial Chamber to evaluate any inconsistencies, to consider whether the evidence taken as a whole is reliable and credible and to accept or reject the 'fundamental features' of the evidence.").
[490] *Nchamihigo* Appeal Judgement, para. 42; *Simba* Appeal Judgment, para. 121; *Rutaganda* Appeal Judgement, para. 504.
[491] Rukundo Appeal Brief, paras. 180-182, 201.
[492] Trial Judgement, paras. 279-281, 339-343.
[493] Rukundo Appeal Brief, paras. 231-247. *See also* Rukundo Reply Brief, paras. 96-99.

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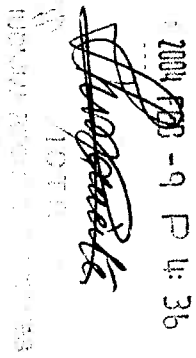
IN THE APPEALS CHAMBER

Original: FRENCH

Before: Judge Theodor Meron, presiding
Judge Fausto Pocar
Judge Claude Jorda
Judge Mohamed Shahabuddeen
Judge Mehmet Güney

Registrar: Adama Dieng

Judgement of: 26 May 2003



GEORGES ANDERSON NDERUBUMWE RUTAGANDA

v.

THE PROSECUTOR

Case No. ICTR-96-3-A

ICTR-96-3-A
9th Feb. 2004
(9913/Abis-9714/Abis)

JUDGEMENT

Office of the Prosecutor:

Norman Farrell
Mathias Marcussen
Norul Rashid
Helen Brady

Counsel for the Appellant:

David Jacobs
David Paciocco

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recalls that, once it has determined the law applicable to a particular issue, it should in principle follow its previous decisions, in the interests of certainty and predictability of the law.[53]

1. Corroboration

27. Rutaganda raised arguments concerning the corroboration of testimonies before the International Tribunal in his grounds of appeal relating to crimes committed at the Amgar garage, and to the murder of Emmanuel Kayitare.

28. The Appeals Chamber recalls that, as a general rule, a Trial Chamber is primarily responsible for assessing and weighing the evidence presented at trial, and that, in this regard, it is incumbent on the Trial Chamber to consider whether a witness is reliable and whether evidence presented is credible.[54] In this exercise, the Trial Chamber has the inherent discretion to decide what approach is most appropriate for the assessment of evidence in the circumstances of the case.[55]

29. Similarly, the issue as to whether it is necessary to rely on one or several witness testimonies to establish proof of a material fact depends on different factors that have to be assessed in the circumstances of each case.[56] It is possible for one Trial Chamber to prefer that a witness statement be corroborated, but neither the jurisprudence of the International Tribunal nor of the ICTY makes this an obligation.[57] Where testimonies are divergent, it is the duty of the Trial Chamber, which heard the witnesses, to decide which evidence it deems to be more probative,[58] and to choose which of the two divergent versions of the same event it may admit.

2. Right to cross-examination

30. Rutaganda raised arguments concerning the right to cross-examination in his grounds of appeal pertaining to general errors of law and to crimes committed at the Amgar garage.

31. Under Rule 85(B) of the Rules, each witness may, following his examination-in-chief, be subjected to cross-examination and re-examination. As to the procedure for cross-examination, Rule 90 (F) (*sic*) stipulates that cross-examination shall be limited to points raised in the examination-in-chief or to matters affecting the credibility of the witness. The Rules provide no other indication as to the scope of cross-examination or the form it should take, and only give general rules on examination and cross-examination of witnesses that are patterned after the *U.S Federal Rules of Evidence*.[59] With regard to leading questions in particular, the Rules do not contain any specific provision thereon, but, as the Appeals Chamber pointed out in the *Akayesu* case:[60]

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[53] Decision, *Laurent Semanza v. The Prosecutor*, Case No. ICTR-97-20-A, 31 May 2002, para. 92 and footnote 125 citing *Aleksovski* Appeal Judgement, paras. 107 to 109.

[54] *Akayesu* Appeal Judgement, para. 132 citing *Aleksovski* Appeal Judgement, para. 63, *Tadić* Appeal Judgement, para 64 and *Furundžija* Appeal Judgement, para. 37.

[55] *Kayishema/Ruzindana* Appeal Judgement, para. 119.

[56] *Musema* Appeal Judgement, para. 90; *Kayishema/Ruzindana* Appeal Judgement, para. 187; *Akayesu* Appeal Judgement, para. 132; *Aleksovski* Appeal Judgement, para. 63; *Tadic* Appeal Judgement, para. 65; *Celebici* Appeal Judgement, para. 506.

[57] *Musema* Appeal Judgement, para. 36 citing *Kayishema/Ruzindana* Appeal Judgement, paras. 154 and 229; *Aleksovski* Appeal Judgement, para. 62; *Tadic* Appeal Judgement, para. 65 and *Celebici* Appeal Judgement, paras. 492 and 506. See also *Kunarac* Appeal Judgement, para. 268.

[58] *Kayishema/Ruzindana* Appeal Judgement, para. 325.

[59] Article 611 of the *U.S. Federal Rules of Evidence* is worded as follows: "(a) Control by Court. The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make interrogation and presentation effective for the ascertainment of the truth; (2) avoid needless consumption of time; and (3) protect witnesses from harassment or undue embarrassment; (b) Scope of the cross-examination. Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the

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> [...] The Defence has not provided evidence which effectively refutes the evidence presented by the Prosecutor in support of the allegations set forth in paragraph 10 of the Indictment.[283]

171. The Prosecution points out that the aforementioned passages of the Trial Judgement cited by the Appellant are quoted out of context, and that the argument reveals a misapprehension of the language used by the Trial Chamber. According to the Prosecution, the language used simply illustrates that the Trial Chamber did what it was required to do, namely, consider all the evidence presented at trial before ruling on the guilt or innocence of the Accused, without misapprehending the principle that the burden of proving guilt beyond reasonable doubt lies on the Prosecution. The Prosecution further submits that, in so doing, the Trial Chamber correctly held that the Appellant's defence was more of a bare denial than an alibi.[284]

172. The Appeals Chamber recalls that the standard of proof to be applied is that of proof beyond a reasonable doubt, and that the burden of proof lies on the Prosecution, insofar as the Accused enjoys the benefit of the presumption of innocence.[285] The Appeals Chamber also endorses the Appeals Chamber's considerations in *Kayishema and Ruzindana* whereby:

> The Appeals Chamber recalls that at the trial stage, the Trial Chamber limited itself to assessing the evidence presented by the parties. The Prosecutor must always prove the existence of the facts charged as well as the accused's responsibility therefor. The Defence, for its part, must produce evidence before the Chamber in support of its claims that the crimes charged cannot be imputed to the accused because of his alibi. However, in that case, the burden of proof is not shouldered by the Defence. It is merely required to produce evidence likely to raise reasonable doubt regarding the case of the Prosecution.[286]

173. In response to the question as to whether the Trial Chamber did, as the second passage cited by the Appellant seems to suggest, make an erroneous application of the burden of proof and shifted it, the Appeals Chamber considers that it is first of all necessary to find out what standard was applied in respect of the burden of proof by the Trial Chamber in the Judgement beyond the impugned paragraph. In this respect, the Appeals Chamber points out that Section 1.4 of the Trial Judgement dealing with evidentiary matters does not set out the standard applicable to the burden of proof.

174. An analysis of parts of the Trial Judgement dealing with the Chamber's factual findings relating to paragraphs 11 to 18 of the Indictment helps to show that the Trial Chamber actually indicated that the onus was on the Prosecution to prove the charges brought against the Appellant beyond a reasonable doubt, and then went on to apply this standard by acquitting the Appellant of the charge against him when it deemed that the Prosecution had not discharged this burden.

> However, the Chamber notes that the Prosecutor has not led evidence to the effect that the *Interahamwe* manning the roadblock had been stationed there by the Accused. Hence, the Chamber finds that it has not been proven beyond reasonable doubt that the Accused stationed *Interahamwe* members at the said roadblock.[287]

> The Chamber notes however that only Prosecution Witness V had testified that the Accused had chaired the meeting and had taken the floor. The Chamber notes that V's testimony on this point is not corroborated by those of Witnesses C and EE, both of whom had declared that the Accused was indeed present at the meeting and had taken a seat at the table of speakers but had himself not taken the floor. Accordingly, the Chamber holds that, on the basis of uncorroborated testimonies

[283] *Ibid.*
[284] Prosecution's Response Brief, paras. 3.137 to 3.140.
[285] See in particular *Kayishema* and *Ruzindana* Appeal Judgement, para. 107.
[286] *Ibid.*, para. 113.
[287] Trial Judgement, para. 226 (cp. also paras. 260, 261, 299, 304, 314, 336, 337).

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> presented to it, it has not been proven beyond a reasonable doubt that the Accused ordered that all Tutsis be tracked and thrown into the river.[288]

175. The Appeals Chamber further underscores the fact that, incidentally, the Trial Chamber explicitly recalled the standard of the burden of proof in most of its legal findings.[289] It is therefore not correct to claim, as the Appellant does, that the Trial Chamber in general misapprehended the principle of presumption of innocence and of burden of proof.

176. The Appeals Chamber considers next that it would be proper to place the passages cited by the Appellant in their context. Paragraph 196 of the Trial Judgement falls within the purview of the factual findings of the Trial Chamber in relation to the charges under paragraph 10 of the Indictment dealing with the distribution of weapons. After finding in paragraph 195 of the Trial Judgement that Prosecution Witnesses J, U, T and Q were credible, and deciding to rely on their testimonies, the Trial Chamber examined in paragraph 196 of the Judgement the Appellant's rebuttal of the evidence brought against him in respect of this charge. The paragraph in question reads as follows:

> The Chamber notes that the testimony of the Accused and Witness DDD indicates that the Accused did leave his house on 8 April, and that he was in Kigali at the Amgar office on 15 April and on 24 April. His defence to the allegations set forth in paragraph 10 of the Indictment is a bare denial. The Chamber notes that under cross-examination, the Defence did not suggest to the Prosecution witnesses that the Accused had not participated in the distribution of weapons, or that he was not present at Nyarugenge *commune* on 8, 15 and 24 April 1994. Further *the Defence did not produce any witnesses to confirm an alibi* by testifying that the Accused was elsewhere when the events described by the Prosecution witnesses took place, as he does in respect of other allegations in the Indictment. A number of Defence witnesses testified that the Accused was very busy selling beer after his return to Kigali on 14 April, but the Chamber considers that selling beer would not have precluded the Accused from also engaging in the distribution of guns as alleged by the Prosecutor. *For these reasons, the Chamber considers that the Defence has not provided evidence which effectively refutes the evidence presented by the Prosecutor in support of the allegations set forth in paragraph 10 of the Indictment.* (Emphasis added)

177. The Appeals Chamber considers that the language used by the Trial Chamber in the last sentence of the paragraph in question is ambiguous with respect to the standard of proof applied, particularly as the said standard has not been previously enunciated in the Judgement. The Appeals Chamber nonetheless concurs with the findings of the Appeals Chamber in *Musema*, which did not consider that the fact that the Trial Chamber assessed "the relative weight and probative value to be accorded to each piece of evidence in the context of all other evidence presented to it in the course of the trial," did not allow for the conclusion that it had shifted the burden of proof, but, on the contrary, was proof of the correct application of the relevant rules of procedure and evidence. In the instant case, it appears that the Trial Chamber first considered that the testimonies of four of the witnesses called by the Prosecution in support of this charge were credible and reliable; and next it considered whether the Appellant's rebuttals were sufficiently supported. The Appeals Chamber understands that this approach is in line with the first passage cited by the Appellant. The Appeals Chamber understands the expression "the Defence has not provided evidence which effectively refutes the evidence presented by the Prosecutor" to mean that, according to the Trial Chamber, the evidence adduced by the Appellant in support of his denial of the charges was not sufficient to cast reasonable doubt on the issue as to whether the Prosecution had discharged the burden of proof beyond a reasonable doubt. The last sentence of the paragraph illustrates this position:

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[288] *Ibid.*, para. 315.

[289] Cp. for example, Trial Judgement paras. 385, 388, 390, 391, 393, 394 and 397.

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> A number of Defence witnesses testified that the Accused was very busy selling beer after his return to Kigali on 14 April, but the Chamber considers that selling beer would not have precluded the Accused from also engaging in the distribution of guns as alleged by the Prosecutor.

178. Accordingly, an analysis of the Trial Chamber's approach in assessing the evidence presented before it by the parties shows that in this instance, it did not depart from the approach used in the rest of the Judgement, and did not apply a different standard of proof nor, as a result, commit an error of law in this respect.

179. The Appellant also raises, in support of his argument, the alleged violation by the Trial Chamber of the rule that the Accused should be given the benefit of the doubt because: first, it considered in paragraph 195 of the Trial Judgement (distribution of weapons) that Witness J was credible on the grounds that, during cross-examination, he had given reasonable answers to the questions put to him regarding the discrepancies between his testimony and his statement prior to the trial;[290] second, it considered in paragraph 253 of the Judgement (attack at the Amgar garage), with regard to Witness Q, "that the said contradictions can probably be attributed to the trauma he may have suffered from having to recount the painful events he witnessed and of which he was a victim";[291] third, it considered as negligible the contradiction between the testimonies of Professor Haglund and of Witness Q and dismissed, in paragraph 259 of the Judgement, the findings by the former on the ground that the Trial Chamber was "not satisfied that the grave site referred to by Witness Q and the one exhumed by Professor Haglund are one and the same."

180. In response, the Prosecution submits that the Trial Chamber, in general, ascribes probative value to the evidence before it based on its relevance and credibility, and that at the end of the proceedings the Prosecution should discharge its burden of proving that all the elements of the crime have been established beyond a reasonable doubt.

181. The Appeals Chamber considers that the aforementioned passages of the Judgement relating to the Trial Chamber's assessment of the probative value of the testimonies of J and Q clearly show that the Chamber actually considered the testimonies to be credible and reliable after having measured the scope of the discrepancies referred to above. There is nothing to show that following this assessment the Trial Chamber entertained any doubts on the matter, as the Appellant's allegation seems to suggest. The Appeals Chamber notes that the examples cited *supra* have also been used by the Appellant as allegations of factual errors in support of his ground of appeal pertaining to the distribution of weapons and to crimes committed at Amgar garage. The Appeals Chamber will thus re-endorse the relevant findings it made with reference to those grounds of appeal under Parts VI and VII of this Judgement. The Appeals Chamber holds that the argument that the examples in question also reflect a violation of the rule that the Accused should be given the benefit of the doubt is clearly unfounded.

182. The Appellant also submits that the approach taken by the Trial Chamber with regard to the non-corroboration of evidence denotes a violation of the principle that it is the Prosecution's duty to prove the charges beyond a reasonable doubt. The Appellant refers in particular to a passage in paragraph 18 of the Trial Judgement:

> *The Chamber's approach is that it will rely on the evidence of a single witness, provided such evidence is relevant, admissible and credible.*

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[290] Defence Appeal Brief, paras. 74 to 75. Defence Reply Brief, paras. 3.68 to 3.72.
[291] *Ibid.*

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The Appellant submits that, where corroboration of some evidence is not effectively requested, it is not sufficient for the said evidence to be "relevant, admissible and credible" for it to serve validly as the only basis for conviction; it must also be sufficiently strong to be believed beyond all reasonable doubt.[292] The Prosecution does not respond specifically to this contention.

183. With reference to paragraph 18 of the Trial Judgement, the Appeals Chamber notes that the French version of the passage cited above differs significantly from the English, without such difference affecting the assessment of the contention raised by the Appellant. The French version reads as follows:

> La Chambre note qu'aux termes de l'Article 96i), la corroboration du témoignage de la victime n'est pas requise en cas de viol et de violences sexuelles. La Chambre s'associe aux *Jugement Akayesu* et au *Jugement « Le Procureur contre Dusko Tadic »* (le « *Jugement Tadic* ») selon lesquels le fait que le Règlement stipule que la corroboration du témoignage de la victime de violences sexuelles n'est pas requise n'autorise pas à déduire que la corroboration de témoignages est nécessaire dans les cas de crimes autres que les violences sexuelles. Toutefois, la Chambre examinera avec prudence tout témoignage unique. *Elle pourrait s'en contenter pour autant qu'elle le juge pertinent, recevable et crédible.* Conformément à l'Article 89 du Règlement, la Chambre peut recevoir tout élément de preuve pertinent dont elle estime qu'il a valeur probante. Le Règlement n'exclut pas la preuve par ouï-dire et la Chambre est libre d'examiner des preuves de cette nature. Cependant, lorsqu'elle décide de le faire, la Chambre procède en toute précaution[293]

184. The Appeals Chamber considers that paragraph 18 of the Judgement contains a relevant and accurate statement on the application of the rules of evidence, drawn on the Rules and case-law of the Tribunal with respect to the evidence of a single witness, hearsay evidence, and the principle of caution related thereto. The indication by the Trial Chamber that it would rely on the evidence of a single witness, so long as it considered such evidence relevant, admissible and credible, should not be interpreted to mean a misapprehension of the general rule of evidence, which requires the Prosecution to prove its case beyond a reasonable doubt. As indicated earlier, although Section 1.4 of the Judgement devoted to evidentiary matters does not contain a reminder of the principle relating to the burden of proof, the Trial Chamber well and truly applied it throughout the Judgement. The Appeals Chamber finds no reason to think that the passage cited, which is perfectly compatible with this principle, would signify that the Trial Chamber implicitly decided not to apply the principle in respect of uncorroborated evidence. The argument must therefore be dismissed.

F. Error relating to prior witness statements [294]

185. The Appellant submits that the Trial Chamber committed an error of law by adopting erroneous and general criteria in its assessment of the contradictions between witnesses' prior statements and their in-court testimony, with a view to minimizing their importance.[295] According to him, this error has occasioned an incorrect assessment of the evidence presented by the Prosecution, and this calls for a retrial.[296] In support of his allegations, the Appellant invokes in particular the Judgement rendered in *Kayishema and Ruzindana.*[297]

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[292] Defence Appeal Brief, paras. 78 to 79.
[293] Emphasis added and references omitted.
[294] Supplemental Defence Document, para. 6.
[295] Defence Appeal Brief, paras. 82 to 93; Defence Reply Brief, paras. 3.73 to 3.80; Supplemental Defence Document, p. 9.
[296] Supplemental Defence Document, p. 11 and Defence Appeal Brief, para. 93.
[297] Defence Appeal Brief, paras. 83, 84, 87, 88 and 93. According to the Prosecution, the Trial Chamber which heard the *Kayishema and Ruzindana* case was merely stating the standard applicable in all cases, namely that "it is not for the Trial Chamber to search for reasons to excuse inadequacies in the Prosecution's investigative process." (*Kayishema and Ruzindana* Judgement, para. 78 cited in Prosecution's Response Brief, para. 3.148).

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(c) Direct and public incitement to commit genocide;

(d) Attempt to commit genocide;

(e) Complicity in genocide.

524. As recalled by the Appeals Chamber of ICTY in *Jelisic*, the Statute[980] defines the specific intent required for the crime of genocide as "the intent to accomplish certain specific types of destruction"[981] against a targeted group. Pursuant to the Statute, therefore, specific intent implies that the perpetrator seeks to destroy, in whole or in part, a national, ethnic, racial or religious group as such, by means of the acts enumerated under Article 2 of the said Statute.[982] In order to prove specific intent, it must be established that the enumerated acts were directed against a group referred to under Article 2 of the Statute and committed with the intent to destroy, in whole or in part, the said group as such.

525. The crime of genocide sometimes implies several offenders participating in the commission of the crime. The Appeals Chamber concurs with the Appellant that in order to find a person guilty of genocide, it must be established that such a person was personally possessed of the specific intent to commit the crime at the time he did so. Nonetheless, as stated by the Appeals Chamber in *Kayishema/Ruzindana*, "explicit manifestations of criminal intent are [...] often rare in the context of criminal trials".[983] In the absence of explicit, direct proof, the *dolus specialis* may therefore be inferred from relevant facts and circumstances.[984] Such an approach prevents perpetrators from escaping convictions simply because such manifestations are absent.[985] The validity of this interpretation was confirmed by the Appeals Chambers of both *ad hoc* Tribunals.[986] With respect to the facts and circumstances from which specific intent may be inferred, the ICTY Appeals Chamber in *Jelisic* stated that such facts are, *inter alia*:

> [...] *the general context, the perpetration of other culpable acts systematically directed against the same group, the scale of atrocities committed, the systematic targeting of victims* on account of their membership of a particular group, *or the repetition of destructive and discriminatory acts.*[987] (Emphasis added)

The ICTY Appeals Chamber also indicated that the existence of a plan or policy is not "a legal ingredient" of the crime of genocide,[988] but that proving the existence of such a plan or policy may facilitate proof of the crime.[989] Moreover, the *Kayishema/Ruzindana* Appeal Judgement reveals that making anti-Tutsi utterances or being affiliated to an extremist anti-Tutsi group is not a *sine qua non* for establishing *dolus specialis*.[990] The Appeals Chamber holds the view that establishing such a fact may, nonetheless, facilitate proof of specific intent.

526. The Appeals Chamber will now examine the Trial Chamber's determination of the *dolus specialis*. It appears helpful, to this end, to examine paragraphs 398, 399 and 400 of the Trial Judgement, which read as follows:

> 398. In its findings on the applicable law with respect to the crime of genocide, the Chamber held that, in practice, intent may be determined, on a case by case basis, through a logical inference from the material evidence submitted to

[980] Article 4(2) of the ICTY Statute corresponds to Article 2(2) of the ICTR Statute.
[981] *Jelisic* Appeal Judgement, para. 45: "The intent to accomplish certain specified types of destruction".
[982] *Ibid.*, para. 46.
[983] *Kayishema/Ruzindana* Appeal Judgement, para. 159.
[984] *Kayishema/Ruzindana* Appeal Judgement, para. 159; *Jelisic* Appeal Judgement, para. 47.
[985] *Kayishema/Ruzindana* Appeal Judgement., para. 159.
[986] *Jelisic* and *Kayishema/Ruzindana*, respectively.
[987] *Jelisic* Appeal Judgement, para. 47.
[988] *Ibid*, para. 48.
[989] *Ibid.*, para. 48.
[990] *Kayishema/Ruzindana* Appeal Judgement, para. 160.

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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

Trial Chamber I

OR: FR.

ICTR-96-3-T
06-DEC-1999
(1723-1549)

Before: Judge Laïty Kama, Presiding
Judge Lennart Aspegren
Judge Navanethem Pillay

Registrar: Mr. Agwu Okali

Judgement of: 6 December 1999

THE PROSECUTOR
VERSUS
GEORGES ANDERSON NDERUBUMWE RUTAGANDA

Case No. ICTR-96-3-T

JUDGEMENT AND SENTENCE

The Office of the Prosecutor:

Ms. Carla Del Ponte
Mr. James Stewart
Mr. Udo Herbert Gehring
Ms. Holo Makwaia

Defence Counsel:

Ms. Tiphaine Dickson

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456. That said, it is clear that the penalties imposed on accused persons found guilty by the Tribunal must be directed, on the one hand, at retribution of the said accused, who must see their crimes punished, and over and above that, on other hand, at deterrence, namely to dissuade for ever, others who may be tempted in the future to perpetrate such atrocities by showing them that the international community shall not tolerate the serious violations of international humanitarian law and human rights.

457. The Chamber also recalls that, in the determination of sentences, it is required under Article 23(2) of the Statute and Rule 101(B) of the Rules to take into account a number of factors including the gravity of the offence, the individual circumstances of the convicted person, the existence of any aggravating or mitigating circumstances, including the substantial co-operation with the Prosecutor by the convicted person before or after his conviction. It is a matter, as it were, of individualizing the penalty.

458. Clearly, however, as far as the individualization of penalties is concerned, the judges of the Chamber cannot limit themselves to the factors mentioned in the Statute and the Rules. Here again, their unfettered discretion in assessing the facts and attendant circumstances should enable them to take into account any other factor that they deem pertinent.

459. Similarly, the factors referred to in the Statute and in the Rules cannot be interpreted as having to be applied cumulatively in the determination of the sentence.

International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

UNITED NATIONS
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IN THE APPEALS CHAMBER

Before: Judge Mohamed Shahabuddeen, Presiding
Judge Patrick Robinson
Judge Liu Daqun
Judge Theodor Meron
Judge Wolfgang Schomburg

Registrar: Mr. Adama Dieng

Judgement of: 12 March 2008

THE PROSECUTOR

v.

ATHANASE SEROMBA

Case No. ICTR-2001-66-A

JUDGEMENT

Office of the Prosecutor:

Mr. Hassan Bubacar Jallow
Ms. Dior Fall
Ms. Amanda Reichman
Mr. Abdoulaye Seye
Mr. Alfred Orono Orono

Counsel for Athanase Seromba:

Mr. Patrice Monthé
Ms. Sarah Ngo Bihegué

78. Third, Athanase Seromba submits that the Trial Chamber violated the legal principle "*unus testis, nullus testis*" by relying on the evidence of Witness CBK, as he was the only witness to testify that Athanase Seromba expelled the employees from the parish.[191]

79. The Appeals Chamber recalls that where a Trial Chamber relies on the evidence of a single witness, this alone does not render its finding erroneous. A witness's testimony need not be corroborated in order to have probative value[192] and a Trial Chamber has the discretion to decide in the circumstances of the case whether corroboration is necessary.[193] Athanase Seromba has failed to demonstrate that the Trial Chamber's reliance on the sole evidence of Witness CBK on this point was erroneous.

2. Alleged Errors relating to Witness NA1

80. As summarized in the Trial Judgement, Defence Witness NA1 testified that he arrived at Nyange parish on 15 April 1994, where he had previously worked between 1992 and 1993.[194] He stated that none of the employees of the parish had been dismissed.[195] Under cross-examination, he testified that he had no idea which employees were among the refugees and that he was not in a position to know who was an employee of the parish and who was not.[196]

81. Athanase Seromba submits that the Trial Chamber erred in attaching "no credibility" to the "precise, coherent and consistent" testimony of Witness NA1.[197] He argues that the Trial Chamber "distorted" the evidence of Witness NA1 given during his cross-examination by "decontextualizing" it.[198] He also claims that the Trial Chamber erroneously referred to certain statements as having been given during cross-examination while, in fact, the witness had made those statements during examination-in-chief.[199]

82. The Appeals Chamber notes that Athanase Seromba refers to the following passage in support of his submission that the Trial Chamber distorted the testimony of Witness NA1:

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[191] Seromba's Appellant's Brief, para. 113.
[192] *See Nahimana et al.* Appeal Judgement, para. 633; *Muhimana* Appeal Judgement, paras. 49, 159, 207; *Gacumbitsi* Appeal Judgement, para. 72; *Kajelijeli* Appeal Judgement, para. 170; *Semanza* Appeal Judgement, para. 153; *Niyitegeka* Appeal Judgement, para. 92; *Rutaganda* Appeal Judgement, para. 29; *Musema* Appeal Judgement, paras. 36-38; *Kvo~ka et al.* Appeal Judgement, para. 576.
[193] *Muhimana* Appeal Judgement, para. 49. *See also Kajelijeli* Appeal Judgement, para. 170, citing *Niyitegeka* Appeal Judgement, para. 92.
[194] Trial Judgement, para. 110.
[195] Trial Judgement, para. 110.
[196] Trial Judgement, para. 111.
[197] Seromba's Appellant's Brief, para. 110.
[198] Seromba's Appellant's Brief, paras. 105, 106.
[199] Seromba's Appellant's Brief, para. 107.

perpetrators of the crime, which would merely constitute the *actus reus* of aiding and abetting.[412] Quite the contrary, the findings of the Trial Chamber allow for only one conclusion, namely, that Athanase Seromba was a principal perpetrator in the killing of the refugees in Nyange church. The Appeals Chamber therefore finds that Athanase Seromba's conduct can only be characterized as "committing" these crimes.

173. The Appeals Chamber recalls that an accused evinces the requisite *mens rea* for committing a crime when he acts with an intent to commit that crime.[413] This stands in contrast to the *mens rea* for aiding and abetting, which "is indicated by the requirement that the act of participation be performed with knowledge that it will assist the principal in the commission of the criminal act."[414]

174. The Appeals Chamber finds, Judge Liu dissenting, that the only reasonable conclusion to be drawn is that, by his acts, Athanase Seromba intended that the approximately 1,500 Tutsi refugees be killed. Therefore, the *mens rea* requirement for committing is satisfied. The Appeals Chamber is satisfied that the acts of Athanase Seromba were not carried out merely with the knowledge that they would assist in the killing of the refugees.

175. The Appeals Chamber now turns to the Prosecution's submission that the Trial Chamber erred by finding that Athanase Seromba did not have the required specific intent to incur liability for genocide. The Appeals Chamber recalls that in addition to intent and knowledge as regards the material elements of the crime of genocide, the mental element of the crime also requires that the perpetrator have acted with the specific intent to destroy a protected group as such in whole or in part.[415]

176. The Trial Chamber correctly held that genocide is a crime requiring specific intent,[416] and that this intent may be proven through inference from the facts and circumstances of a case.[417] In this case, the Trial Chamber, in line with the Appeals Chamber's previous holdings,[418] stated that

> the specific intent of genocide may be inferred from certain facts or indicia, including but not limited to (a) the general context of the perpetration of other culpable acts systematically directed against that same group, whether these acts were committed by the same offender or by others, (b) the scale of atrocities committed, (c) their general nature, (d) their execution in a region or a

[412] *Blaškić* Appeal Judgement, para. 46.
[413] *Blagoje Simić et al.* Trial Judgement, para. 137.
[414] *Kayishema and Ruzindana* Appeal Judgement, para. 186.
[415] GERHARD WERLE, PRINCIPLES OF INTERNATIONAL CRIMINAL LAW 207 (2005), referring *inter alia* to *Akayesu* Trial Judgement, para. 497 *et seq.* and *Jelisić* Appeal Judgement, paras. 45, 50 *et seq.*
[416] Trial Judgement, para. 319.
[417] Trial Judgement, para. 320. *See, e.g., Nahimana et al.* Appeal Judgement, para. 524; *Gacumbitsi* Appeal Judgement, para. 40; *Rutaganda* Appeal Judgement, para. 525; *Kayishema and Ruzindana* Appeal Judgement, para. 159.
[418] For examples of relevant facts and circumstances from which the specific intent may be inferred, *see also* *Gacumbitsi* Appeal Judgement, paras. 40, 41; *Rutaganda* Appeal Judgement, para. 525.

> country, (e) the fact that the victims were deliberately and systematically chosen on account of their membership of a particular group, (f) the exclusion, in this regard, of members of other groups, (g) the political doctrine which gave rise to the acts referred to, (h) the repetition of destructive and discriminatory acts and (i) the perpetration of acts which violate the very foundation of the group or considered as such by their perpetrators.[419]

177. The Appeals Chamber finds, Judge Liu dissenting, that while the Trial Chamber correctly set out the applicable law, it erred in concluding that the Prosecution had not proved that Athanase Seromba acted with the required specific intent. The Appeals Chamber particularly notes that, in any event at least on 16 April 1994, Athanase Seromba approved and joined the decision of Kayishema, Ndahimana, Kanyarukiga, Habarugira and other persons to destroy the church when no other means were available to kill the Tutsis who were seeking refuge inside.[420] Further, Athanase Seromba advised the bulldozer driver on where the weakest side of the church was and directed him to destroy the church, assuring him that it would be Hutus who would be able to rebuild it.[421] The Appeals Chamber notes that this in effect meant killing the Tutsis inside the church. Indeed, Athanase Seromba knew that there were approximately 1,500 Tutsis in the church and that the destruction of the church would necessarily cause their death.

178. Moreover, on two occasions, already before the destruction of the church on 16 April 1994, Athanase Seromba turned away Tutsi refugees from the presbytery, whereupon two of them were killed.[422] With respect to these factual findings, the Trial Chamber relied on the testimony of several witnesses. Witness CBJ, who the Trial Chamber deemed credible with respect to the circumstances of Meriam's death,[423] testified as follows:

> At the beginning, when people started fleeing and taking refuge at the church, she took refuge in the church after the death of Habyarimana. But on the 14th -- or before the 14th of April 1994, Father Seromba -- the girls from Miriam's family and the people who were educated, in particular the teachers -- so Father Seromba had given to these people lodgings, accommodation at the *presbytery*. But on the 14th, when they held the meeting, the purpose of which was to decide on our being killed, he sent away these people to whom he had provided accommodation. So Miriam and her family joined us in the church. I was together with Miriam and her family in the church. And on the 15th, the doors were opened for us and we came out. And after having gotten outside, during the attacks, Miriam went to the same building in which she was before, and Father Seromba, once again, sent her -- sent away the people who were in the rear court to the *presbytery*, and where these people were coming out, they were being shot at. Miriam was captured after she had been sent away by Father Seromba. She was beaten up in front of the secretariat, and I saw people bring her to the front of the church. I didn't quite observe the scene, but subsequently I saw

[419] Trial Judgement, para. 320.
[420] Trial Judgement, para. 268.
[421] Trial Judgement, paras. 239, 269.
[422] Trial Judgement, paras. 193, 201, 202. As a further indicia for Athanase Seromba's *mens rea vis-à-vis* the Tutsis, the Appeals Chamber notes that four of the parish's six employees were dismissed by him on 13 April 1994, all of them Tutsis. The remaining employees were Hutus. *See* Trial Judgement, para. 114.
[423] Trial Judgement, para. 201.

Affaire No.ICTR-98-39-S

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International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

Trial Chamber I

OR : FR

Before: Judge Laïty Kama, Président de Chambre
Judge Lennart Aspegren
Judge Navanethem Pillay

Registry: Mr. Agwu Okali

Decision of: 5 February 1999

THE PROSECUTOR
VERSUS
OMAR SERUSHAGO

Case no: ICTR-98-39-S

SENTENCE

Office of the Prosecutor:

Mr. Bernard Muna, Deputy Prosecutor
Mr. Mohamed Othman, Senior Legal Adviser
Ms Josée D'Aoust, Legal Adviser

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Tribunal pénal international pour le Rwanda
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NAME / NOM: MINOUA ANTOINE
SIGNATURE: ..... DATE: 25/02/99

Counsel for the Defence:

Mr. Mohamed Ismail

by the accused with the Prosecutor before or after his conviction. It is a matter, as it were, of individualizing the penalty.

22. Clearly, however, as far as the individualization of penalties is concerned, the judges of the Chamber cannot limit themselves to the factors mentioned in the Statute and the Rules. Here again, their unfettered discretion to evaluate the facts and attendant circumstances should enable them to take into account any other factor that they deem pertinent.

23. Similarly, the factors at issue in the Statute and in the Rules cannot be interpreted as having to be mandatorily cumulative in the determination of the sentence.

III. Case on Merits

24. Having reviewed the principles set out above, the Trial Chamber proceeds to consider all relevant information submitted by both parties in order to determine an appropriate sentence in terms of Rule 101 of the Rules.

A. Facts of the Case

25. In addition to the guilty plea of Omar Serushago, the Prosecutor submitted to the Chamber a document entitled "Plea Agreement between Omar Serushago and the Office of the Prosecutor", signed by the representatives of the Prosecutor, on the one hand, and Omar Serushago and his defence counsel, Mohamed Ismail, on the other hand. In this document, Omar Serushago makes full of all the relevant facts alleged in counts one to four of the indictment, facts pertaining exclusively to count 5 of the indictment having been withdrawn by the Prosecutor with the permission of the Chamber. In particular:

> (i) Omar Serushago acknowledges that there was in Rwanda between 7 April-17 July 1994 a widespread or systematic attack against a civilian population, notably on civilian Tutsi and moderate Hutu, on political, ethnic or racial grounds, and which resulted in the death of hundreds of thousands of persons throughout Rwanda. Omar Serushago admits that the purpose of the mass killings of the Tutsi in Rwanda and those in Gisenyi between April and July 1994 was to exterminate them. Omar Serushago further recognizes that this is evidenced by the selective searching and targeting of Tutsi; the indiscriminate nature of the mass killings which victimized women and children, young people and old people alike, and the fact that they were pursued in the places where they had taken refuge, i.e. prefectures and communal offices, schools, churches and stadiums with the intent of exterminating them.
>
> (ii) Omar Serushago acknowledges that Gisenyi, the prefecture of origin of the deceased President, Juvénal Habyarimana, located in northwestern Rwanda, was the bastion of the *Mouvement républicain national pour la démocratie et le développement* (MRND) and the *Coalition pour la défense de la république* (CDR). He further declares that several prominent civil and military leaders who had espoused the extremist Hutu



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Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

IN THE APPEALS CHAMBER

Before:	**Judge Patrick Robinson, Presiding** **Judge Mehmet Güney** **Judge Fausto Pocar** **Judge Liu Daqun** **Judge Carmel Agius**
Registrar:	**Mr. Adama Dieng**
Judgement of:	**28 September 2011**

Ephrem SETAKO

v.

THE PROSECUTOR

Case No. ICTR-04-81-A

JUDGEMENT

Counsel for the Appellant	**Office of the Prosecutor**
Prof. Lennox Hinds	Mr. Hassan Bubacar Jallow Mr. James J. Arguin Ms. Deborah Wilkinson Mr. Ousman Jammeh Ms. Thembile Segoete Ms. Christina Fomenky Ms. Betty Mbabazi

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30. Setako avers that the Trial Chamber erred in finding Witnesses SLA and SAT credible.[82] In particular, he submits that the Trial Chamber erred in its assessment of: (a) their prior confessions and statements;[83] (b) inconsistencies between Witness SLA's testimony in the present case and his testimony in the *Ndindiliyimana et al.* case;[84] (c) inconsistencies between the testimonies of Witnesses SLA and SAT in the present case;[85] (d) allegations of fabrication and manipulation of evidence;[86] (e) allegations of collusion;[87] and (f) Witnesses SLA's and SAT's evidence in light of the fact that they were accomplice witnesses.[88]

31. The Appeals Chamber will consider these challenges in turn. At the outset, it recalls that it is within the discretion of a trial chamber to evaluate inconsistencies in the evidence, to consider whether the evidence taken as a whole is reliable and credible, and to accept or reject the fundamental features of the evidence.[89] The Appeals Chamber will defer to a trial chamber's judgement on issues of credibility, including its resolution of disparities among different witnesses' accounts, and will only find an error of fact if it determines that no reasonable trier of fact could have made the impugned finding.[90] Furthermore, corroboration may exist even when some details differ between testimonies, provided that no credible testimony describes the facts in question in a way which is not compatible with the description given in another credible testimony.[91]

(a) Prior Confessions and Statements

32. Witnesses SLA and SAT made several confessions to the Rwandan judicial authorities about their participation in crimes committed during the genocide. Witness SLA made a *pro justitia* statement in January 1997[92] and a confession and guilty plea in July[93] and August 1999.[94] Witness SAT confessed and entered a guilty plea in March 2001[95] and May 2005.[96] Both witnesses

[82] Setako Notice of Appeal, paras. 13, 25, 41-52; Setako Appeal Brief, paras. 98, 99, 154-185; AT. 29 March 2011 pp. 4-15, 37-40. *See also* Setako Brief in Reply, paras. 19, 20, 22-43.
[83] Setako Notice of Appeal, paras. 36, 41-47; Setako Appeal Brief, paras. 89-92, 94-96, 140, 154-175.
[84] Setako Notice of Appeal, paras. 48-50, 52; Setako Appeal Brief, paras. 93, 97, 169, 176-184.
[85] Setako Notice of Appeal, paras. 24, 31, 51; Setako Appeal Brief, paras. 79-82, 87, 128-139, 185.
[86] Setako Notice of Appeal, para. 37, 40; Setako Appeal Brief, paras. 142-145, 152, 153. *See also* Setako Brief in Reply, paras. 22-24.
[87] Setako Notice of Appeal, paras. 38, 39; Setako Appeal Brief, paras. 146-151.
[88] Setako Notice of Appeal, para. 25; Setako Appeal Brief, paras. 98, 99, 141, 166; AT. 29 March 2011 pp. 8, 39. *See also* Setako Brief in Reply, para. 29.
[89] *Rukundo* Appeal Judgement, para. 207; *Simba* Appeal Judgement, para. 103.
[90] *See supra*, para. 10. *See also Renzaho* Appeal Judgement, para. 355; *Gacumbitsi* Appeal Judgement, para. 70.
[91] *Rukundo* Appeal Judgement, para. 201; *Karera* Appeal Judgement, para. 173; *Nahimana et al.* Appeal Judgement, para. 428.
[92] Defence Exhibit 47.
[93] Prosecution Exhibit 21.
[94] Defence Exhibit 48.
[95] Prosecution Exhibit 23.
[96] Prosecution Exhibit 24.

46. Setako submits that the Trial Chamber erred in so finding.[123]

47. The Prosecution responds that Setako does not demonstrate an error in the Trial Chamber's conclusion that Witness SLA's claim of torture was irrelevant to its assessment of his evidence.[124]

48. The Appeals Chamber recalls that a trial chamber may rely on part of a witness's testimony and reject other parts.[125] Furthermore, the Appeals Chamber notes that the Trial Chamber only relied on Witness SLA's testimony where corroborated.[126] The Trial Chamber was therefore entitled to disregard Witness SLA's claim of torture and still rely on his evidence with respect to the 25 April and 11 May Killings.

49. Accordingly, the Appeals Chamber dismisses Setako's argument.

b. Admission of Lying in Confessions

50. Setako submits that the Trial Chamber erred by failing to consider that Witness SLA admitted to having lied in his confessions and that this admission affected the "veracity and truthfulness in his testimony".[127] Specifically, Setako challenges the Trial Chamber's failure to properly assess the witness's explanation that, if he had told the truth, he would have risked being killed by his co-perpetrators with whom he was incarcerated.[128] Setako argues that "[t]he problem with this explanation is that it does not explain his failure to mention the massacres at Mukamira".[129]

51. The Prosecution responds that Setako ignores Witness SLA's explanations.[130]

52. The Appeals Chamber notes that Setako does not indicate in which confessions Witness SLA is alleged to have lied. However, Setako refers to portions of Witness SLA's testimony in which the Defence confronted the witness with his January 1997 *pro justitia* statement and his confession from July 1999.[131] A review of the trial record shows that Witness SLA's explanation

[123] Setako Notice of Appeal, para. 43; Setako Appeal Brief, para. 160. *See also* Setako Brief in Reply, para. 33.
[124] Prosecution Response Brief, paras. 78-80.
[125] *Haradinaj et al.* Appeal Judgement, para. 201.
[126] *See* Trial Judgement, para. 367.
[127] Setako Appeal Brief, para. 159. *See also* Setako Notice of Appeal, para. 42; Setako Appeal Brief, para. 158.
[128] Setako Appeal Brief, para. 158.
[129] Setako Appeal Brief, para. 158.
[130] Prosecution Response Brief, para. 75.
[131] Setako Notice of Appeal, para. 42, *referring to* T. 16 September 2008 pp. 60, 63, 64.

> A. Mr. President, Your Honour, wherever I was, in Nyamagumba or elsewhere, my duty was to supply provisions to my friends; that is, I brought foodstuff. And in order to bring foodstuff in the morning, I left the position at about 10 o'clock in the morning. And to provide the evening meal, I left the position at about 3 p.m. or 4 p.m., and I came back at 6 p.m. to spend the night at the position. And the next morning I would go to the camp at about 6 a.m. to take care of the morning meal.
>
> Q. So is it your testimony here, Witness, that as you went to all of the various camps, that you left on a daily basis to go back to Mukamira in order to get supplies? Is that your testimony, Witness?
>
> A. Yes, Mr. President.[214]

95. The Appeals Chamber finds that it was reasonable for the Trial Chamber to accept Witness SLA's explanation for his presence at Mukamira camp on 11 May 1994 in the present case and conclude that it was compatible with the witness's testimony in *Ndindiliyimana et al.* case. Furthermore, Witness SLA's testimony in respect of various details of the 11 May Killings was corroborated by Witness SAT.[215] Consequently, even if Witness SLA's explanations about his presence at Mukamira camp were inconsistent, any difference was minor and did not call into question the overall credibility of his account. For the same reason, it is irrelevant that Witness SLA made no mention of his daily returns to Mukamira camp in his April 2003 statement.[216]

96. Setako's arguments are therefore dismissed.

(c) Inconsistencies Between the Testimonies of Witnesses SLA and SAT at Trial

97. The Trial Chamber found that the fundamental features of Witnesses SAT's and SLA's accounts of the events at Mukamira camp were largely consistent.[217] It further found that, although there were differences in their testimonies, many of those differences were reasonably explained by the witnesses' varying vantage points and the passage of time.[218]

98. Setako submits that the Trial Chamber ignored significant contradictions between Witnesses SLA's and SAT's testimonies at trial.[219] The Appeals Chamber will consider Setako's specific challenges relating to the 25 April and 11 May Killings in turn.

(i) The 25 April Meeting and 25 April Killings

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[214] T. 18 September 2008 pp. 36, 37.
[215] *See infra*, Section III.B.1.(c)(ii).
[216] The Trial Chamber considered this fact in its assessment of Witness SLA's testimony. *See* Trial Judgement, para. 358.
[217] Trial Judgement, paras. 340, 345. *See also* Trial Judgement, para. 367.
[218] *See* Trial Judgement, para. 341.
[219] Setako Notice of Appeal, paras. 24, 30-35; Setako Appeal Brief, paras. 79-82, 95, 118-140. *See also* Setako Appeal Brief, paras. 29, 41.



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ORIGINAL: ENGLISH

TRIAL CHAMBER I

Before: Judge Erik Møse, presiding
Judge Sergei Alekseevich Egorov
Judge Florence Rita Arrey

Registrar: Adama Dieng

Date: 25 February 2010

THE PROSECUTOR

v.

Ephrem SETAKO

Case No. ICTR-04-81-T

JUDGEMENT AND SENTENCE

The Prosecution
Ifeoma Ojemeni Okali
Simba Mawere
Christiana Fomenky

The Defence
Lennox Hinds
Cainnech Lussiaà-Berdou

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including at least one woman and a child. Witness SAT saw their killing from his position at the camp, and Witness SLA heard about their murder.

341. There are also differences between the two testimonies. Many of them are reasonably explained by their varying vantage points and the passage of time. In particular concerning the events of 25 April, both witnesses testified that General Augustin Bizimungu, Juvénal Kajelijeli, *Bourgmestre* Dominique Gatsimbanyi and Major Bizabarimana were present. However, Witness SAT added that Colonel Marcel Bivugabagabo, Captain Hasengineza and Lieutenant Mburuburengero were also among the attendants. In the Chamber's view, this is not a significant difference.

342. More notably, Witness SLA indicated that only Setako addressed the crowd, whereas Witness SAT recalled Bizimungu speaking as well. However, the intervention of Bizimungu, as described by Witness SAT, amounts only to a brief comment. The difference in their accounts on this point is not surprising or material.

343. Finally, Witness SLA was the only witness to mention Setako's order to establish roadblocks. He was also alone in discussing the killing of 30 to 40 Tutsis that evening who were captured at a roadblock that had been established based on Setako's instructions. The Chamber notes, however, that Witness SLA was ultimately tasked with mounting the barrier outside of the camp, which accounts for his more precise recollection of this instruction. Furthermore, Witness SAT's general lack of knowledge concerning the killing of the refugees captured at the roadblock follows from Witness SLA's evidence that the Tutsis stopped at the roadblock were killed in a relatively inconspicuous manner. The attackers used knives, instead of loud-sounding firearms, and their bodies were disposed of in a pit and not left out in the open.[413]

344. In connection with the 11 May incident, Witness SLA stated that Setako addressed supervisory staff, including Colonel Marcel Bivugabagabo and Lieutenant Mburuburengero, other junior soldiers as well as civil defence forces that had gathered. Three soldiers and two civilians took the detainees away. According to Witness SAT, Setako addressed Captain Hasengineza, who then removed the prisoners. During cross-examination, Witness SLA indicated that he was uncertain whether Hasengineza was there, but later said that he was.[414]

345. Bearing in mind that the fundamental features of the two mostly first-hand accounts are largely consistent, the Chamber will now view the two testimonies in the context of their criminal proceedings in Rwanda, prior statements to Tribunal investigators and evidence in other trials in Arusha.

346. The Defence confronted Witnesses SLA and SAT with documents from their criminal proceedings in Rwanda, which do not refer to the events of 25 April and 11 May. Specifically, Witness SLA was shown his January 1997 *pro justitia* statement, his July 1999

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[413] T. 16 September 2008 p. 48 ("Q.What happened to their bodies? Do you know? A. The bodies of the victims who were killed at the camp were thrown in the pits that are found at the camp. Q. Witness, what is this pit called, if it has a name? A. They are called Ibibare in Kinyarwanda."); T. 18 September 2008 p. 24 ("The witness: ... I stated that we buried the bodies in pits called Ibibare. However, those are not the only bodies that were at the camp. There were many other bodies, and some of them were eaten up by dogs. I have explained that at some point we dumped bodies in that pit, Ibibare, but that does not stop the fact that there were other bodies.").

[414] T. 18 September 2008 pp. 40-41.

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Tribunal pénal international pour le Rwanda
International Criminal Tribunal for Rwanda

IN THE APPEALS CHAMBER

Before:	**Judge Theodor Meron, Presiding** **Judge Mehmet Güney** **Judge Fausto Pocar** **Judge Liu Daqun** **Judge Carmel Agius**
Registrar:	**Mr. Adama Dieng**
Judgement of:	**16 November 2009**

PROTAIS ZIGIRANYIRAZO

v.

THE PROSECUTOR

Case No. ICTR-01-73-A

JUDGEMENT

Counsel for Protais Zigiranyirazo:

Mr. John Philpot
Mr. Peter Zaduk
Ms. Fiona Gray
Mr. Kyle Gervais

The Office of the Prosecutor:

Mr. Hassan Bubacar Jallow
Mr. Alex Obote-Odora
Ms. Christine Graham
Ms. Linda Bianchi
Ms. Béatrice Chapaux
Mr. Alfred Orono Orono

crime[44] indicates that the Trial Chamber misapplied the burden of proof. Indeed, as stated in the *Musema* Appeal Judgement, "[i]n considering the manner in which the Trial Chamber applied the burden and standard of proof, the Appeals Chamber must start off by assuming that the words used in the Trial Judgement accurately describe the approach adopted by the Trial Chamber."[45]

20. In assessing whether a Trial Chamber, when using this type of language, has in fact shifted the burden of proof, the Appeals Chamber carries out an in-depth analysis of the specific findings related to a given incident.[46] The Appeals Chamber has generally found that such language, while inappropriate, is not fatal when viewed in the broader context of a Trial Chamber's findings. This is especially the case where the Trial Chamber accurately refers elsewhere in the judgement to the appropriate burden of proof for the evaluation of alibi evidence, its overall approach evinces a careful assessment of the alibi evidence, and its conclusion that the alibi evidence is ultimately not credible is reasonable when weighed against the evidence of participation in a crime.[47]

2. Alleged Errors in Evaluating Exculpatory Evidence Related to Kesho Hill (Ground 6)

(a) Introduction

21. The Trial Chamber convicted Zigiranyirazo of genocide and extermination as a crime against humanity based on his participation in a joint criminal enterprise to kill Tutsi civilians at Kesho Hill in Gisenyi Prefecture.[48] The Trial Chamber found that he was present at Kesho Hill at some point on the morning of 8 April 1994 and that he addressed the assembled assailants before they launched an attack on the Tutsi refugees there.[49] As part of his defence, Zigiranyirazo presented evidence that he was not observed at Kesho Hill during the attack.[50] The Trial Chamber did not find this evidence to be credible or to have probative value.[51]

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the evidence' could be read in the sense that the Trial Chamber required Haradin Bala to negate the Prosecution evidence"), *quoting Limaj et al.* Trial Judgement, para. 647.

[43] *See Kamuhanda* Appeal Judgement, para. 39 ("the Appeals Chamber notes that in some instances the Trial Chamber applied language which *prima facie* supports the Appellant's arguments [that the Trial Chamber shifted the burden of proof], for example in paragraph 174 of the [*Kamuhanda*] Trial Judgement: '[...] the evidence of Witness ALB does not *exonerate* the Accused from being present at Gikomero.'") (emphasis in original).

[44] *See Musema* Appeal Judgement, para. 295 ("The wording '*are by themselves, insufficient to refute the possibility*' used by the Trial Chamber with respect to alibi evidence might be an error on a point of law, had Musema's evidence been sufficient to sustain a potential alibi.")(emphasis in original), *quoting Musema* Trial Judgement, para. 740.

[45] *Musema* Appeal Judgement, para. 209.

[46] *See, e.g., Musema* Appeal Judgement, paras. 210, 211.

[47] *See, e.g., Limaj et al.* Appeal Judgement, para. 65; *Kamuhanda* Appeal Judgement, paras. 38-44; *Musema* Appeal Judgement, paras. 317, 318.

[48] Trial Judgement, paras. 410, 436, 447.

[49] Trial Judgement, paras. 329, 330, 400, 401.

[50] Trial Judgement, paras. 288-300.

[51] Trial Judgement, paras. 319-322.

factors into consideration, Zigiranyirazo submits that the journey under optimal conditions would have taken approximately three hours and 18 minutes, which the Appeals Chamber accepts as a reasonable estimate.[118] In addition, other estimates following from the site visit suggest that the journey could have taken between four and 10 hours one way.[119] There is no basis in the record for the Prosecution's theory that the journey would have taken Zigiranyirazo approximately 45 minutes by helicopter.[120]

45. The Appeals Chamber notes that "[t]here is a presumption that a Trial Chamber has evaluated all the evidence presented to it, as long as there is no indication that the Trial Chamber completely disregarded any particular piece of evidence."[121] However, this presumption may be rebutted "when evidence which is clearly relevant to the findings is not addressed by the Trial Chamber's reasoning."[122] The Appeals Chamber is mindful of potential limitations to evidence taken after the passage of several years concerning specifics of travel; however all relevant evidence shows that Kesho Hill in Gisenyi Prefecture is not in close geographic proximity to Kanombe, which is southwest of Kigali. As a result, the distance, time, and feasibility of travel are highly relevant factors to consider in view of the considerable evidence placing Zigiranyirazo at Kanombe at various times on 8 April 1994. Despite the crucial importance of this issue, the Trial Chamber failed to address it.

46. In addition, Zigiranyirazo presented the evidence of Witnesses Bernadette Niyonizeye and Agnès Kampundu, who recalled that Zigiranyirazo returned to Kanombe on 8 April 1994 shortly

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[118] *See* T. 28 September 2009 p. 10. At the hearing, the Prosecution maintained that it would take around two and a half hours to travel from Kanombe to Kesho Hill. It further admitted that it would take no more than 20 minutes to travel from Kanombe to Kigali. *See* T. 28 September 2009 pp. 47, 48. Zigiranyirazo noted that the last seven or eight kilometres before reaching Kesho Hill was along a dirt road. *See* T. 28 September 2009 p. 10. In view of these factors, the Appeals Chamber considers Zigiranyirazo's estimate of the journey taking more than three hours under optimal conditions as more reasonable.

[119] The estimate of 10 hours is based on the longest route via Butare Prefecture. With respect to the route via Gitarama, the approximate times offered by the Prosecution and Zigiranyirazo are similar. *See* T. 28 September 2009 p. 49 ("[The Prosecution] would stipulate [that the route via Gitarama took] four to five hours. The Defence estimate is five to six, so we're not really that far apart.").

[120] The Prosecution cites its own counsel's question during cross-examination of a defence witness for the proposition that it only took 45 minutes to travel from Kanombe to Gisenyi Prefecture. *See* Prosecution Response Brief, para. 84, *citing* T. 27 February 2007 p. 81. The relevant exchange reads: "Q. Would you agree or would you have no idea that to travel from Kanombe camp to the Rubaya tea factory area in a helicopter would take about 45 minutes? A. I wouldn't know. I don't know. I saw -- that a journey by car took a whole day." During oral argument, the Appeals Chamber asked the Prosecution whether it had abandoned its theory of Zigiranyirazo's possible use of a helicopter. *See* T. 28 September 2009 p. 45 ("MR. PRESIDENT: During the trial, the point was made that there was some kind of a possibility of helicopter travel. I take it that you are not maintaining this any longer. MS. BIANCHI: colleague, Christine Graham, is going to deal with the issue of travel, including the questions on whe theory is still in play."). The Prosecution never returned to the matter.

[121] *Halilovi}* Appeal Judgement, para. 121. *See also Kvoèka et al.* Appeal Judgement, para. 23.

[122] *Kvoèka et al.* Appeal Judgement, para. 23.



UNITED NATIONS
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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER III

Before: Judge Inés Mónica Weinberg de Roca, presiding
Judge Khalida Rachid Khan
Judge Lee Gacuiga Muthoga

Registrar: Adama Dieng

Date: 18 December 2008

THE PROSECUTOR

v.

Protais ZIGIRANYIRAZO

Case No. ICTR-01-73-T

JUDGEMENT

Office of the Prosecutor:
Wallace Kapaya
Charity Kagwi-Ndungu
Gina Butler
Iskandar Ismail
Jane Mukangira

Counsel for the Accused:
John Philpot
Peter Zaduk

3.3.3 Deliberations

135. Prosecution Witness Sagahutu testified that the Accused influenced the appointment of the heads of the *Interahamwe* and military leaders. The Chamber notes, however, that Sagahutu appears to have reached this conclusion on the basis that the Accused attended all the meetings. The Chamber is unwilling to find that the Accused had such influence on the basis of uncorroborated speculation.

136. The Chamber considered the testimony of Prosecution Witnesses Sagahutu, PA, and AVY regarding the training of the *Interahamwe*, but finds that they did not specifically connect the Accused to this training. Sagahutu testified that Colonel Nsengiyumva was tasked with training the *Interahamwe*, but the only connection his evidence suggests with this training, and the Accused, is that Colonel Nsengiyumva was very close to the Accused and was tasked with this training by the *Akazu*.[172] The Chamber further notes that Sagahutu did not explain how he came to know that the *Akazu* tasked Colonel Nsengiyumva with taking on such training. Witness PA testified regarding training provided by Bernard Munyagashiri and Colonel Nsengiyumva, but did not link the Accused to the training, other than to suggest that Colonel Nsengiyumva and Zigiranyirazo were both members of the *Akazu*.[173] Witness AVY testified that he was ordered to attend training by Faziri Hakizimana, but did not link the Accused to this training.[174]

137. The Chamber has several concerns regarding the testimony of Prosecution Witness Bagaragaza that the Accused supported the *Interahamwe* with his personal escort and Presidential Guards. First, Bagaragaza's testimony consists entirely of hearsay. Contrary to the Prosecution's suggestion, the fact that nearly all Bagaragaza's sources, namely, Bahufite, Bizumuremye, Juvenal Uwilingiyimana, Kuradusenge, and Pascal Hitimana, are deceased, does not make this hearsay evidence more reliable.[175]

138. Second, Bagaragaza's status as an accused person before this Tribunal and an alleged accomplice to the Accused warrants caution when considering his evidence.[176] The indictment against Bagaragaza implicates him in some of the same crimes as the Accused, and it is conceivable that by testifying against the Accused, Bagaragaza seeks to shift blame away from himself.[177] In addition, Bagarazaga acknowledged that he provided money to Kuradusenge, to "give the Interahamwe drinks in order to motivate [them]." He added that Kuradusenge was always asking him for money, and

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[172] Isaïe Murashi Sagahutu, T. 24 January 2006 p. 24.
[173] Witness PA, T. 21 February 2006 pp. 13, 16.
[174] In addition, the Chamber notes its findings with regard to Witness AVY's credibility, *see infra*, paras. 154, 376-379.
[175] In paragraph 125 of its Closing Brief, the Prosecution argues that Bagaragaza's hearsay evidence on another event, the alleged 6 April Meeting at Kanombe, should be considered reliable because Bagaragaza's source, Pasteur Musabe, is deceased. However, the Prosecution provides no support for this argument.
[176] Defence Closing Brief, paras. 480-483.
[177] *The Prosecutor v. Michel Bagaragaza*, Case No. ICTR-2005-86-I, Amended Indictment, 1 December 2006, paras. 15, 17. (Paragraph 15 of the Indictment alleges that Bagaragaza was involved in establishing the *Interahamwe* in Gisenyi; Paragraph 17 of the Indictment alleges that Bagaragaza was involved in the Kesho Hill attack against Tutsi).

B.

3. ICTY Jurisprudence

UNITED
NATIONS

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Case No.: IT-95-14/1-A

Date: 24 March 2000

Original: English

IN THE APPEALS CHAMBER

Before: **Judge Richard May, Presiding**
Judge Florence Ndepele Mwachande Mumba
Judge David Hunt
Judge Wang Tieya
Judge Patrick Robinson

Registrar: **Mrs. Dorothee de Sampayo Garrido-Nijgh**

Judgement of: **24 March 2000**

PROSECUTOR

v.

ZLATKO ALEKSOVSKI

JUDGEMENT

Office of the Prosecutor:

Mr. Upawansa Yapa
Mr. William Fenrick
Mr. Norman Farrell

Counsel for the Appellant:

Mr. Srdjan Joka for Zlatko Aleksovski

> Corresponding to this is the care evinced by the Court not formally to overrule earlier decisions, but rather, where necessary, to try to explain away, usually on the ground of some factual particularity, an earlier decision which it feels unable to follow. The attitudes adopted in 1961 and 1964 in the *Temple of Preah Vihear* and the *Barcelona Traction* cases towards the 1959 decision in the Aerial Incident case are illustrative of this process, and of the relative character of the requirement of consistency of jurisprudence (which is probably the guiding element in this aspect of the Court's work).[245]

104. The right of appeal is a component of the fair trial requirement[246] set out in Article 14 of the ICCPR, and Article 21(4) of the Statute. The right to a fair trial is, of course, a requirement of customary international law.[247]

105. An aspect of the fair trial requirement is the right of an accused to have like cases treated alike, so that in general, the same cases will be treated in the same way and decided as Judge Tanaka said, "possibly by the same reasoning."[248]

106. The right to a fair trial requires and ensures the correction of errors made at trial. At the hearing of an appeal, the principle of fairness is the ultimate corrective of errors of law and fact, but it is also a continuing requirement in any appeal in which a previous decision of an appellate body is being considered.

107. The Appeals Chamber, therefore, concludes that a proper construction of the Statute, taking due account of its text and purpose, yields the conclusion that in the interests of certainty and predictability, the Appeals Chamber should follow its previous decisions, but should be free to depart from them for cogent reasons in the interests of justice.

108. Instances of situations where cogent reasons in the interests of justice require a departure from a previous decision include cases where the previous decision has been decided on the basis of a wrong legal principle or cases where a previous decision has been given *per incuriam*, that is a judicial decision that has been "wrongly decided, usually because the judge or judges were ill-informed about the applicable law."[249]

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[245] Rosenne, *The Law and Practice of the International Court* (1985), p. 613.
[246] Nowak, *UN Covenant on Civil and Political Rights, CCPR Commentary* (1993) comments that the bundle of rights which constitute the right to a fair trial are those set out in Articles 14 and 15 of the International Covenant on Civil and Political Rights 1966 ("ICCPR") (*ibid.*, Article 14, para. 19).
[247] *See* Article 6 of the 1949 European Convention on Human Rights, Article 8 of the 1969 American Convention on Human Rights and Article 7 of the 1981 African Charter on Human and People's Rights.
[248] *See* footnote 243, Judge Tanaka's Separate Opinion.
[249] *Black's Law Dictionary* (7th ed., 1999).

109. It is necessary to stress that the normal rule is that previous decisions are to be followed, and departure from them is the exception. The Appeals Chamber will only depart from a previous decision after the most careful consideration has been given to it, both as to the law, including the authorities cited, and the facts.

110. What is followed in previous decisions is the legal principle (*ratio decidendi*), and the obligation to follow that principle only applies in similar cases, or substantially similar cases. This means less that the facts are similar or substantially similar, than that the question raised by the facts in the subsequent case is the same as the question decided by the legal principle in the previous decision. There is no obligation to follow previous decisions which may be distinguished for one reason or another from the case before the court.

111. Where, in a case before it, the Appeals Chamber is faced with previous decisions that are conflicting, it is obliged to determine which decision it will follow, or whether to depart from both decisions for cogent reasons in the interests of justice.

2. Whether the Decisions of the Appeals Chamber are Binding on Trial Chambers

112. Generally, in common law jurisdictions, decisions of a higher court are binding on lower courts. In civil law jurisdictions there is no doctrine of binding precedent. However, as a matter of practice, lower courts tend to follow decisions of higher courts. As one commentator has stated:

> ... it is hardly an exaggeration to say that the doctrine of *stare decisis* in the Common Law and the practice of Continental courts generally lead to the same results... In fact, when a judge can find in one or more decisions of a supreme court a rule which seems to him relevant for the decision in the case before him, he will follow those decisions and the rules they contain as much in Germany as in England or France.[250]

113. The Appeals Chamber considers that a proper construction of the Statute requires that the *ratio decidendi* of its decisions is binding on Trial Chambers for the following reasons:

(i) the Statute establishes a hierarchical structure in which the Appeals Chamber is given the function of settling definitively certain questions of law and fact arising from

decisions of the Trial Chambers. Under Article 25, the Appeals Chamber hears an appeal on the ground of an error on a question of law invalidating a Trial Chamber's decision or on the ground of an error of fact which has occasioned a miscarriage of justice, and its decisions are final;

(ii) the fundamental mandate of the Tribunal to prosecute persons responsible for serious violations of international humanitarian law cannot be achieved if the accused and the Prosecution do not have the assurance of certainty and predictability in the application of the applicable law; and

(iii) the right of appeal is, as the Chamber has stated before,[251] a component of the fair trial requirement, which is itself a rule of customary international law and gives rise to the right of the accused to have like cases treated alike. This will not be achieved if each Trial Chamber is free to disregard decisions of law made by the Appeals Chamber, and to decide the law as it sees fit. In such a system, it would be possible to have four statements of the law from the Tribunal on a single legal issue - one from the Appeals Chamber and one from each of the three Trial Chambers, as though the Security Council had established not a single, but four, tribunals. This would be inconsistent with the intention of the Security Council, which, from a plain reading of the Statute and the Report of the Secretary-General, envisaged a tribunal comprising three trial chambers and one appeals chamber, applying a single, unified, coherent and rational corpus of law. The need for coherence is particularly acute in the context in which the Tribunal operates, where the norms of international humanitarian law and international criminal law are developing, and where, therefore, the need for those appearing before the Tribunal, the accused and the Prosecution, to be certain of the regime in which cases are tried is even more pronounced.

3. Whether the Decisions of the Trial Chambers are Binding on Each Other

114. The Appeals Chamber considers that decisions of Trial Chambers, which are bodies with coordinate jurisdiction, have no binding force on each other, although a Trial Chamber is free to follow the decision of another Trial Chamber if it finds that decision persuasive.

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[250] Zweigert and Kotz, *An Introduction to Comparative Law* (1998), p. 263.
[251] *See* para. 104, *supra*.

The Prosecution submits that the Appeals Chamber should not depart from its previous decision in *Tadi}* unless it decides that decision was clearly erroneous and cannot stand.[256]

123. The Defence, on the other hand, makes a general case against the application by the Tribunal of the doctrine of *stare decisis*, but concludes that, if it is to be applied, it "can be only exceptionally applied in the procedure before ICC [*sic*] and only after all priority legal sources have failed to direct to the decision with respect to the specific factual and legal question."[257] In particular, the Defence stresses that if the doctrine of *stare decisis* is to be applied by the Tribunal, it can only be applied in circumstances where the factual situations are the same or substantially similar.[258] The Defence contends that in the instant case, since "the armed conflict between Serbian and Muslim ethnicities in the territory of Bosnia and Herzegovina was basically different from the armed conflict between the Croatian and Muslim ethnicities",[259] the principle is inapplicable here. The Defence further argues that the doctrine of *stare decisis* or binding precedent is inconsistent with the principle of legality, or *nullem crimen sine lege*.[260]

124. The Appeals Chamber will now address the arguments advanced by the Defence.

125. The argument that the principle of *stare decisis* is only to be applied in circumstances where the facts are the same, is unmeritorious. As explained earlier in this Judgement,[261] what is followed in relation to a previous decision is the legal principle that it establishes, and the obligation to follow it only arises where, on the facts, the question settled by that principle is the same as the question that is raised by the facts of the subsequent case. Thus, it is irrelevant that the *Tadi}* Judgement dealt with an armed conflict between the Serbian and Muslim groups in Bosnia and Herzegovina, while the present case dealt with an armed conflict between the Croatian and Muslim groups. What is important is whether, in the subsequent case, the legal principle enunciated in the *Tadi}* Judgement as to "overall control" may be applied in relation to the conflict between the Bosnian Croats and the Bosnian Muslims in Bosnia and Herzegovina. In the *Tadi}* Judgement, that legal principle was derived from a factual situation in which there was a question of the level of control by a State (the Federal Republic of Yugoslavia

[256] Cross-Appellant's Reply, para. 1.18.
[257] Appellant's Additional Submissions, para. 7.
[258] *Ibid.*, para. 8.
[259] Appellant's Additional Submissions, para. 10.
[260] *Ibid.*, paras. 7 and 8.

(Serbia and Montenegro)) or entity (the Yugoslav Peoples's Army, "JNA") over a military group (the Army of the Serbian Republic of Bosnia and Herzegovina/Republika Srpska, "VRS") that was involved in an armed conflict that was *prima facie* internal. The same question arises from the facts of the instant case, that is, the level of control by a State or entity (Croatia or the Army of the

[261] *See* para. 110, *supra*.

Republic of Croatia, "HV") over a military group (the HVO) that was engaged in an armed conflict that was *prima facie* internal. It is, therefore, perfectly proper in the instant case to recall and rely upon the legal principle enunciated in the *Tadi}* Judgement.

126. The Defence argument on the principle of legality or *nullum crimen sine lege*, is based on a misunderstanding of that principle. The Appeals Chamber understands the Defence to be saying that reliance cannot be placed on a previous decision as a statement of the law, since that decision would necessarily have been made after the commission of the crimes, and for that reason would not meet the requirements of the principle of legality. There is nothing in that principle that prohibits the interpretation of the law through decisions of a court and the reliance on those decisions in subsequent cases in appropriate circumstances. The principle of legality is reflected in Article 15 of the ICCPR.[262] What this principle requires is that a person may only be found guilty of a crime in respect of acts which constituted a violation of the law at the time of their commission. In the instant case, the acts in respect of which the accused was indicted, all constituted crimes under international law at the time of their commission. Inhuman treatment and wilfully causing grave suffering or serious injury to body or health under Article 2 of the Statute were violations of the grave breaches provisions of the Geneva Conventions, and outrages against personal dignity under Article 3 of the Statute constituted a violation of the laws or customs of war, at the time of the commission of the crimes.

127. There is, therefore, no breach of the principle of *nullum crimen sine lege*. That principle does not prevent a court, either at the national or international level, from determining an issue through a process of interpretation and clarification as to the elements of a particular crime; nor does it prevent a court from relying on previous decisions which reflect an interpretation as to the meaning to be ascribed to particular ingredients of a crime.

128. The Appeals Chamber now turns to a consideration of the *Tadi}* Judgement in order to determine whether it should be followed, applying the principle set out in paragraph 107, *supra*, that a previous decision of the Chamber should be followed unless there are cogent reasons in the interests of justice for departing from it.

[262] Article 15 of the ICCPR states in relevant part: "No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed."

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UNITED NATIONS

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Case No. IT-03-72-A

Date: 18 July 2005

Original: English

IN THE APPEALS CHAMBER

Before: **Judge Florence Ndepele Mwachande Mumba, Presiding**
Judge Fausto Pocar
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Wolfgang Schomburg

Registrar: **Mr. Hans Holthuis**

Judgement of: **18 July 2005**

PROSECUTOR

v.

MILAN BABIĆ

JUDGEMENT ON SENTENCING APPEAL

Counsel for the Prosecution:

Mr. Mark J. McKeon
Mr. Xavier Tracol
Ms. Kristina Carey

Counsel for the Appellant:

Mr. Peter Michael Müller
Mr. Robert Fogelnest

80. The Appeals Chamber now turns to the arguments raised at the Appeal Hearing with regard to this ground of appeal.[260] The Prosecution reiterated its position that the Trial Chamber did not consider the Appellant's position as a political leader as being equivalent to a leadership position in the joint criminal enterprise.[261] In reply, the Defence stated the following:

> If that reasoning holds, then anyone who is indicted, who is in a high political office no matter what their role in the joint criminal enterprise [is] must be given an aggravating circumstance. Is that what the law intends? Or does the law intend that a person be given an aggravating circumstance for a leadership role if they in fact [held] a leadership role in the joint criminal enterprise?[262]

Counsel for the Defence concluded that "[i]ndeed there have been cases where people in high political offices have been found to warrant the aggravating circumstance, but they were also leaders of the joint criminal enterprise."[263] The Appeals Chamber notes that, contrary to the Defence's assertion, the position of an accused in "high political offices" has been considered as an aggravating factor for the purposes of sentencing even where an accused's leadership of a joint criminal enterprise is not at issue.[264] Several cases before the International Tribunal in which the mode of liability of joint criminal enterprise was not at issue illustrate that a Trial Chamber has the discretion to take into account, as an aggravating circumstance, the seniority, position of authority, or high position of leadership held by a person criminally responsible under Article 7(1) of the Statute.[265] A high rank in the military or political field does not, in itself, merit a harsher sentence. But a person who abuses or wrongly exercises power deserves a harsher sentence.[266] Consequently, what matters is not the position of authority taken alone, but that position coupled with the manner in which the authority is exercised.[267] For instance, in the *Aleksovski* case, the Appeals Chamber considered that the superior responsibility of the appellant, who was a prison warden, "seriously aggravated [his] offences, [as] [i]nstead of preventing it, he involved himself in violence against those whom he should have been protecting".[268] In *Ntakirutimana*, the ICTR Appeals Chamber

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[260] AT. 52-53.
[261] AT. 43, lines 2-6: "[...] in this particular ground, the [A]ppellant has misconstrued what the Trial Chamber did. It did not base this particular aggravating circumstance on [the Appellant's] leadership role in the joint criminal enterprise. In fact, it based the aggravating circumstance on his role as a regional political leader."
[262] AT. 52, line 23 to AT. 53 line 4.
[263] AT. 53, lines 6-9.
[264] *Brđanin* Trial Judgement, para. 1099. Having found that a joint criminal enterprise was not an appropriate mode of liability to describe the individual criminal responsibility of Brđanin, the Trial Chamber found that his position of authority at the highest level of the political hierarchy and the abuse of such authority constituted an aggravating factor of considerable weight.
[265] *See Aleksovski* Appeal Judgement, para. 183; *Čelebići* Appeal Judgement, para. 745; *Kupreškić* Appeal Judgement, para. 451.
[266] *Krstić* Trial Judgement, para. 709.
[267] *Kayishema and Ruzindana* Appeal Judgement, paras 358 - 359.
[268] *Aleksovski* Appeal Judgement, para. 183.

concurred with the Trial Chamber that the abuse of the appellant's personal position in the community was an aggravating circumstance.[269]

81. In the present case, the Trial Chamber did not hold that the Appellant's position as a regional political leader in itself constituted an aggravating circumstance. The Trial Chamber thoroughly considered the Appellant's behaviour as a regional political leader and stressed that it considered his leadership position as an aggravating circumstance because he used his authority to enlist resources of the SAO Krajina to further the joint criminal enterprise, made inflammatory speeches during public events and in the media which prepared the ground for the Serb population to accept that their goals could be achieved through acts of persecution, and amplified the consequences of the campaign of persecutions by allowing it to continue.[270] Therefore, the Appeals Chamber considers that the Trial Chamber correctly found that the Appellant's leadership position was an aggravating circumstance.

82. For the foregoing reasons, the Appellant's seventh ground of appeal is dismissed.

[269] *Ntakirutimana* Appeal Judgement, para. 563.
[270] Sentencing Judgement, para. 61.

UNITED
NATIONS

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia since 1991

Case No.: IT-02-60-A

Date: 9 May 2007

Original: English

IN THE APPEALS CHAMBER

Before: **Judge Fausto Pocar, Presiding**
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Andrésia Vaz
Judge Theodor Meron

Registrar: **Mr. Hans Holthuis**

Judgement of: **9 May 2007**

PROSECUTOR

v.

VIDOJE BLAGOJEVIĆ
AND
DRAGAN JOKIĆ

JUDGEMENT

The Office of the Prosecutor:

Mr. Norman Farrell
Ms. Antoinette Issa
Ms. Marie-Ursula Kind
Mr. Matteo Costi

Counsel for Vidoje Blagojević:

Mr. Vladimir Domazet

Counsel for Dragan Jokić:

Mr. Peter Murphy
Ms. Chrissa Loukas

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G. Alleged Errors relating to Aiding and Abetting (Ground 7)

125. The Trial Chamber determined that Blagojević permitted the use of the Bratunac Brigade's resources, including personnel, to facilitate the commission of the crimes for which he was convicted.[338] The Trial Chamber considered that aiding and abetting constituted the most appropriate form of participation under Article 7(1) of the Statute to describe his criminal responsibility.[339] Under this ground of appeal, Blagojević raises four errors of law and fact in connection with his conviction for aiding and abetting, including an alleged legal error in the definition of aiding and abetting and alleged factual errors related to his knowledge of the underlying crimes, whether he made Bratunac Brigade resources available, and whether this constituted substantial assistance.[340]

1. Alleged Error in Defining Aiding and Abetting

126. Initially, Blagojević submits that the Trial Chamber erred in law in setting forth the elements of aiding and abetting.[341]

127. The Appeals Chamber has explained that an aider and abettor carries out acts specifically directed to assist, encourage, or lend moral support to the perpetration of a certain specific crime, which have a substantial effect on the perpetration of the crime.[342] The *actus reus* need not serve as condition precedent for the crime and may occur before, during, or after the principal crime has been perpetrated.[343] The Appeals Chamber has also determined that the *actus reus* of aiding and abetting may be satisfied by a commander permitting the use of resources under his or her control, including personnel, to facilitate the perpetration of a crime.[344] The requisite mental element of aiding and abetting is knowledge that the acts performed assist the commission of the specific crime of the principal perpetrator.[345] In cases of specific intent crimes such as persecutions or genocide, the aider and abettor must know of the principal perpetrator's specific intent.[346]

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[338] Trial Judgement, paras. 747, 749, 755, 757, 759-760, 784, 794-796.
[339] Trial Judgement, para. 796.
[340] Blagojević Notice of Appeal, paras. 26, 27; Blagojević Appeal Brief, paras. 8.1-8.18. In addition, Blagojević makes additional arguments concerning his conviction for complicity in genocide. These arguments overlap to some extent with those raised under Ground 6 and are dealt with there.
[341] Blagojević Appeal Brief, paras. 8.1, 8.2.
[342] *Simić* Appeal Judgement, para. 85; *Blaškić* Appeal Judgement, paras. 45, 46; *Vasiljević* Appeal Judgement, para. 102; *Ntagerura et al.* Appeal Judgement, para. 370.
[343] *Blaškić* Appeal Judgement, para. 48. *See also Simić* Appeal Judgement, para. 85; *Ntagerura et al.* Appeal Judgement, para. 372.
[344] *Krstić* Appeal Judgment, paras. 137, 138, 144.
[345] *Simić* Appeal Judgement, para. 86; *Vasiljević* Appeal Judgement, para. 102; *Blaškić* Appeal Judgement, para. 46; *Ntagerura et al.* Appeal Judgement, para. 370.
[346] *Simić* Appeal Judgement, para. 86; *Krstić* Appeal Judgment, paras. 140, 141.

Brigade resources to be used to facilitate the crimes.[362] In connection with Blagojević's conviction for the mistreatment and murder, which occurred in and around the Vuk Karadžić School in Bratunac town from 12 to 14 July 1995, the Trial Chamber concluded that members of the Bratunac Brigade Military Police gave "practical assistance" by guarding the detainees and helping to control access to them which ensured their further detention and allowed the murders to take place.[363] In addition, in connection with Blagojević's conviction for persecutions, the Trial Chamber concluded that members of the Bratunac Brigade gave practical assistance to terrorising the civilian population and to creating the inhumane conditions in Potočari and Bratunac town from 11 to 14 July 1995 by shelling and shooting around the civilians moving toward Potočari on 11 July; by participating in the separation process; by patrolling in Potočari on 12 and 13 July; and by guarding the detainees in Bratunac town from 12 to 14 July.[364] In addition, in connection with Blagojević's conviction for forcible transfer, the Trial Chamber concluded that members of the Bratunac Brigade gave practical assistance by separating the men from the women, children, and the elderly; loading buses; counting people as they entered buses; escorting the buses; and patrolling the area where the population was being held pending the completion of the transfer.[365]

133. In his submissions, Blagojević points to the relatively few members of the Bratunac Brigade who participated in the crimes when compared with the overall operation as well as the fact that the brigade members were not direct participants in the mistreatment or murder.[366]

134. The Appeals Chamber observes that the question of whether a given act constitutes substantial assistance to a crime requires a fact-based inquiry. Blagojević's primary argument on the point of substantial assistance is that the role played by the Bratunac Brigade was inconsequential in the overall context of the event. The Appeals Chamber, however, has already held that it is not required that the act of assistance serve as a condition precedent for the commission of the crime.[367] In making its findings, the Trial Chamber was aware of the more limited scope of assistance provided by the Bratunac Brigade in relation to other elements of the VRS and civilian authorities.[368] Nonetheless, the Trial Chamber described the contribution of the resources made available by Blagojević as "practical assistance" to the crimes which had a

[361] Blagojević Appeal Brief, paras. 3.118-3.120, 3.130-3.133, 5.21-5.23, 7.8, 8.14-8.17.
[362] Trial Judgement, paras. 729, 749, 759, 784.
[363] Trial Judgement, para. 747.
[364] Trial Judgement, para. 755.
[365] Trial Judgement, para. 757.
[366] Blagojević Appeal Brief, paras. 3.118-3.120, 3.130-3.133, 5.21-5.23, 7.8, 8.14.
[367] *Simić* Appeal Judgement, para. 85; *Blaškić* Appeal Judgement, para. 48.
[368] *See, e.g.*, Trial Judgement, para. 191 (noting the primary role played by the MUP in the transport of Bosnian Muslim refugees out of Potočari on 13 July 1995); para. 835 ("In relation to Vidoje Blagojević, the Trial Chamber finds that he was not one of the major participants in the commission of the crimes").

substantial effect on the commission of the crimes.[369] The Appeals Chamber recalls that, in a similar context, it reached the same conclusion in the *Krstić* Appeal Judgement.[370] Blagojević has therefore failed to demonstrate that the Trial Chamber erred on this point.

5. Conclusion

135. For the foregoing reasons, the Appeals Chamber grants Blagojević's seventh ground of appeal with respect to the crime of genocide, as discussed in detail in his sixth ground of appeal. In all other respects, the Appeals Chamber finds that Blagojević's appeal against the Trial Chamber's findings related to aiding and abetting is not founded and, therefore, dismisses it. Judge Shahabuddeen dissents in all respects on the ground that Blagojević was denied the right to a fair trial and considers that his case should be remanded for a new trial.

[369] Trial Judgement, paras. 747, 755, 757.
[370] *Krstić* Appeal Judgement, paras. 135-138.

referenced statement in relation to the aider and abettor carrying out acts which are specifically directed to assist.[492]

187. In the *Blaškić* Appeal Judgement, the Appeals Chamber considered whether the *actus reus* of aiding and abetting requires causation between the act of the accused and the act of the principal, or in other words, whether the contribution "must have a direct and important impact on the commission of the crime."[493] The Appeals Chamber found that "proof of a cause-effect relationship between the conduct of the aider and abettor and the commission of the crime, or proof that such conduct served as a condition precedent to the commission of the crime, is not required."[494] However, the Appeals Chamber reiterated that one of the requirements for the *actus reus* of aiding and abetting is that the support of the aider and abettor have a substantial effect upon the perpetration of the crime.[495]

188. In reaching this conclusion, in the *Blaškić* Appeal Judgement the Appeals Chamber referenced the definition of aiding and abetting in the *Vasiljević* Appeal Judgement, which is identical to that set out in the *Tadić* Appeal Judgement, and which, in specifying that the assistance given by an aider and abettor must be specifically directed, also contrasted aiding and abetting liability with that of joint criminal enterprise.[496] However, in the *Blaškić* Appeal Judgement the Appeals Chamber also found that the Trial Chamber correctly held that the standard for the *actus reus* was that set out in the *Furundžija* Trial Judgement: "consist[ing] of practical assistance, encouragement, or moral support which has a substantial effect on the perpetration of the crime."[497]

189. The Appeals Chamber observes that while the *Tadić* definition has not been explicitly departed from, specific direction has not always been included as an element of the *actus reus* of aiding and abetting.[498] This may be explained by the fact that such a finding will often be implicit in the finding that the accused has provided practical assistance to the principal perpetrator which had a substantial effect on the commission of the crime. The Appeals Chamber also considers that, to the extent specific direction forms an implicit part of the *actus reus* of aiding and abetting, where the accused knowingly participated in the commission of an offence and his or her participation

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[492] *Aleksovski* Appeal Judgement, para. 163(ii).
[493] *Blaškić* Appeal Judgement, para. 43.
[494] *Blaškić* Appeal Judgement, para. 48. *See also Simić* Appeal Judgement, para. 85.
[495] *Blaškić* Appeal Judgement, para. 48.
[496] *Vasiljević* Appeal Judgement, para. 102.
[497] *Blaškić* Appeal Judgement, para. 46, quoting *Blaškić* Trial Judgement, para. 283 (quoting *Furundzija* Trial Judgement, para. 249).
[498] *Krnojelac* Appeal Judgement, para. 37, citing *Tadić* Appeal Judgment, para. 229; *Čelebići* Appeal Judgement, para. 345, citing *Tadić* Trial Judgement, para 688 (where the opposition is drawn between culpability where the accused "intentionally commits" a crime or where he "*knowingly* aids, abets or otherwise assists, *directly and substantially*, in the commission of such a crime" (emphasis added)). *But see Čelebići* Appeal Judgement, para. 352.

substantially affected the commission of that offence, the fact that his or her participation amounted to no more than his or her "routine duties" will not exculpate the accused.

190. Jokić seeks to rely on the statement of the Appeals Chamber in the *Čelebići* Appeal Judgement that it "would not accept that the circumstance alone of holding a position as a guard somewhere within a camp in which civilians are unlawfully detained suffices to render that guard responsible for the crime of unlawful confinement of civilians."[499] On this basis, Jokić argues that "while the work of camp guards directly contributed to the unlawful confinement of prisoners within the camp, the Appeals Chamber accepted, as a matter of law, that such contribution alone was too insignificant or insubstantial to constitute aiding and abetting that crime."[500] From this, Jokić extrapolates that "where a person holds a position within an organized structure to which certain lawful duties attach, the mere performance by that person of their routine duties will not of itself constitute aiding and abetting crimes that may be committed by others within that organized structure."[501]

191. The Appeals Chamber considers it unreasonable to compare Jokić's position within the Zvornik Brigade to that of a camp guard in the *Čelebići* case. At issue in the *Čelebići* case was the ability of the accused, Zejnil Delalić and Hazim Delić, to affect the continued detention of the civilians in the camp.[502] The Appeals Chamber considers that it was reasonable for the Trial Chamber in this case to find, with respect to the three execution sites, that Jokić's role, whether as duty officer or Chief of Engineering, went beyond that of merely relaying orders up and down the chain of command.[503] The Trial Chamber's findings make it clear that Jokić's ability to affect the commission of the crime was substantial. In particular, the Trial Chamber found that, while Jokić did not directly issue orders in his capacity as Chief of Engineering, he assisted in carrying out the orders of the Brigade Commander which were based on his advice and proposals.[504]

192. Finally, Jokić's attempt to ground his argument in its apparent consistency with the principle that a person convicted of aiding and abetting "is convicted *of the crime itself*, in the same way as the principal perpetrator who actually commits the crime"[505] and thus must be specifically directed, is fundamentally misguided. The Appeals Chamber recalls that Article 7(1) of the Statute deals not only with individual responsibility by way of direct or personal participation in the criminal act but

[499] *Čelebići* Appeal Judgement, para. 364.
[500] Jokić Appeal Brief, para. 94.
[501] Jokić Appeal Brief, para. 95.
[502] *Čelebići* Appeal Judgement, paras. 336-369.
[503] Trial Judgement, paras. 761-770.
[504] Trial Judgement, para. 519.
[505] Jokić Appeal Brief, para. 100.

forms of liability under Article 7(1) of the Statute, including ordering, instigating, and planning, which, in its view, require only an awareness of the substantial likelihood that the crime will be committed.[579]

221. In describing the applicable law for aiding and abetting, the Trial Chamber restated the formulation of the *mens rea* for aiding and abetting found in the *Vasiljević* Appeal Judgement:

> [I]t is not required that the aider and abettor shared the *mens rea* required for the crime; it is sufficient that the aider and abettor had knowledge that his or her own acts assisted in the commission of the specific crime by the principal offender. The aider and abettor must also be aware of the "essential elements" of the crime committed by the principal offender, including the state of mind of the principal offender.[580]

The Appeals Chamber has applied this formulation consistently in its judgements.[581] Consequently, the Appeals Chamber finds no legal error on the part of the Trial Chamber in this regard.

222. The Prosecution faults the Trial Chamber for not recalling the following additional language from the *Blaškić* Appeal Judgement and applying it in this case:

> The Trial Chamber agreed with the statement in the *Furundžija* Trial Judgement that "it is not necessary that the aider and abettor [...] know the precise crime that was intended and which in the event was committed. If he is aware that one of a number of crimes will probably be committed, and one of those crimes is in fact committed, he has intended to facilitate the commission of that crime, and is guilty as an aider and abettor." The Appeals Chamber concurs with this conclusion.[582]

The Appeals Chamber, however, recalls its position from the *Blaškić* Appeal Judgement that there are no reasons to depart from the definition of *mens rea* of aiding and abetting found in the *Vasiljević* Appeal Judgement.[583] The *Blaškić* Appeal Judgement did not extend the definition of *mens rea* of aiding and abetting.

223. The Prosecution also points to the Trial Chamber's statement that it had reasonable doubt that Blagojević "knew" that his acts furthered the mass killing operation,[584] suggesting that this indicates that the Trial Chamber examined the evidence to determine whether Blagojević knew that the mass killings were a virtual certainty. The Appeals Chamber, however, can identify no error on the part of the Trial Chamber based on the use of this formulation. The Appeals Chamber has employed the same formulation in its examination of the *mens rea* of aiding and abetting in other

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[578] *See* Prosecution Appeal Brief, paras. 2.28-2.58.
[579] Prosecution Appeal Brief, paras. 2.35-2.38, 2.55-2.58.
[580] Trial Judgement, para. 727.
[581] *See, e.g.*, *Blaškić* Appeal Judgement, para. 45; *Vasiljević* Appeal Judgement, para. 102; *Tadić* Appeal Judgement, para. 229.
[582] *Blaškić* Appeal Judgement, para. 50 (internal citations omitted).
[583] *Blaškić* Appeal Judgement, para. 45.
[584] Prosecution Appeal Brief, para. 2.17, citing Trial Judgement, paras. 742, 743 (emphasis in Prosecution Appeal Brief).

cases.[585] Moreover, the Appeals Chamber observes that the Trial Chamber's reasonable doubt as to Blagojević's knowledge of the impending murder operation arose out of the equally plausible inference that "he saw [the detention and capture of Bosnian Muslim men] as further steps in transporting the Bosnian Muslim population out of Serb-held territory".[586] In this respect, the Trial Chamber also noted throughout the Trial Judgement that Bosnian Muslim men, who were captured, were told that they would be exchanged.[587] It is also telling that the Trial Chamber accepted as credible testimony from a former Bratunac Brigade officer who stated that he did not assist a particular detainee who was taken to the Vuk Karadžić School and later killed because he thought that the detainee was going to be exchanged.[588] Thus, the Trial Chamber did not decline to find that Blagojević knew about the mass killing operation because he lacked certainty, but because it could not rule out the equally reasonable inference that he thought that his acts were directed towards another goal. Accordingly, the Trial Chamber did not err in its formulation of the *mens rea* requirement for aiding and abetting, and the Appeals Chamber dismisses this sub-ground of appeal.

2. Alleged Error of Law in the Application of the Standard of Proof Beyond Reasonable Doubt

224. The Prosecution submits that the Trial Chamber erred in law in its application of the standard of proof. Specifically, the Prosecution contends that the Trial Chamber applied the standard of proof in a two-stage process, first to the individual strands of evidence and then to the issue of *mens rea*, rather than reserving the application of the standard to the ultimate conclusion of guilt.[589] The Prosecution argues that this approach led the Trial Chamber to consider the evidence "piecemeal", failing to consider all of the established facts as a coherent whole in assessing Blagojević's *mens rea* for the mass killings.[590]

225. In particular, the Prosecution argues that the Trial Chamber failed to incorporate the following findings into its analysis of Blagojević's knowledge of the mass killings: (1) Blagojević's knowledge of the killings in Bratunac town on the nights of 12 and 13 July 1995 and the assistance provided by the Bratunac Brigade units in those killings;[591] (2) the vastness of the murder operation, involving many elements of VRS and MUP forces and occurring in many towns in a geographically small area, including Potočari, Jadar River, Kravica Warehouse, and Tišca;[592] (3) Blagojević's knowledge of his units' participation in the separation and transport of Muslims from Potočari, in

[585] *See, e.g., Kvočka et al.* Appeal Judgement, paras. 89, 90.
[586] Trial Judgement, para. 742.
[587] Trial Judgement, paras. 177, 227, 242, 251, 252, 254, 277, 316, 647, 736.
[588] Trial Judgement, paras. 251-252, 736, fn. 2197. At the time, this officer was tasked with matters related to prisoners of war. Trial Judgement, paras. 50, 251.
[589] Prosecution Appeal Brief, paras. 2.8, 2.66.
[590] Prosecution Appeal Brief, para. 2.69.
[591] Prosecution Appeal Brief, paras. 2.92-2.95.

testimony, in its view, indicated that Blagojević would have known about the killings.[610] Finally, Blagojević was at the Bratunac Brigade headquarters and slept in his apartment in Bratunac town between 12 and 14 July 1995.[611] The Prosecution also argues that the Trial Chamber erred in characterizing Blagojević as searching the woods in the days immediately following the killings at the Kravica Warehouse.[612]

231. A review of the Trial Judgement reflects that the Trial Chamber expressly noted much of the evidence that the Prosecution points to in support of its contention that the Trial Chamber gave scant or no regard to several findings indicating that Blagojević must have known about the killing at the Kravica Warehouse shortly after they occurred. Moreover, the Appeals Chamber finds no evidence that renders the Trial Chamber's finding on this point unreasonable.

232. The strongest evidence suggesting that Blagojević knew about the Kravica Warehouse killings came from Momir Nikolić's testimony that "already on the 14th" the Kravica Warehouse killings were "common knowledge" in Bratunac town, "[t]hat is, almost the entire town, all the soldiers, had heard about it."[613] The Trial Chamber did not reference this specific statement in the Trial Judgement; however, it clearly took account of this testimony because it cited the same transcript page when discussing when and how the Kravica Warehouse massacre became known.[614] The Trial Chamber, however, did not consider Nikolić to be a "wholly credible or reliable witness", and concluded that "on matters that bear directly on [Blagojević's] knowledge [...] such as what [Nikolić] reported to Colonel Blagojević [...] or was told to do [by Blagojević], it must require corroboration for such evidence, in order to enter a finding against [Blagojević]."[615] The Prosecution does not challenge the Trial Chamber's assessment of Nikolić's credibility, nor does the Prosecution make a specific argument as to why the testimony at issue here should be credited. In addition, the Trial Chamber found that, according to Momir Nikolić, he did not discuss the Kravica Warehouse killings with Blagojević until sometime around 24 July 1995.[616]

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[610] Prosecution Appeal Brief, para. 2.81, citing testimony of Momir Nikolić, Witness DP-102, Tesić, Mirković, Gajić, and Davidović.
[611] Prosecution Appeal Brief, para. 2.75, citing Trial Judgement, para. 748.
[612] The Prosecution does not indicate where the Trial Chamber might have made this alleged error, but the Prosecution cites orders signed by Colonel Blagojević to battalions to sweep the terrain demonstrating that he was in Bratunac Headquarters. *See* Prosecution Appeal Brief, para. 2.78. The Prosecution is likely referring to the Trial Chamber's statement about Blagojević that "*he and his units* continued to participate in the search operation [emphasis added]" in the days following the Kravica Warehouse massacre. This statement is made in the Trial Chamber's summary remarks regarding Blagojević's knowledge of that incident. *See* Trial Judgement, para. 742.
[613] T. 1734.
[614] Trial Judgement, para. 300 fn. 1080.
[615] Trial Judgement, para. 472.
[616] Trial Judgement, paras. 456 (Nikolić did not tell Blagojević of the Kravica Warehouse massacre until Blagojević returned from Žepa), 469 (Blagojević returned from Žepa on 24 July 1995). This evidence was referenced again by the

UNITED
NATIONS

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia since 1991

Case No. IT-02-60-T

Date: 17 January 2005

Original: English

IN TRIAL CHAMBER I, SECTION A

Before: **Judge Liu Daqun, Presiding**
Judge Volodymyr Vassylenko
Judge Carmen Maria Argibay

Registrar: **Mr. Hans Holthuis**

Judgement of: **17 January 2005**

PROSECUTOR

v.

VIDOJE BLAGOJEVIĆ
DRAGAN JOKIĆ

JUDGEMENT

The Office of the Prosecutor:

Mr. Peter McCloskey
Mr. Stefan Waespi
Ms. Antoinette Issa
Mr. Milbert Shin
Mr. Salvador Viada

Counsel for the Accused:

Mr. Michael Karnavas and Ms. Suzana Tomanović for Vidoje Blagojević
Mr. Miodrag Stojanović and Mr. Branko Lukić for Dragan Jokić

724. As will be discussed below and recalling that joint criminal enterprise is a form of "commission", the Trial Chamber finds that the appropriate form of liability to describe Dragan Jokić's participation in these crimes is aiding and abetting.

725. Accordingly, the Trial Chamber finds that Dragan Jokić did not commit murder, extermination or persecutions as part of a joint criminal enterprise.

2. Aiding and Abetting

(a) Applicable Law

726. The Trial Chamber finds that the *actus reus* for 'aiding and abetting' is that the accused carried out an act which consisted of practical assistance, encouragement or moral support to the principal.[2175] The criminal act of the principal for which the aider and abettor is responsible must be established.[2176] The assistance need not have caused the act of the principal, but it must have had a "substantial effect" on the commission of the crime.[2177] The assistance may be provided by either an act or by an omission,[2178] and it may occur before, during or after the act of the principal.[2179]

727. For aiding and abetting, it is not required that the aider and abettor shared the *mens rea* required for the crime; it is sufficient that the aider and abettor had knowledge that his or her own acts assisted in the commission of the specific crime by the principal offender.[2180] The aider and abettor must also be aware of the "essential elements" of the crime committed by the principal offender, including the state of mind of the principal offender.[2181]

2175 *Tadić* Appeal Judgement, para. 229 (iii); *Vasiljević* Appeal Judgement, para. 102 (i). *See also* Criminal Code of SFRY, Art. 24(2):
The following, in particular, shall be considered as aiding: the giving of instructions or counselling about how to commit a criminal act, the supply of tools and resources for the crime, the removal of obstacles to the commission of a crime, as well as the promise, prior to the commission of the act, to conceal the existence of the criminal act, to hide the offender, the means to commit the crime, its traces, or goods gained through the commission of a criminal act.

2176 *Aleksovski* Appeal Judgement, para. 165.

2177 *Čelebići* Appeal Judgement, para. 352; *Blaškić* Appeal Judgment, para. 48; *Furundzija* Trial Judgment, para. 235. "Mere presence" at the scene of the crime is not conclusive of aiding and abetting unless it is demonstrated to have a significant encouraging effect on the principal offender. *Furundzija* Trial Judgment, para. 249.

2178 *Blaškić* Appeal Judgement, para. 47.

2179 *Čelebići* Appeal Judgement, para. 352, adopting the *Čelebići* Trial Judgement, para. 327 which held that "[subject to the caveat that it be found to have contributed to, or have had an effect on, the commission of the crime, the relevant act of assistance may be removed in time and place from the actual commission of the offence." *See also Aleksovski* Appeal Judgement, para. 62; *Blaškić* Appeal Judgement, para. 48.

2180 *Tadić* Appeal Judgement, para. 229(iv); *Vasiljević* Appeal Judgement, para. 102 (ii); and *Blaškić* Appeal Judgement, para. 45.

2181 *Aleksovski* Appeal Judgement, para. 162. *See also Krnojelac* Trial Judgement, para. 90.

UNITED
NATIONS

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Case No.: IT-95-14-A
Date: 29 July 2004
Original: English

IN THE APPEALS CHAMBER

Before: **Judge Fausto Pocar, Presiding**
Judge Florence Ndepele Mwachande Mumba
Judge Mehmet Güney
Judge Wolfgang Schomburg
Judge Inés Mónica Weinberg de Roca

Registrar: **Mr. Hans Holthuis**

Judgement of: **29 July 2004**

PROSECUTOR

v.

TIHOMIR BLAŠKIĆ

JUDGEMENT

The Office of the Prosecutor:

Mr. Norman Farrell
Ms. Sonja Boelaert-Suominen
Ms. Michelle Jarvis
Ms. Marie-Ursula Kind
Ms. Kelly Howick

Counsel for the Appellant:

Mr. Anto Nobilo
Mr. Russell Hayman

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41. Having examined the approaches of national systems as well as International Tribunal precedents, the Appeals Chamber considers that none of the Trial Chamber's above articulations of the *mens rea* for ordering under Article 7(1) of the Statute, in relation to a culpable mental state that is lower than direct intent, is correct. The knowledge of any kind of risk, however low, does not suffice for the imposition of criminal responsibility for serious violations of international humanitarian law. The Trial Chamber does not specify what degree of risk must be proven. Indeed, it appears that under the Trial Chamber's standard, any military commander who issues an order would be criminally responsible, because there is always a possibility that violations could occur. The Appeals Chamber considers that an awareness of a higher likelihood of risk and a volitional element must be incorporated in the legal standard.

42. The Appeals Chamber therefore holds that a person who orders an act or omission with the awareness of the substantial likelihood that a crime will be committed in the execution of that order, has the requisite *mens rea* for establishing liability under Article 7(1) pursuant to ordering. Ordering with such awareness has to be regarded as accepting that crime.[76]

2. Aiding and Abetting

43. The Appellant submits that liability for aiding and abetting requires, at a minimum, actual knowledge.[77] He submits that not only must the aider and abettor know that his acts provide support to another person's offence, but he must also know the specifics of that offence. Recklessness or negligence on his part is not sufficient, he asserts, contrary to the Trial Chamber's alleged finding on that point.[78] Furthermore, the Appellant submits that the *actus reus* of aiding and abetting includes a causation requirement which the Trial Chamber failed to acknowledge and to apply.[79] In other words, the contribution must "have a direct and important impact on the commission of the crime."[80] Instead, the Appellant maintains, the Trial Chamber erroneously applied a strict liability standard to find the Appellant guilty as an aider and abettor and reiterates that the Trial Chamber's conclusion that "he could be found guilty if he accepted the possibility that some unspecified crime was a 'possible or foreseeable consequence' of military action effectively eliminates the 'actual knowledge' *mens rea* of aiding and abetting, and is thus erroneous as a matter

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[76] The French translation of this legal standard reads as follows:
> Quiconque ordonne un acte ou une omission en ayant conscience de la réelle probabilité qu'un crime soit commis au cours de l'exécution de cet ordre possède la *mens rea* requise pour établir la responsabilité aux termes de l'article 7 alinéa 1 pour avoir ordonné. Le fait d'ordonner avec une telle conscience doit être considéré comme l'acceptation dudit crime.

[77] Appellant's Brief, p. 131.
[78] Appellant's Brief, pp. 131-133.
[79] Appellant's Brief, pp. 133-135.
[80] Appellant's Brief, p. 134.

of law."[81] He states that this standard was set out at the beginning of the Trial Judgement and pervades the entire analysis that followed.[82]

44. The Prosecution submits that the Appellant's claim that the *mens rea* adopted by the Trial Chamber in relation to aiding and abetting — "possible and foreseeable consequence of the conduct" — was too low is unsupported by any "standard" or authority. Nor did the Appellant, according to the Prosecution, indicate any instance where the application of such a standard would have impacted upon his conviction thereby possibly enabling him to claim prejudice.[83] The Prosecution further submits that the Trial Chamber did not apply a negligence standard in the instant case but that, if it had, it would have been completely appropriate to do so.[84] Finally, the Prosecution rejects the Appellant's unsupported assertion that aiding and abetting liability requires an element of causation between the act of the accused and the act of the principal.[85]

45. In *Vasiljević*, the Appeals Chamber set out the *actus reus* and *mens rea* of aiding and abetting. It stated:

> (i) The aider and abettor carries out acts specifically directed to assist, encourage or lend moral support to the perpetration of a certain specific crime (murder, extermination, rape, torture, wanton destruction of civilian property, etc.), and this support has a substantial effect upon the perpetration of the crime. [...]
>
> (ii) In the case of aiding and abetting, the requisite mental element is knowledge that the acts performed by the aider and abettor assist [in] the commission of the specific crime of the principal. [...][86]

The Appeals Chamber considers that there are no reasons to depart from this definition.

46. In this case, the Trial Chamber, following the standard set out in *Furundžija*, held that the *actus reus* of aiding and abetting "consists of practical assistance, encouragement, or moral support which has a substantial effect on the perpetration of the crime."[87] It further stated that the *mens rea* required is "the knowledge that these acts assist the commission of the offense."[88] The Appeals Chamber considers that the Trial Chamber was correct in so holding.

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[81] Brief in Reply, para. 115.
[82] Brief in Reply, para. 116.
[83] Respondent's Brief, para. 5.67.
[84] Respondent's Brief, paras. 5.68-5.69.
[85] Respondent's Brief, paras. 5.71-5.75.
[86] *Vasiljević* Appeal Judgement, para. 102.
[87] Trial Judgement, para. 283 (quoting *Furundžija* Trial Judgement, para. 249).
[88] Trial Judgement, para. 283 (quoting *Furundžija* Trial Judgement, para. 249).

47. The Trial Chamber further stated that the *actus reus* of aiding and abetting may be perpetrated through an omission, "provided this failure to act had a decisive effect on the commission of the crime and that it was coupled with the requisite *mens rea*."[89] It considered:

> In this respect, the mere presence at the crime scene of a person with superior authority, such as a military commander, is a probative indication for determining whether that person encouraged or supported the perpetrators of the crime.[90]

The Appeals Chamber leaves open the possibility that in the circumstances of a given case, an omission may constitute the *actus reus* of aiding and abetting.

48. The Trial Chamber in this case went on to state:

> Proof that the conduct of the aider and abettor had a causal effect on the act of the principal perpetrator is not required. Furthermore, participation may occur before, during or after the act is committed and be geographically separated therefrom.[91]

The Appeals Chamber reiterates that one of the requirements of the *actus reus* of aiding and abetting is that the support of the aider and abettor has a substantial effect upon the perpetration of the crime. In this regard, it agrees with the Trial Chamber that proof of a cause-effect relationship between the conduct of the aider and abettor and the commission of the crime, or proof that such conduct served as a condition precedent to the commission of the crime, is not required. It further agrees that the *actus reus* of aiding and abetting a crime may occur before, during, or after the principal crime has been perpetrated, and that the location at which the *actus reus* takes place may be removed from the location of the principal crime.

49. In relation to the *mens rea* of an aider and abettor, the Trial Chamber held that "in addition to knowledge that his acts assist the commission of the crime, the aider and abettor needs to have intended to provide assistance, or as a minimum, accepted that such assistance would be a possible and foreseeable consequence of his conduct."[92] However, as previously stated in the *Vasiljević* Appeal Judgement, knowledge on the part of the aider and abettor that his acts assist in the commission of the principal perpetrator's crime suffices for the *mens rea* requirement of this mode of participation.[93] In this respect, the Trial Chamber erred.

50. The Trial Chamber agreed with the statement in the *Furundžija* Trial Judgement that "it is not necessary that the aider and abettor...know the precise crime that was intended and which in the event was committed. If he is aware that one of a number of crimes will probably be committed,

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[89] Trial Judgement, para. 284 (footnote omitted).
[90] Trial Judgement, para. 284 (footnote omitted).
[91] Trial Judgement, para. 285 (citing *Furundžija* Trial Judgement, para. 233; *Aleksovski* Trial Judgement, para. 61).
[92] Trial Judgement, para. 286.
[93] *Vasiljević* Appeal Judgement, para. 102.

and one of those crimes is in fact committed, he has intended to facilitate the commission of that crime, and is guilty as an aider and abettor."[94] The Appeals Chamber concurs with this conclusion.

51. In light of the foregoing, the Appeals Chamber finds that the Trial Chamber was correct in part and erred in part in setting out the legal requirements of aiding and abetting.

52. The Appeals Chamber notes that in this case, the Trial Chamber did not hold the Appellant responsible for aiding and abetting the crimes at issue. In addition, the Appeals Chamber considers that this form of participation was insufficiently litigated on appeal.[95] Furthermore, the Appeals Chamber does not consider that this form of participation was fairly encompassed by the Indictment.[96] In these circumstances, the Appeals Chamber declines to consider this form of participation any further.

B. Command Responsibilty under Article 7(3) of the Statute

53. In this section,[97] the Appeals Chamber will only address alleged legal errors concerning Article 7(3) of the Statute, and will leave contentions raised by the Appellant in his second ground of appeal, concerning whether the facts of the case support a finding that the Appellant had effective control in the Central Bosnia Operative Zone (CBOZ), to the parts of the Judgement where the factual grounds of appeal are considered.

1. Actual knowledge of a superior

54. The Appellant claims that the *mens rea* under Article 7(3) of the Statute is actual knowledge or "information which, if at hand, would oblige the commander to conduct further inquiry."[98] Regarding actual knowledge, the Appellant submits that it requires more than proof of a person's rank as a military commander, and that the Trial Chamber failed to look beyond the Appellant's status to establish his knowledge, thus relying "almost exclusively" on the Appellant's rank and status. This, the Appellant contends, is an unacceptable form of strict liability which in effect shifts the burden of proof.[99]

55. The Prosecution responds that the Appellant has failed to make a single reference to any paragraph of the Trial Judgement that would lend credence to this allegation. On the contrary, it

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[94] Trial Judgement, para. 287 (quoting *Furundžija* Trial Judgement, para. 246). *See,* for example, in German law, "Risikoerhöhungstheorie" ("theory of added peril"), BGH St. 42, 135-139.
[95] It was discussed primarily as an error of law in the parties' briefs, and there was no discussion concerning aiding and abetting during the appeal hearing. Compare *Krstić* Appeal Judgement, p. 47, n. 228; *Vasiljević* Appeal Judgement, para. 133.
[96] *See* below Chapter VI (A); compare *Krstić* Appeal Judgement, para. 137.
[97] In this Judgement, the expressions "command responsibility" and "superior responsibility" are synonymous.
[98] Appellant's Brief, p. 136.

> attacks on property. In other words, the perpetrator of the acts of persecution does not initially target the individual but rather membership in a specific racial, religious or political group.[334]

164. The Appeals Chamber reiterates that the *mens rea* of the perpetrator carrying out the underlying physical acts of persecutions as a crime against humanity requires evidence of a "specific intent to discriminate on political, racial, or religious grounds."[335] The requisite discriminatory intent may not be "inferred directly from the general discriminatory nature of an attack characterised as a crime against humanity."[336] However, the Appeals Chamber considers that the "discriminatory intent may be inferred from such a context as long as, in view of the facts of the case, circumstances surrounding the commission of the alleged acts substantiate the existence of such intent."[337]

165. Pursuant to the jurisprudence of the International Tribunal, the Appeals Chamber holds that a showing of a specific persecutory intent behind an alleged persecutory plan or policy, that is, the removal of targeted persons from society or humanity, is not required to establish the *mens rea* of the perpetrator carrying out the underlying physical acts of persecutions. The Appeals Chamber further dismisses the Appellant's allegation that a discriminatory purpose alone is insufficient to establish the *mens rea* for the crime of persecutions. The Trial Chamber was correct when it held at paragraph 235 of the Trial Judgement that the *mens rea* for persecutions "is the specific intent to cause injury to a human being because he belongs to a particular community or group." The Appeals Chamber stresses that there is no requirement in law that the actor possess a "persecutory intent" over and above a discriminatory intent.

166. The Appeals Chamber has also examined the Appellant's argument that the Trial Chamber erred in applying a recklessness standard in relation to the *mens rea* requirement for persecutions. In paragraph 235 of the Trial Judgement, reproduced above, there is no reference to recklessness. Paragraph 254 of the Trial Judgement outlines a standard of indirect malicious intent, or recklessness, for the knowing participation in the attack, as a *chapeau* requirement of crimes against humanity, and not for the crime of persecution. However, the Appeals Chamber is cognizant of the fact that in making its factual findings relating to the ordering of crimes under Article 7(1) of the Statute, the Trial Chamber frequently employed language such as "took the risk" or "deliberately ran the risk."[338] As stated above, the correct legal standard in relation thereto is that a person who orders an act or omission with the awareness of the substantial likelihood that a crime will be committed in the execution of that order, has the requisite *mens rea* for establishing liability under

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[334] Trial Judgement, para. 235 (footnotes omitted).
[335] *Krnojelac* Appeal Judgement, para. 184; *Vasiljević* Appeal Judgement, para. 113.
[336] *Krnojelac* Appeal Judgement, para. 184.
[337] *Krnojelac* Appeal Judgement, para. 184.
[338] *See*, for example, Trial Judgement, paras. 474, 562, 592, 653, and 738.

Article 7(1) pursuant to ordering. Ordering with such awareness has to be regarded as accepting that crime. Thus, an individual who orders an act with the awareness of a substantial likelihood that persecutions as a crime against humanity will be committed in the order's execution, may be liable under Article 7(1) for the crime of persecutions. Whether the facts in this case support a finding that the Appellant is responsible for ordering persecutions as a crime against humanity will be considered in the factual chapters of this Judgement.

against Bosnian Muslims. Their arbitrary detention in pitiful conditions, and in a climate of fear, combined with their employment for forced labour or as human shields, establishes the gravity of the offences in this case. In particular the abuse of the sizeable number of 247 human beings as human shields and – in doing so – endangering their lives at least *in abstracto* has to be seen as a serious aggravating factor.

(c) The individual circumstances of the accused[1446]

685. The factors that remain critical to sentencing are the individual circumstances of each case and the individual guilt of the perpetrator.[1447] The factors to be taken into account in aggravation or

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[1446] Article 24(2) of the Statute.
[1447] Article 24(2) of the Statute; *Čelebići* Appeal Judgement, para. 717 (noting "the overriding obligation to individualise a penalty to fit the individual circumstances of the accused and the gravity of the crime."). *See also Furundžiia* Appeal Judgement, para. 237, *cited in Čelebići* Appeal Judgement, para. 721.
[1448] *Čelebići* Appeal Judgement, para. 780.
[1449] Rule 101(B)(i).
[1450] *Čelebići* Appeal Judgement, para. 763.
[1451] *Jokić* Sentencing Judgement, paras. 61-62. *See also Tadić* Appeal Judgement, paras. 55-56.
[1452] *Vasiljević* Appeal Judgement, paras. 172-173: "The first issue is whether discriminatory intent can be used as an aggravating factor. To that question the answer is in the affirmative". *See also* the *Vasiljević* Trial Judgement, para. 277: "[T]he discriminatory purpose of the crimes and the selection of victims based on their ethnicity ... can only ... [constitute an aggravating factor] where the crime for which an accused is convicted does not include a discriminatory state of mind as an element. The crime of persecution in Article 5(h) of the Statute already includes such an element. Such a discriminatory state of mind goes to the seriousness of the offence, *but it may not additionally aggravate that offence*." (Emphasis added.). *See also Kunarac* Appeal Judgement, para. 357.
[1453] *Kunarac* Appeal Judgement, para. 357, *citing Tadić* Appeal Judgement, para. 508 (stating that a discriminatory intent "is an indispensable ingredient of the offence only with regard to those crimes for which this is expressly required, that is, for Article 5(h), concerning various types of persecution."). *See also Todorović* Trial Judgement, para. 57 ("Since a discriminatory intent is one of the basic elements of the crime of persecution, this aspect of Todorovic's criminal conduct is already encompassed in a consideration of the offence. [I]t should not be treated separately as an aggravating factor.").
[1454] *Kunarac* Appeal Judgement, para. 356; *Todorović* Sentencing Judgement, para. 65.
[1455] *Krstić* Trial Judgement, para. 708.
[1456] *Furundžija* Trial Judgement, para. 281. This issue was not raised on appeal (*see Furundžija* Appeal Judgement).
[1457] *Čelebići* Appeal Judgement, paras. 736-737.
[1458] *Jelisić* Appeal Judgement, para. 86; *Kayishema* Appeal Judgement, para. 351.
[1459] *Krstić* Trial Judgement, paras. 711-712. *See also Krstić* Appeal Judgement, para. 258 ("There was an element of premeditation in the decision forcibly to transfer the civilian population, but it was within the discretion of the Trial Chamber to discount this factor from having any bearing on the sentence imposed.")
[1460] *Kunarac* Trial Judgement, para. 867, and *Kunarac* Appeal Judgement, para. 353.
[1461] *Kunarac et al.* Trial Judgement, para. 864, 866; *Kunarac et al.* Appeal Judgement, para. 355.
[1462] *Furundžija* Trial Judgement, para. 283: "[T]he Trial Chamber considers the fact that Witness A was a civilian detainee and at the complete mercy of her captors to be a further aggravating circumstance."
[1463] *Čelebići* Appeal Judgement, para. 788 (referring to the behaviour of the accused during trial proceedings, which "is relevant to a Trial Chamber's determination of, for example, remorse for the acts committed or, on the contrary, total lack of compassion.")

mitigation of a sentence have not been defined exhaustively by the Statute or the Rules, and a Trial Chamber has considerable discretion in deciding how these factors are applied in a particular case.[1448]

(i) Aggravating circumstances[1449]

686. Aggravating circumstances must be proved by the Prosecution beyond reasonable doubt[1450] and include the following: (i) the position of the accused, that is, his position of leadership, his level in the command structure, or his role in the broader context of the conflict of the former Yugoslavia;[1451] (ii) the discriminatory intent[1452] or the discriminatory state of mind for crimes for which such a state of mind is not an element or ingredient of the crime;[1453] (iii) the length of time during which the crime continued;[1454] (iv) active and direct criminal participation, if linked to a high-rank position of command,[1455] the accused's role as fellow perpetrator,[1456] and the active participation of a superior in the criminal acts of subordinates;[1457] (v) the informed, willing or enthusiastic participation in crime;[1458] (vi) premeditation and motive;[1459] (vii) the sexual, violent, and humiliating nature of the acts and the vulnerability of the victims;[1460] (viii) the status of the victims, their youthful age and number, and the effect of the crimes on them;[1461] (ix) civilian detainees;[1462] (x) the character of the accused;[1463] and (xi) the circumstances of the offences generally.[1464]

687. Not included as an aggravating circumstance is the decision of an accused to make use of his right to remain silent.[1465] In this way, the consideration of aggravating circumstances differs from that of mitigating circumstances and reflects the different burden of proof for each.[1466] Furthermore, the absence of a mitigating factor can never serve as an aggravating factor.[1467]

[1464] *Tadić* Sentencing Judgement, para. 19 (referring to the "horrific conditions at the camps established by Bosnian Serb authorities in opština Prijedor").
[1465] *Čelebići* Appeal Judgement, para. 783; *Plavšić* Sentencing Judgement, para. 64.
[1466] *Čelebići* Appeal Judgement, para. 763: "The Appeals Chamber agrees that only those matters which are proved beyond reasonable doubt against an accused may be the subject of an accused's sentence or taken into account in aggravation of that sentence"; *Kunarac* Trial Judgement, para. 847: "The Trial Chamber underlines its view that fairness requires the Prosecutor to prove aggravating circumstances beyond a reasonable doubt, [footnote omitted] and that the Defence needs to prove mitigating circumstances only on the balance of probabilities."
[1467] The absence of a mitigating factor does not itself constitute an aggravating factor (*Plavsić* Sentencing Judgement, para. 64).

UNITED
NATIONS

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of The Former Yugoslavia since 1991

Case No. IT-95-14-T

Date: 3 March 2000

Original: English
French

IN THE TRIAL CHAMBER

Before: Judge Claude Jorda, Presiding
Judge Almiro Rodrigues
Judge Mohamed Shahabuddeen

Registrar: Mrs. Dorothee de Sampayo Garrido-Nijgh

Decision of: 3 March 2000

THE PROSECUTOR

v.

TIHOMIR BLA[KI]

JUDGEMENT

The Office of the Prosecutor:

Mr. Mark Harmon
Mr. Andrew Cayley
Mr. Gregory Kehoe

Defence Counsel:

Mr. Anto Nobilo
Mr. Russell Hayman

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indirect intent, it is necessary to prove his direct or indirect intent, the latter corresponding to the notion of recklessness in common law and the notion of *dolus eventualis* in civil law[493].

268. The Prosecution submits that "ordering" implies a superior-subordinate relationship between the person who orders and the one who carries it out. In other words, the person in authority uses that authority to cause another to commit an offence. This may be proved by circumstantial or direct evidence. There is no requirement as to the form of the order, which may be implied or express. Moreover, an order does not need to be issued by the accused directly to the person(s) who perform(s) the *actus reus* of the crime. Nor is it necessary that the order explicitly required the commission of the crime[494].

269. "Planning" implies that one or several persons plan, design or organise the commission of the *actus reus* of a crime. This may be proved by circumstantial evidence. It is not required that the planners intervene in the execution of the crime[495].

270. The essence of instigating is that the accused causes another person to commit a crime. Although it must be proved that the instigation was a clear contributing factor to the commission of the crime, it need not be a *conditio sine qua non*. Instigation can take many different forms; it can be express or implied, and entail both acts and omissions[496].

271. The Prosecution contended that although aiding and abetting both constitute acts of complicity, they are two different concepts. "Aiding" means giving assistance to someone whereas "abetting" assumes facilitating the commission of an offence. The conduct of the person who aids or abets (hereinafter "the aider and abettor"[497]) must have a "direct and substantial" effect on the commission of the crime, although the adjective "direct" adds little to the definition. The aiding and abetting need not have been a *conditio sine qua non* for the actual perpetration of the offence. Nor is a pre-existing plan between the aider and abettor and the perpetrator required. The assistance may be provided before, after (even without prior agreement) or during the commission of the crime. Proof is not required that the aider and abettor actually participated in or that he was present during the physical perpetration of the crime. Both acts and omissions may constitute a form of aiding and abetting, at least in circumstances where the omission is in breach of a duty to act. The aiding and abetting need

[493] *Ibid.*, paras. 1.3-1.14.
[494] *Ibid.*, paras. 1.15-1.19.
[495] *Ibid.*, paras. 1.20-1.25.
[496] *Ibid.*, paras. 1.26-1.28.
[497] And by reference, "complicity".

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UNITED
NATIONS

International Tribunal for the Prosecution of Persons Responsible for Serious Violations ofInternational Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991

Case No: IT-95-14-T

Date: 21 January 1998
English
Original: French

IN THE TRIAL CHAMBER

Before: **Judge Claude Jorda, Presiding**
Judge Fouad Riad
Judge Mohamed Shahabuddeen

Registrar: **Mr. Jean-Jacques Heintz, Deputy Registrar**

Decision of: **21 January 1998**

THE PROSECUTOR

v.

TIHOMIR BLAŠKIĆ

DECISION ON THE STANDING OBJECTION OF THE DEFENCE TO THE ADMISSION OF HEARSAY WITH NO INQUIRY AS TO ITS RELIABILITY

The Office of the Prosecutor

Mr. Mark Harmon
Mr. Andrew Cayley
Mr. Gregory Kehoe

Counsel for the Accused

Mr. Anto Nobilo
Mr. Russell Hayman

Judge Stephen, in particular, affirmed:

> "The fact that evidence is hearsay does not, of course, affect its relevance nor will it necessarily deprive it of probative value". *(Separate Opinion of Judge Stephen on the Defence Motion on Hearsay,* p.2*).*

10. This Trial Chamber agrees with those conclusions and emphasises that the two criteria for admissibility - relevance and probative value - pursuant to Sub-rule 89(C) of the Rules, apply whether the testimony is direct or hearsay. In fact, direct testimony may also not be relevant or have the required probative value and thus be declared inadmissible. The direct or hearsay nature of the testimony is but one of the many factors which the Trial Chamber will consider when evaluating the relevance and probative value of such testimony. The Trial Chamber therefore considers that the admissibility of hearsay evidence may not be subject to any prohibition in principle since the proceedings are conducted before professional Judges who possess the necessary ability to begin by hearing hearsay evidence and then to evaluate it so that they may make a ruling as to its relevance and probative value. The Trial Chamber notes, finally, that the principle of the inadmissibility of hearsay evidence, as enshrined in the common law countries, has, in those very countries today, become "riddled with judicial and even legal exceptions" (Jean Pradel, *Droit pénal comparé,* Précis Dalloz, 1995, p. 406).

B. The question of the limits to the admissibility of hearsay evidence

11. As regards the limits to the admissibility of hearsay evidence, the Defence is seeking both that a general limit be placed on recourse to hearsay evidence and that the evidence be identified so that the Judges may evaluate its reliability. The principal argument in support of such limits is the absence of any cross-examination of the initial declarant. However, since the principle making hearsay evidence admissible has been accepted, the objection in respect of the absence of cross-examination is not related to admissibility but to the weight given to the evidence.

12. The right to cross-examination guaranteed by Article 21(4)(e) of the Statute applies to the witness testifying before the Trial Chamber and not to the initial declarant whose statement has been transmitted to this Trial Chamber by the witness.

The Trial Chamber does, however, note that the right to cross-examine the witness in court may be used to challenge the importance to be given to the hearsay testimony, for example, by clearly indicating the number of intermediaries who transmitted the testimony and by seeking to learn the identity and other characteristics of the initial declarant as well as the possibilities for that declarant to have learned the relevant elements or even by bringing out the other facts or circumstances which might assist the Trial Chamber in its evaluation of such evidence.

13. In the opinion of the Trial Chamber, the Judges are the ones who will, in due course and in each case, determine the reliability to be accorded to a testimony, according to the circumstances in which it was obtained and to its content. For this purpose, the Judges, if necessary, will not hesitate to ask the witness questions relating to the hearsay evidence. The proceedings of the International Tribunal are not conducted before a jury, but before professional Judges who rule on both fact and law. Thanks to their training and experience, the Judges can give the appropriate weight to testimony declared admissible in light of its reliability. Such an evaluation can logically be made only *a posteriori* once the Parties have presented all their claims.

C. The need to ensure a fair trial

14. The Trial Chamber would recall that testimony initially admitted because it satisfies the two-fold criteria of relevance and probative value may subsequently be rejected, pursuant to Sub-rule 89(D) of the Rules should the Judges deem that, within the context of the trial, such testimony no longer meets the need to ensure a fair trial. Sub-rule 89(D), in fact, states that

> "A Chamber may exclude evidence if its probative value is substantially outweighed by the need to ensure a faire trial".

In its Decision on hearsay, Trial Chamber II already considered the real guarantee for the Defence in respect of the unconditional admission of evidence. It noted that

> "Moreover, Sub-rule 89(D) provides further protection against prejudice to the Defence, for if evidence has been admitted as relevant and having probative value, it may later be excluded" (para. 18).

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	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991	Case No.	IT-04-82-A
		Date:	19 May 2010
		Original:	English

IN THE APPEALS CHAMBER

Before: **Judge Patrick Robinson, Presiding**
Judge Mehmet Güney
Judge Liu Daqun
Judge Andrésia Vaz
Judge Theodor Meron

Registrar: **Mr. John Hocking**

Judgement of: **19 May 2010**

PROSECUTOR

v.

LJUBE BOŠKOSKI
JOHAN TARČULOVSKI

PUBLIC

JUDGEMENT

The Office of the Prosecutor:

Mr. Paul Rogers
Mr. François Boudreault
Ms. Nadia Shihata
Ms. Elena Martin Salgado
Ms. Laurel Baig

Counsel for Ljube Boškoski:

Ms. Edina Rešidović
Mr. Guénaël Mettraux

Counsel for Johan Tarčulovski:

Mr. Alan M. Dershowitz
Mr. Nathan Z. Dershowitz
Mr. Antonio Apostolski
Mr. Jordan Apostolski

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15. The same standard of reasonableness and the same deference to factual findings applies when the Prosecution appeals against an acquittal.[47] Thus, when considering an appeal by the Prosecution, the Appeals Chamber will only hold that an error of fact was committed when it determines that no reasonable trier of fact could have made the impugned finding.[48] Considering that it is the Prosecution that bears the burden at trial of proving the guilt of an accused beyond reasonable doubt, the significance of an error of fact occasioning a miscarriage of justice is somewhat different for a Prosecution appeal against acquittal from a defence appeal against conviction.[49] An accused must show that the Trial Chamber's factual errors create a reasonable doubt as to his guilt.[50] The Prosecution must show that, when account is taken of the errors of fact committed by the Trial Chamber, all reasonable doubt of the accused's guilt has been eliminated.[51]

16. A party may not merely repeat on appeal arguments that did not succeed at trial, unless the party can demonstrate that the Trial Chamber's rejection of those arguments constituted an error warranting the intervention of the Appeals Chamber.[52] Arguments which do not have the potential to cause the impugned decision to be reversed or revised need not be considered on the merits and may be immediately dismissed by the Appeals Chamber.[53]

17. The Appeals Chamber's mandate cannot be effectively and efficiently carried out without focused contributions by the parties.[54] In a primarily adversarial system, like that of the Tribunal, the deciding body considers its case on the basis of the arguments advanced by the parties.[55] It thus falls to the parties appearing before the Appeals Chamber to present their case clearly, logically and exhaustively so that the Appeals Chamber may fulfil its mandate in an efficient and expeditious manner.[56] In order for the Appeals Chamber to assess a party's arguments on appeal, the appealing party is expected to provide precise references to relevant transcript pages or paragraphs in the

[47] *Mrkšić and Šljivančanin* Appeal Judgement, para. 15; *Martić* Appeal Judgement, para. 12; *Strugar* Appeal Judgement, para. 14.
[48] *Mrkšić and Šljivančanin* Appeal Judgement, para. 15; *Martić* Appeal Judgement, para. 12; *Strugar* Appeal Judgement, para. 14.
[49] *Mrkšić and Šljivančanin* Appeal Judgement, para. 15; *Martić* Appeal Judgement, para. 12; *Strugar* Appeal Judgement, para. 14.
[50] *Mrkšić and Šljivančanin* Appeal Judgement, para. 15; *Martić* Appeal Judgement, para. 12; *Strugar* Appeal Judgement, para. 14.
[51] *Mrkšić and Šljivančanin* Appeal Judgement, para. 15; *Martić* Appeal Judgement, para. 12; *Strugar* Appeal Judgement, para. 14.
[52] *Mrkšić and Šljivančanin* Appeal Judgement, para. 16; *Simić* Appeal Judgement, para. 12; *Gacumbitsi* Appeal Judgement, para. 9.
[53] *Mrkšić and Šljivančanin* Appeal Judgement, para. 16; *Simić* Appeal Judgement, para. 12; *Gacumbitsi* Appeal Judgement, para. 9.
[54] *Milošević* Appeal Judgement, para. 16; *Simić* Appeal Judgement, para. 13.
[55] *Simić* Appeal Judgement, para. 13.
[56] *Milošević* Appeal Judgement, para. 16; *Simić* Appeal Judgement, para. 13; *Kunarac et al.* Appeal Judgement, para. 43 (fns ommitted).

decision or judgement to which the challenges are being made.[57] Further, the Appeals Chamber will not consider a party's submissions when they are obscure, contradictory, vague, or suffer from other formal and obvious insufficiencies.[58] Finally, the Appeals Chamber exercises its inherent discretion in selecting which submissions merit a detailed reasoned opinion in writing, and may dismiss arguments which are evidently unfounded without providing detailed reasoning.[59]

18. When applying these principles, the Appeals Chamber recalls that it has identified the types of deficient submissions on appeal which are bound to be summarily dismissed.[60] In particular, the Appeals Chamber will dismiss without detailed analysis (i) arguments that fail to identify the challenged factual findings, that misrepresent the factual findings or the evidence, or that ignore other relevant factual findings; (ii) mere assertions that the Trial Chamber must have failed to consider relevant evidence, without showing that no reasonable trier of fact, based on the evidence could have reached the same conclusion as the Trial Chamber did; (iii) challenges to factual findings on which a conviction does not rely, and arguments that are clearly irrelevant, that lend support to, or that are not inconsistent with the challenged finding; (iv) arguments that challenge a Trial Chamber's reliance or failure to rely on one piece of evidence, without explaining why the conviction should not stand on the basis of the remaining evidence; (v) arguments contrary to common sense; (vi) challenges to factual findings where the relevance of the factual finding is unclear and has not been explained by the appealing party; (vii) mere repetition of arguments that were unsuccessful at trial without any demonstration that their rejection by the Trial Chamber constituted an error warranting the intervention of the Appeal Chamber; (viii) allegations based on material not on record; (ix) mere assertions unsupported by any evidence, undeveloped assertions, failure to articulate error; and (x) mere assertions that the Trial Chamber failed to give sufficient weight to evidence or failed to interpret evidence in a particular manner.[61]

[57] Practice Direction on Formal Requirements for Appeals from Judgement (IT/201) of 7 March 2002, paras 1(c)(iii), 1(c)(iv), and 4(b)(ii). *See* also *Mrkšić and Šljivančanin* Appeal Judgement, para. 17; *Simić* Appeal Judgement, para. 13; *Gacumbitsi* Appeal Judgement, para. 10.
[58] *Milošević* Appeal Judgement, para. 16; *Mrkšić and Šljivančanin* Appeal Judgement, para. 17; *Krajišnik* Appeal Judgement, para. 16; *Martić* Appeal Judgement, para. 14; *Strugar* Appeal Judgement, para. 16; *Orić* Appeal Judgement, para. 14; *Karera* Appeal Judgement, para. 12.
[59] *Milošević* Appeal Judgement, para. 16; *Mrkšić and Šljivančanin* Appeal Judgement, para. 18; *Strugar* Appeal Judgement, para. 16.
[60] *Milošević* Appeal Judgement, para. 17; *Krajišnik* Appeal Judgement, para. 17; *Martić* Appeal Judgement, para. 15.
[61] *Milošević* Appeal Judgement, para. 17; *Krajišnik* Appeal Judgement, paras 17-27; *Martić* Appeal Judgement, paras 14-21.

Boris Trajkovski, it failed to make a reasonable and favourable inference from this evidence, thereby violating the principle of *in dubio pro reo*.[451]

166. The Prosecution responds that the Trial Chamber's finding that Tarčulovski was in charge of the operation on the ground is consistent with the finding that he was not the person who initiated it.[452] The Prosecution further argues that the fact that an accused has acted pursuant to an order of a Government or a superior does not relieve him of criminal responsibility.[453]

167. The Appeals Chamber recalls that the Trial Chamber found that Tarčulovski had been ordered to lead the police in the operation in Ljuboten without making a positive finding as to who gave the order.[454] This is, however, irrelevant: the fact that Tarčulovski was ordered to lead the operation does not exonerate him from criminal responsibility if in the execution of the order he in turn instructed other persons to commit a crime.[455] Moreover, the fact that someone else ordered Tarčulovski to lead the operation does not mean that he did not order the operation to be carried out. Tarčulovski fails to show that the Trial Chamber's findings in this respect were unreasonable,[456] and that the *in dubio pro reo* principle was violated. His arguments in this regard are therefore dismissed.

E. Alleged improper expansion of *actus reus* and *mens rea* of planning, ordering and instigating

168. Tarčulovski contends that the Trial Chamber erred in finding that an accused is criminally responsible for planning, instigating or ordering an operation with a legitimate goal, if he did so with the awareness of the substantial likelihood that crimes would be committed in the execution of the operation.[457]

1. Alleged expansion of the *actus reus*

169. First, Tarčulovski argues that the Trial Chamber misapplied the Appeals Chamber's jurisprudence and erroneously expanded the *actus reus* of planning, instigating and ordering by

criminally liable although it could not even determine whether the President was directly involved (citing Trial Judgement, para. 563); AT. 35 and 51.

[451] Tarčulovski Appeal Brief, para. 197(f) (citing Trial Judgement, para. 114); Tarčulovski Amended Notice of Appeal, para. 104 (E) (citing Trial Judgement, para. 114).

[452] Prosecution Response Brief, paras 95 (citing Trial Judgement, paras 564, 574 and 594) and 159 (citing Trial Judgement, paras 113-114 and 594).

[453] Prosecution Response Brief, paras 95 and 159 (both referring to Article 7(4) of the Statute).

[454] Trial Judgement, paras 114 and 541.

[455] *Cf.* Article 7(4) of the Statute.

[456] Trial Judgement, paras 572, 574 and 577.

[457] Tarčulovski Appeal Brief, para. 127 (citing Trial Judgement, para. 576); Tarčulovski Amended Notice of Appeal, para. 39 (citing Trial Judgement, para. 576); Tarčulovski Reply Brief, para. 32.

finding that it can encompass the planning, instigating or ordering of conduct that does not constitute a crime.[458]

170. The Prosecution responds that this argument ignores and misrepresents the Trial Chamber's findings that the predominant object of the operation was to commit the crimes and that "ordering, planning or instigating an operation primarily designed to commit crimes is the same as ordering planning or instigating the crimes themselves."[459] The Prosecution further contends that "the plan, instigation or order need not be explicitly to commit crimes" and that an accused can be held responsible when planning, instigating or ordering an act or omission with the awareness of the substantial likelihood that it will result in a crime.[460]

171. The Trial Chamber reasonably found that the predominant purpose of the operation in Ljuboten was to indiscriminately attack Albanian villagers and their property and that the evidence established that Tarčulovski planned, instigated and ordered this operation.[461] In other words, the Trial Chamber found that Tarčulovski planned, instigated and ordered conduct *which constituted crimes.*[462] In so doing, the Trial Chamber did not expand the *actus reus* of planning, instigating and ordering. Tarčulovski's arguments misinterpret the Trial Chamber's findings and are thus dismissed.[463]

172. Furthermore, the Appeals Chamber notes that the legitimate character of an operation does not exclude an accused's criminal responsibility for planning, instigating and ordering crimes committed in the course of this operation. In other words, even if the goal of an operation is to root

[458] Tarčulovski Appeal Brief, paras 127 and 129 (citing Trial Judgement, para. 576); Tarčulovski Amended Notice of Appeal, para. 39 (citing Trial Judgement, para. 576). *See* also Tarčulovski Reply Brief, paras 47-49. Tarčulovski further argues that requiring that an accused solely planned, instigated or ordered an act or omission, including a legitimate operation, with the awareness of the substantial likelihood that it will result in a crime, effectively turns into criminals "commanding officers of any country whose troops have gone to war, especially against terrorists who hide among civilians". According to Tarčulovski, "in wartime, there is a substantial likelihood – if not a near certainty – that some soldiers will behave improperly and engage in behaviour that IHL law proscribes" (Tarčulovski Reply Brief, para. 46). *See* also AT. 95-96.

[459] Prosecution Response Brief, paras 70 (citing Trial Judgement, paras 572-573) requesting summarily dismissal and 97 (citing Trial Judgement, paras 572-573). *See* also Prosecution Response Brief, Section V (in particular, paras 63-65).

[460] Prosecution Response Brief, paras 98-99 (referring to *Nahimana et al.* Appeal Judgement, paras 479-481; *Karera* Appeal Judgement, para. 211; *Blaškić* Appeal Judgement, paras 41-42 and 471; *Kordić and Čerkez* Appeal Judgement, paras 30-32; *Martić* Appeal Judgement para. 261, and citing Trial Judgement, para. 577 and fn. 2502).

[461] *See supra* paras 135, 153-154, 157 and 161.

[462] *See* Planning: *Kordić and Čerkez* Appeal Judgement, paras 26; *Nahimana et al.* Appeal Judgement, para. 479. Instigating: *Kordić and Čerkez* Appeal Judgement, paras 27; *Nahimana et al.* Appeal Judgement, para. 480. Ordering: *Galić* Appeal Judgement, para. 176; *Kordić and Čerkez* Appeal Judgement, para. 28; *Nahimana et al.* Appeal Judgement, para. 481; *Semanza* Appeal Judgement, para. 361. *See* also Trial Judgement, paras 398-400.

[463] Consequently, the Appeals Chamber dismisses Tarčulovski's arguments that even if the jurisprudence of the Appeals Chamber had expanded the *actus reus* of ordering, planning or instigating, their holdings must not be applied "retroactively" to the charged crimes in August 2001 (Tarčulovski Appeal Brief, paras 134-135; Prosecution Response Brief, paras 100-101).

out "terrorists", this must not be achieved by an act that constitutes a crime.[464] In addition, the Appeals Chamber recalls "that motive is generally not an element of criminal liability".[465]

2. Alleged expansion of the *mens rea*

173. Tarčulovski also submits that the Trial Chamber erroneously expanded the *mens rea* of planning, instigating and ordering when it held that an accused must only know of the *possibility* that a crime will be committed, although the correct standard is that an accused must be aware of a "substantial likelihood" that a crime will occur.[466] Tarčulovski further asserts that the Trial Chamber failed to address whether the risk of crimes being committed under the "perceived threat" by the NLA was unjustifiable or unreasonable.[467]

174. The Appeals Chamber recalls the Trial Chamber's finding that the crimes "were foreseen [...] to be a substantial likelihood of the execution of the operation."[468] This finding is consistent with the established *mens rea* standard of planning, instigating and ordering.[469] The jurisprudence does not require the risk of crimes to be committed to be "reasonable" or "justified"; therefore the Trial Chamber did not err when it did not address this issue.[470] Tarčulovski's arguments in this regard are therefore dismissed.

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[464] *Cf.* HCJ 5100/94 *The Public Committee against Torture in Israel v. The State of Israel*, 53(4) PD 817, 854. (Supreme Court in Israel)

> "This is the destiny of a democracy - it does not see all means as acceptable, and the ways of its enemies are not always open before it. A democracy must sometimes fight with one arm tied behind its back. Even so, a democracy has the upper hand. The rule of law and the liberty of an individual constitute important components in its understanding of security. At the end of the day, they strengthen its spirit and this strength allows it to overcome its difficulties."

[465] *Limaj et al.* Appeal Judgement, para. 109; *Jelisić* Appeal Judgement, para. 71; *Tadić* Appeal Judgement, para. 269. *See also Kvočka et al.* Appeal Judgement, para. 106; *Jelisić* Appeal Judgement, para. 49. As regards Tarčulovski's argument that too broad an interpretation of the legal requirements for planning, instigating and ordering would effectively turn into criminals commanding officers of any country whose troops have gone to war, the Appeals Chamber is not satisfied that he has shown that the Trial Chamber erred in the definition of these modes of liability.

[466] Tarčulovski Appeal Brief, paras 130-132 (referring to *Blaškić* Appeal Judgement, paras 32, 34-42; *Kordić and Čerkez* Appeal Judgement, paras 29-32); Tarčulovski Amended Notice of Appeal, para. 39 (citing Trial Judgement, para. 576). It is not clear from Tarčulovski's submissions whether he considers this notion of *mens rea* different from, or akin to, "recklessness" in common law.

[467] Tarčulovski Appeal Brief, para. 133 (referring to *Blaškić* Appeal Judgement, para. 38); Tarčulovski Amended Notice of Appeal, para. 39 (citing Trial Judgement, para. 576); Tarčulovski Reply Brief, para. 50. The Prosecution responds that the Trial Chamber reasonably applied the Tribunal's jurisprudence that in order to hold a person criminally responsible for planning, instigating and ordering a crime, that person must have acted at least with the awareness of the substantial likelihood that the crime will occur (Prosecution Response Brief, paras 98-99 (citing Trial Judgement, para. 576)).

[468] Trial Judgement, para. 576.

[469] Planning: *Martić* Appeal Judgement, fn. 553; *Kordić and Čerkez* Appeal Judgement, para. 31; *Nahimana et al.* Appeal Judgement, para. 479. Instigating: *Martić* Appeal Judgement, fn. 553; *Kordić and Čerkez* Appeal Judgement, para. 32; *Nahimana et al.* Appeal Judgement, para. 480. Ordering: *Martić* Appeal Judgement, paras 221-222; *Blaškić* Appeal Judgement, para. 42; *Kordić and Čerkez* Appeal Judgement, para. 30; *Nahimana et al.* Appeal Judgement, para. 481.

[470] The Appeals Chamber notes that para. 38 of the *Blaškić* Appeal Judgement refers to the notion of "unjustifiable or unreasonable" only in the context of the *mens rea* of "recklessness" in common law jurisdictions.

general practice of the FYROM courts in its determination of Tarčulovski's sentence.[528] The Prosecution asserts that the Trial Chamber did not make a determination of what his sentence would be under FYROM law; it merely noted that Article 404 of the 1996 FYROM Criminal Code indicated that violations of international law would warrant a minimum sentence of ten years' imprisonment.[529] The Prosecution also submits that the fact that the Trial Chamber did not expressly refer to Article 40 of the 1996 FYROM Criminal Code does not constitute an error.[530]

2. Discussion

210. In its determination of the appropriate sentence for Tarčulovski, the Trial Chamber considered the general practice regarding prison sentences in the courts of the FYROM.[531] The Trial Chamber also summarised the legal provisions that are relevant to sentencing in the FYROM, as well as any relevant definitions of offences included in the relevant laws.[532] The Trial Chamber noted that relevant factors in sentencing were set out in Articles 39(1) and 39(2) of the 1996 FYROM Criminal Code, which was in force at the time of the commission of the crimes alleged in the Indictment.[533] The Trial Chamber further noted that Article 404 of the 1996 FYROM Criminal Code, which codified laws related to violations of the rules of international law, prohibited "ordering or committing 'murder', 'inhumane acts' and 'inflicting grave suffering or injury to the body integrity or the health' and 'illegal and self-willed destruction or usurpation of a larger extent of properties which is not justified by the military needs'", prescribing a sentence of between ten years to life imprisonment.[534] The Trial Chamber also noted that Article 35(1) of the 1996 FYROM Criminal Code limited fixed-term imprisonment to a maximum of fifteen years, which was amended to allow for a sentence up to twenty years in 2004.[535] The Trial Chamber held that the maximum sentence that could be imposed by FYROM courts for "crimes committed in 2001 of the nature of those charged [...] in the Indictment"[536] was fifteen years to life imprisonment.[537]

211. The Appeals Chamber notes that the Trial Chamber made no explicit findings as to the minimum sentence required by the 1996 FYROM Criminal Code.[538] Rather, it merely referred to Article 404 of the 1996 FYROM Criminal Code which prescribes a sentence of at least ten years for

[528] Prosecution Response Brief, para. 178; AT. 92.
[529] Prosecution Response Brief, para. 179.
[530] Prosecution Response Brief, para. 179; AT. 92.
[531] Trial Judgement, paras 602-603.
[532] Trial Judgement, paras 602-603.
[533] Trial Judgement, para. 602.
[534] Trial Judgement, para. 603.
[535] Trial Judgement, para. 603.
[536] Trial Judgement, para. 603.
[537] Trial Judgement, para. 603. The Trial Chamber referred to the principle of *lex mitior* which is enshrined in Article 3(2) of the 1996 FYROM Criminal Code.
[538] Trial Judgement, para. 603.

UNITED NATIONS

	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991	Case No.	IT-04-82-T
		Date:	10 July 2008
		Original:	English

IN TRIAL CHAMBER II

Before: **Judge Kevin Parker, Presiding**
Judge Christine Van Den Wyngaert
Judge Krister Thelin

Registrar: **Mr Hans Holthuis**

Judgement of: **10 July 2008**

PROSECUTOR

v.

LJUBE BOŠKOSKI
JOHAN TARČULOVSKI

PUBLIC

JUDGEMENT

The Office of the Prosecutor:

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Ms Joanne Motoike
Mr Gerard Dobbyn
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Counsel for the Accused:

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Mr Antonio Apostolski and Ms Jasmina Živković for Johan Tarčulovski

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397. The perpetrators carrying out the *actus reus* of the crimes set out in the indictment do not have to be members of the JCE. What matters in such cases is whether the crime in question forms part of the common purpose[1577] and whether at least one member of the JCE used the perpetrator acting in accordance with the common plan.[1578] In this respect, when a member of the JCE uses a person outside the JCE to carry out the *actus reus* of a crime, the fact that this person knows of the existence of the JCE, *i.e.* of the common purpose, may be a factor taken into consideration when determining whether the crime forms part of the common criminal purpose.[1579] When the direct perpetrator commits a crime beyond the common purpose of the JCE, but which is its natural and foreseeable consequence[1580] the accused may be found responsible if he participated in the common criminal purpose with the requisite intent and if, in the circumstances of the case, (i) it was foreseeable that such a crime might be perpetrated by one or more of the persons used by him (or by any other member of the JCE) in order to carry out the *actus reus* of the crimes forming part of the common purpose; and (ii) the accused willingly took that risk – that is the accused, with the awareness that such a crime was a possible consequence of the implementation of that enterprise, decided to participate in that enterprise.[1581]

(b) Planning

398. The *actus reus* of "planning" requires that one or more persons plan or design, at both the preparatory and execution phases, the criminal conduct constituting one or more crimes, provided for in the Statute, which are later perpetrated.[1582] Such planning need only be a feature which contributes substantially to the criminal conduct.[1583] As regards the *mens rea*, the accused must have acted with an intent that the crime be committed, or with an awareness of the substantial likelihood that a crime will be committed in the execution of that plan.[1584]

(c) Instigating

399. The term "instigating" has been defined to mean "prompting another to commit an offence."[1585] Both acts and omissions may constitute instigating, which covers express and implied

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1577 *Brđanin* Appeals Judgement, paras 410, 418.
1578 *Brđanin* Appeals Judgement, paras 413, 430.
1579 *Brđanin* Appeals Judgement, para 410.
1580 *Brđanin* Appeals Judgement, paras 413, 431.
1581 *Brđanin* Appeals Judgement, para 411.
1582 *Brđanin* Trial Judgement, para 268; *Krstić* Trial Judgement, para 601; *Stakić* Trial Judgement, para 443; *Kordić* Appeals Judgement, para 26, citing *Kordić* Trial Judgement, para 386.
1583 *Kordić* Appeals Judgement, para 26; *Limaj* Trial Judgement, para 513.
1584 *Kordić* Appeals Judgement, para 31.
1585 *Krstić* Trial Judgement, para 601; *Akayesu* Trial Judgement, para 482; *Blaškić* Trial Judgement, para 280; *Kordić* Appeals Judgement, para 27; *Kordić* Trial Judgement, para 387; *Limaj* Trial Judgement, para 514.

conduct.[1586] There must be proof of a nexus between the instigation and the perpetration of the crime, which is satisfied where the particular conduct substantially contributes to the commission of the crime. It need not be proven that the crime would not have occurred without the instigation.[1587] As regards the *mens rea*, it must be shown that the accused intended to provoke or induce the commission of the crime, or was aware of the substantial likelihood that a crime would be committed as a result of that instigation.[1588]

(d) Ordering

400. The *actus reus* of "ordering" requires that a person in a position of authority instructs another person to commit an offence.[1589] Closely related to "instigating", this form of liability additionally requires that the accused possess the authority, either *de jure* or *de facto*, to order the commission of an offence.[1590] That authority may reasonably be implied from the circumstances.[1591] Further, there is no requirement that the order be given in writing, or in any particular form, and the existence of the order may be proven through circumstantial evidence.[1592] With regard to the *mens rea,* the accused must have intended to bring about the commission of the crime, or have been aware of the substantial likelihood that a crime would be committed as a consequence of the execution or implementation of the order.[1593]

(e) Aiding and abetting

401. "Aiding and abetting" is a form of accomplice liability[1594] which has been defined as the act of rendering practical assistance, encouragement or moral support, which has a substantial effect on the perpetration of a certain crime.[1595]

402. With respect to the *actus reus*, a cause-effect relationship between the conduct of the aider or abettor and the commission of the crime, or proof that such conduct was a condition precedent to the commission of the crime need not be established.[1596] However, it needs to be shown that the

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1586 *Brđanin* Trial Judgement, para 269; *Blaškić* Trial Judgement, para 280.
1587 *Kordić* Appeals Judgement, para 27.
1588 *Kordić* Appeals Judgement, para 32.
1589 *Kordić* Appeals Judgement, para 28, citing *Kordić* Trial Judgement, para 388; *Semanza* Appeals Judgement, para 361.
1590 *Brđanin* Trial Judgement, para 270; *Mrkšić* Trial Judgement, para 550.
1591 *Brđanin* Trial Judgement, para 270; *Limaj* Trial Judgement, para 515.
1592 *Kamuhanda* Appeals Judgement, para 76, citing *Kordić* Trial Judgement, para 388; *see* also *Blaškić* Trial Judgement, para 281; *Limaj* Trial Judgement, para 515; with respect to proving an order by circumstantial evidence, *see* also *Galić* Appeals Judgment, paras 170 -171.
1593 *Blaškić* Appeals Judgement, para 42; *Kordić* Appeals Judgement, para 30; *Brdanin* Trial Judgement, para 270.
1594 *Tadić* Appeals Judgement, para 229.
1595 *Krstić* Trial Judgement, para 601; *Aleksovski* Appeals Judgement, para 162, citing *Furundžija* Trial Judgement, para 249; *Blagojević and Jokić* Appeals Judgement, para 127; *Mrkšić* Trial Judgement, para 551.
1596 *Blaškić* Appeals Judgement, para 48, *Limaj* Trial Judgement, para 517.

assistance provided by the accused had a substantial effect on the commission of the crime,[1597] which requires a fact-based inquiry.[1598] Such assistance may occur before, during or after the principal crime has been perpetrated.[1599] Further, an omission may, in the particular circumstances of a case, constitute the *actus reus* of aiding and abetting.[1600] While it has been found that the mere presence at the scene of a crime will not usually constitute aiding and abetting, the presence of a superior, for example, may operate as an encouragement to the actual perpetrator and may bestow legitimacy on the crime.[1601] Such encouragement may consist of tacit approval of a person in a position of authority and physically present at the crime scene, even where he had no duty to act.[1602]

403. The *mens rea* required is knowledge that, by his or her conduct, the aider and abettor is assisting or facilitating the commission of the offence,[1603] a knowledge which need not have been explicitly expressed and may be inferred from all the relevant circumstances.[1604] The aider and abettor need not share the *mens rea* of the principal; he must, however, be aware of the essential elements of the crime ultimately committed by the principal, including of his state of mind.[1605] While it has been held that it need not be shown that the aider and abettor was aware of the specific crime that was intended or committed, provided that he was aware that one of a number of crimes would probably be committed, and one of those crimes is in fact committed,[1606] the Appeals Chamber recently confirmed that this ruling does not extend the definition of *mens rea* of aiding and abetting.[1607]

2. Responsibility under Article 7(3) of the Statute

404. Article 7(3) of the Statute provides:

> The fact that any of the acts referred to in Article 2 to 5 of the present Statute was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to

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1597 *Blaškić* Appeals Judgement, para 48, *Furundžija* Trial Judgement, para 249, *Kunarać* Trial Judgement, para 391, *Limaj* Trial Judgement, para 517.
1598 *Blagojević* Appeals Judgement, para 134.
1599 *Blaškić* Appeals Judgement, para 48; *Krnojelac* Trial Judgement, para 88; *Brđanin* Trial Judgement, para 271; *Limaj* Trial Judgement, para 517.
1600 *Blaškić* Appeals Judgement, para 47. *See* also *Krnojelac* Trial Judgement, para 88; *Kunarac* Trial Judgement, para 391; *Mrkšić* Trial Judgement, para 553.
1601 *Brđanin* Appeals Judgement, paras 273, 277. *Limaj* Trial Judgement, para 517.
1602 *Haradinaj* Trial Judgement, para 145. *See* also *Brđanin* Appeals Judgement, paras 273, 277.
1603 *Furundžija* Trial Judgement, para 249; *Tadić* Appeals Judgement, para 229; *Blaškić* Appeals Judgement, para 49; *Vasiljević* Appeals Judgement, para 102; *Brđanin* Appeals Judgement, para 484; *Blagojević* Appeals Judgement, para 127.
1604 *Čelebići* Trial Judgement, para 328; *Tadić* Trial Judgement, para 676; *Limaj* Trial Judgement, para 518.
1605 *Aleksovski* Appeals Judgement, para 162; *Vasiljević* Appeals Judgement, para 102; *Tadić* Appeals Judgement, para 229.
1606 *Blaškić* Appeals Judgement, para 50, citing *Blaškić* Trial Judgement, para 287; *Furundžija* Trial Judgement, para 246; *Brđanin* Trial Judgement, para 272.
1607 *Blagojević* Appeals Judgement, para 222.

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UNITED
NATIONS

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia since 1991

Case No. IT-99-36-T

Date: 1 September 2004

Original: English

IN THE TRIAL CHAMBER II

Before: **Judge Carmel Agius, Presiding**
Judge Ivana Janu
Judge Chikako Taya

Registrar: **Mr. Hans Holthuis**

Judgement of: **1 September 2004**

PROSECUTOR

v.

RADOSLAV BRĐANIN

JUDGEMENT

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Ms. Anna Richterova
Ms. Ann Sutherland
Mr. Julian Nicholls

Counsel for the Accused:

Mr. John Ackerman
Mr. David Cunningham

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support.[726] An accused may be convicted for having aided and abetted a crime which requires specific intent even where the principal offender has not been tried or identified.[727]

272. The *mens rea* of aiding and abetting consists of knowledge – in the sense of awareness – that the acts performed by the aider and abettor assist in the commission of a crime by the principal offender.[728] It is not necessary that the aider and abettor has knowledge of the precise crime that was intended or that was actually committed, as long as he was aware that one of a number of crimes would probably be committed, including the one actually perpetrated.[729]

273. In addition, the aider and abettor must be aware of the essential elements of the crime committed by the principal offender, including the principal offender's state of mind. However, the aider and abettor need not share the intent of the principal offender.[730]

274. The fact that the aider and abettor does not share the intent of the principal offender generally lessens his criminal culpability *vis-à-vis* that of an accused acting pursuant to a JCE who does share the intent of the principal offender.[731]

B. Superior Criminal Responsibility under Article 7(3) of the Statute[732]

1. Responsibility pursuant to Article 7(3) in general

275. The Appeals Chamber has held that "[t]he principle that military and other superiors may be held criminally responsible for the acts of their subordinates is well-established in conventional and customary law."[733] This applies both in the context of international as well as internal armed

[725] *Blaškić* Appeal Judgement, para. 48; *Kunarac* Trial Judgement, para. 391; *Blaškić* Trial Judgement, para. 285; *Naletilić* Trial Judgement, para. 63; *Simić* Trial Judgement, para. 162; *Kvočka* Trial Judgement, para. 256.
[726] *Aleksovski* Trial Judgement, para. 65. The *Akayesu* Trial Chamber found a mayor guilty of abetting by considering his passive presence next to the scene of the crime in connection with his prior encouraging behaviour: *Akayesu* Trial Judgement, para. 693.
[727] *Krstić* Appeal Judgement, para. 143.
[728] *Vasiljević* Appeal Judgement, para. 102; *Blaškić* Appeal Judgement, para. 49.
[729] *Blaškić* Appeal Judgement, para. 50; *Naletilić* Trial Judgement, para. 63; *Kvočka* Trial Judgement, para. 255; *Furundžija* Trial Judgement, para. 246.
[730] *Aleksovski* Appeal Judgement, para. 162; *Kunarac* Trial Judgement, para. 392.
[731] *Vasiljević* Trial Judgement, para. 71.
[732] The Trial Chamber uses the term 'superior criminal responsibility' instead of 'command responsibility' so as to make clear that the doctrine applies to civilian as well as to military superiors.
[733] *Čelebići* Appeal Judgement, para. 195. In the present case, it is not alleged that the Accused was a military superior, but a civilian superior. Consequently, the Trial Chamber views the statement of law in the *Čelebići* Appeal Judgement, para. 195, in the context of Article 86(2) of Additional Protocol I to the 1949 Geneva Conventions, rather than Article 87(3), which refers to military superiors. In addition, the Trial Chamber notes that it is Article 86(2) that deals with the requirement of the failure to act.

UNITED
NATIONS

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Case No.: IT-96-21-A

Date: 20 February 2001

Original: ENGLISH

IN THE APPEALS CHAMBER

Before: **Judge David Hunt, Presiding**
Judge Fouad Riad
Judge Rafael Nieto-Navia
Judge Mohamed Bennouna
Judge Fausto Pocar

Registrar: **Mr Hans Holthuis**

Judgement of: **20 February 2001**

PROSECUTOR

V

Zejnil DELALIC, Zdravko MUCIC (aka "PAVO"), Hazim DELIC and Esad LANDŽO (aka "ZENGA")

("*ELEBICI* Case")

JUDGEMENT

Counsel for the Accused:
Mr John Ackerman and Ms Edina Rešidovi} for Zejnil Delalic
Mr Tomislav Kuzmanovic and Mr Howard Morrison for Zdravko Mucic
Mr Salih Karabdic and Mr Tom Moran for Hazim Delic
Ms Cynthia Sinatra and Mr Peter Murphy for Esad Landžo

The Office of the Prosecutor:
Mr Upawansa Yapa
Mr William Fenrick
Mr Christopher Staker
Mr Norman Farrell
Ms Sonja Boelaert-Suominen
Mr Roeland Bos

war crimes."[642] In the *Trial of Josef Altstötter and Others (The Justice Trial)*, the tribunal found numerous defendants guilty of war crimes as well as crimes against humanity based on exactly the same acts,[643] thus appearing to uphold the possibility of cumulative convictions, at least when war crimes and crimes against humanity are involved.

412. Having considered the different approaches expressed on this issue both within this Tribunal and other jurisdictions, this Appeals Chamber holds that reasons of fairness to the accused and the consideration that only distinct crimes may justify multiple convictions, lead to the conclusion that multiple criminal convictions entered under different statutory provisions but based on the same conduct are permissible only if each statutory provision involved has a materially distinct element not contained in the other. An element is materially distinct from another if it requires proof of a fact not required by the other.

413. Where this test is not met, the Chamber must decide in relation to which offence it will enter a conviction. This should be done on the basis of the principle that the conviction under the more specific provision should be upheld. Thus, if a set of facts is regulated by two provisions, one of which contains an additional materially distinct element, then a conviction should be entered only under that provision.

414. In this case, defendants Mucic and Delic have been convicted of numerous crimes under Articles 2 and 3 of the Statute, which crimes arise out of the same acts. The chart below summarises their convictions.

Article 2 (Grave Breaches of Geneva Convention No. IV	Article 3 (Violations of the Laws or Customs of War—Common Article 3)
1. wilful killings	1. murders
2. wilfully causing great suffering or serious injury to body or health	2. cruel treatment
3. torture	3. torture
4. inhuman treatment	4. cruel treatment

[642] *Id.*

[643] *Ibid* at 75-76. *See also* Interim Report of the Commission of Experts Established Pursuant to Security Council Resolution 780 (1992), U.N. Doc S/25274 ("The Commission notes that fundamental rules of human rights law often are materially identical to rules of the law of armed conflict. It is therefore possible for the same act to be a war crime and a crime against humanity."). However, the Report does not indicate whether *convictions* based on the same acts are possible under provisions for war crimes and crimes against humanity.

conclusion that Babic was a completely unreliable witness who could not be believed in all circumstances.[706]

456. In the circumstances of this case, the Appeals Chamber does not accept the "fine distinction" which the Prosecution sought to draw between not being satisfied beyond reasonable doubt as to the reliability of a witness's evidence and a finding that the witness was lying.[707] The nature of the evidence which Babic gave in support of the torture and cruel treatment charges was of such a nature that, if true, it established those charges beyond reasonable doubt. It was not just the absence of supporting evidence which led to the acquittal on those charges. There was a wealth of evidence which demonstrated that Babic was lying in relation to them, including evidence that the injuries which he alleged had resulted from the mistreatment (which included having his leg doused in petrol and set alight) had occurred sometime prior to his detention at the Célebici prison camp.[708]

457. But this debate concerning the evidence of Babic does not need to be resolved in this appeal, as it is apparent from the judgement itself that the Trial Chamber did not rely upon it. As already stated, the Trial Chamber did not include in the circumstantial case upon which it relied in finding beyond reasonable doubt that Delic participated in the second beating any direct evidence that Delic was present in the area when the second beating took place. If the evidence of Babic that Delic was present *had* been accepted, it was of such a vital nature that it would inevitably have been included in the statement of the circumstances relied on. Its absence from that statement demonstrates that the Trial Chamber did *not* accept that evidence, and that it did not interpret the evidence of either Witness B or Rajko Dragonic as demonstrating that Delic was present on the occasion of the second beating.

458. A circumstantial case consists of evidence of a number of different circumstances which, taken in combination, point to the guilt of the accused person because they would usually exist in combination only because the accused did what is alleged against him – here that he participated in the second beating of Gotovac. Such a conclusion must be established beyond reasonable doubt. It is not sufficient that it is a reasonable conclusion available from that evidence. It must be the *only* reasonable conclusion available. If there is another conclusion which is also reasonably open from that evidence, and which is consistent with the innocence of the accused, he must be acquitted.

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[706] Appeal Transcript, pp 517.
[707] *Ibid*, p 518.
[708] Trial Judgement, paras 986-987.

610. As observed by the Prosecution, the test relied on by Landžo in *United States of America v Armstrong,* puts a heavy burden on an appellant.[1027] To satisfy this test, Landžo must demonstrate clear evidence of the intent of the Prosecutor to discriminate on improper motives, and that other similarly situated persons were not prosecuted. Other jurisdictions which recognise an ability for judicial review of a prosecutorial discretion also indicate that the threshhold is a very high one.[1028]

611. It is unnecessary to select between such domestic standards, as it is not appropriate for the Appeals Chamber simply to rely on the jurisprudence of any one jurisdiction in determining the applicable legal principles. The provisions of the Statute referred to above and the relevant principles of international law provide adequate guidance in the present case. The breadth of the discretion of the Prosecutor, and the fact of her statutory independence, imply a presumption that the prosecutorial functions under the Statute are exercised regularly. This presumption may be rebutted by an appellant who can bring evidence to establish that the discretion has in fact not been exercised in accordance with the Statute; here, for example, in contravention of the principle of equality before the law in Article 21. This would require evidence from which a clear inference can be drawn that the Prosecutor was motivated in that case by a factor inconsistent with that principle. Because the principle is one of *equality* of persons before the law, it involves a comparison with the legal treatment of other persons who must be similarly situated for such a comparison to be a meaningful one. This essentially reflects the two-pronged test advocated by Landžo and by the Prosecution of (i) establishing an unlawful or improper (including discriminatory) motive for the prosecution and (ii) establishing that other similarly situated persons were not prosecuted.

612. Landžo argues that he was the only Bosnian Muslim accused without military rank or command responsibility held by the Tribunal, and he contends that he was singled out for prosecution "simply because he was the only person the Prosecutor's office could find to 'represent' the Bosnian Muslims". He was, it is said, prosecuted to give an appearance of "evenhandedness" to the Prosecutor's policy.[1029] Landžo alleges that the Prosecutor's decision to seek the withdrawal of indictments against the accused identified in the Press Release, without seeking the discontinuation of the proceedings against Landžo, was evidence of a discriminatory purpose. Landžo rejects the justification given by the Prosecutor in the Press Release of a revaluation of indictments according to changed strategies "in light of the decision

[1027] Prosecution Response, p 113.
[1028] *Chief Constable of Kent and Crown Prosecution Service, ex parte GL,* (1991) Crim App R 416; *R v Inland Revenue Commissioners, ex parte Mead and Cook,* [1993] 1 All ER 772; *R v Power* [1994] 1 SCR 601.

The Prosecution does not, however, identify any passages which contain any findings that Mucic specifically was responsible for such unspecified acts. The Appeals Chamber cannot find any indication from the Trial Judgement that the Trial Chamber had found beyond reasonable doubt that Mucic had committed any criminal acts additional to those specifically identified in the Indictment.

763. Mucic submits that the Prosecution's argument is in effect an appeal against acquittal under the mantle of an appeal against sentence because, if the Trial Chamber had not found the relevant matters proved beyond reasonable doubt against Mucic, there was no basis on which it could take those matters into account in sentencing.[1287] The Appeals Chamber agrees that only those matters which are proved beyond reasonable doubt against an accused may be the subject of an accused's sentence or taken into account in aggravation of that sentence. As was made clear during the hearing of oral submissions on appeal,[1288] the issue is primarily one of whether the Prosecution actually sought findings in relation to the other acts referred to in the Indictment. The Trial Chamber could not be expected to make findings in respect of matters which had not been specifically put before it, whether in the Indictment or during the trial. Another issue is whether the accused, in view of the very general wording used in the Indictment, had been sufficiently put on notice during the proceedings that such additional offences were alleged and of the nature of those offences so that he could meet the allegations in his own defence case.[1289]

764. As to the first issue, the Prosecution in its submissions on appeal was not able to direct the Appeals Chamber to any record of the Prosecution having sought, at trial, findings by the Trial Chamber in relation to other offences by Mucic not specifically alleged in the Indictment. The Appeals Chamber notes that, in its final written submission before the Trial Chamber, the Prosecution submitted that

> [...] the specific incidents referred to in the Indictment are not exhaustive but rather illustrative [...]. Thus for the purposes of superior responsibility, the Judges may consider other incidents not specifically described in the indictment but proved at trial.[1290]

[1287] Mucic Response, p 12.
[1288] Appeal Transcript, pp 737-738
[1289] Statute of the Tribunal, Article 21(4)(a) refers to the right of an accused "to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him".
[1290] Closing Statement of the Prosecution, filed 25 August 1998, para 3.71.

> fabrication of evidence to be given at the trial. There have also been allegations that Mr. Mucic participated in the threatening of a witness in the courtroom. Such efforts to influence and/or intimidate witnesses are particularly relevant aggravating conduct, which the Trial Chamber is entitled to take into account in the determination of the appropriate sentence.[1317]

It also found:

> The general attitude of Mr. Mucic during the trial proceedings in and outside the courtroom would seem to be a repetition of his casual and perfunctory attitude to his duties in the Celebici prison-camp. He made concerted and sustained efforts where he could to intimidate witnesses and to suborn favourable evidence from them. His demeanour throughout the proceedings suggests that he appears to have regarded this trial as a farce and an expensive joke. Zdravko Mucic has declined to give any oral evidence, notwithstanding the dominant position he played in the facts giving rise to the prosecution of the accused persons.[1318]

780. It has already been stated that the Statute and the Rules do not define exhaustively the factors which may be taken into account by a Trial Chamber in mitigation or aggravation of sentence, and Trial Chambers are therefore endowed with a considerable degree of discretion in deciding on the factors which may be taken into account. Nevertheless, it must be queried whether the Trial Chamber erred in taking these particular factors into account. A Trial Chamber's decision may be disturbed on appeal if an appellant shows that the Trial Chamber either took into account what it ought not to have, or failed to take into account what it ought to have taken into account, in the weighing process involved in this exercise of the discretion.

781. It is alleged that the Trial Chamber erred in taking into account in aggravation of sentence the fact that Mucic failed to give oral testimony. In accordance with the position in many national jurisdictions, an accused before the Tribunal is not obliged to give oral testimony during the trial on his or her own behalf. Rule 85(C) of the Rules provides

> *If the accused so desires*, the accused may appear as a witness in his or her own defence.[1319]

Article 21(4)(g) of the Statute provides further guidance and provides that an accused shall be entitled to the right "not to be compelled to testify against himself or to confess guilt".[1320] This, however, does not explicitly identify the consequences of failure to testify at

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[1317] Trial Judgement, para 1244.
[1318] Trial Judgement, para 1251.
[1319] (Emphasis added).
[1320] *See* also the International Covenant on Civil and Political Rights (1966) ("the ICCPR"), Article 14 (3)(g) which provides that in the determination of a criminal charge, everyone shall be entitled to the right "not to be compelled to testify against himself or to confess guilt."

DECISION OF THE BUREAU

Before:
President Gabrielle Kirk McDonald
Vice-President Shahabuddeen
Judge Cassese, Presiding Judge of Trial Chamber II
Judge Jorda, Presiding Judge of Trial Chamber I
Judge May, Presiding Judge of Trial Chamber III

Registrar:
Mrs. Dorothee de Sampayo Garrido-Nijgh

Decision of:
25 October 1999

PROSECUTOR

v.

ZEJNIL DELALIC
ZDRAVKO MUCIC also known as "PAVO"
HAZIM DELIC
ESAD LANDZO also known as "ZENGA"

DECISION OF THE BUREAU ON MOTION TO DISQUALIFY JUDGES PURSUANT TO RULE 15 OR IN THE ALTERNATIVE THAT CERTAIN JUDGES RECUSE THEMSELVES

THE BUREAU of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, comprising President McDonald, Vice-President Shahabuddeen, Judge Cassese, Presiding Judge of Trial Chamber II, Judge Jorda, Presiding Judge of Trial Chamber I and Judge May, Presiding Judge of Trial Chamber III,

DECIDES as follows:

I. PROCEDURAL HISTORY

1. On 30 July 1999, a motion entitled "Motion to Disqualify Judges Pursuant to Rule 15 or in the Alternative that Certain Judges Recuse Themselves" ("the Motion") was filed before the Appeals Chamber by all the accused except Zejnil Delalic in the matter of the *Prosecutor v. Zejnil Delalic, Zdravko Mucic, Hazim Delic and Esad Landzo* (IT-96-21-T, hereinafter referred to as "the Celebici case").

2. In this Motion, the appellants requested, pursuant to Rule 15 of the Rules of Procedure and Evidence, that all judges of the Tribunal who either participated in the plenary session which found that Judge Odio Benito's nomination as Vice-President of Costa Rica would not be incompatible with service as a judge of the Tribunal or who took part in the plenary session after her election which approved her taking the oath of office as Vice-President of Costa Rica while remaining a judge of the Tribunal be disqualified from sitting on the Appeals Chamber in Celebici on the appeal against conviction or, in the alternative, that these judges recuse themselves. This request was set out by the appellants on the following grounds:

i. That Judge Odio Benito was not qualified to sit as a judge of the Tribunal after her inauguration as Vice-President of Costa Rica on the basis, *inter alia,* that Article 13(1) of the Statute requires that judges be eligible to serve on their nation's highest court and Article 161 of the Constitution of Costa Rica disqualified her from sitting on her nation's highest court;

ii. That although some doubt existed as to which of the other judges took part in the plenary sessions, all judges who were serving before November 1998 had already taken part in a decision related to the issue and consequently ought to be disqualified;

iii. That taken together, Rules 15(A), 15(C) and 15(D) suggest that a judge who has already expressed an opinion on a case or who has taken part in a portion of a case cannot sit on a subsequent part, on the grounds that his or her fairness and impartiality could otherwise reasonably be questioned;

iv. That the judges in plenary twice considered the issue of whether Judge Odio Benito could be a judge of the Tribunal while she was Vice-President of Costa Rica without giving notice to the appellants or giving them an opportunity to be heard on the matter; and

v. That there is nothing to indicate that the plenary was informed or that it gave due consideration to the issue of the interaction between Article 161 of the Constitution of Costa Rica and Article 13(1) of the Statute of the Tribunal.

3. On 10 August 1999, the Office of the Prosecutor filed a response entitled "Prosecution Response to Motion to Disqualify Judges Pursuant to Rule 15 or in the Alternative that Certain Judges Recuse Themselves" ("Prosecution Response") whereupon the Prosecution submitted that the Motion should be rejected on the following grounds;

i. That the appellants had not made a sufficient showing to satisfy any of the grounds for disqualification of judges as provided for in Rule 15, as none of these exclusionary rules refer to plenary sessions or prevent the judges who sit in plenary sessions from sitting on any Trial Chambers or the Appeals Chamber;

ii. That the appellant's claim that the fact that judges had previously considered an issue of law in a plenary session without notice to the affected appellants and giving them an opportunity to be heard cannot logically constitute grounds for dismissal, as it would mean that any judges who make substantive changes to the Rules of Procedure in plenary sessions could not preside in the cases which decide upon the

implementation of these Rules and in any event, the appellants have no standing to be heard on issues considered during plenary sessions, which are intended to provide a forum for the judges to meet to perform particular functions in accordance with Rule 24;

iii. That there is nothing to suggest that the judges comprising the present Appeals Chamber who attended the plenary sessions concerning Judge Odio Benito's nomination and appointment as Vice-President of Costa Rica might not be able to impartially consider this matter as part of appellate proceedings in the light of the submissions of the parties, as the judges in plenary dealt with this matter in accordance with their duties under Rule 24 and not in relation to any particular case;

iv. That even if plenary proceedings are considered to be previous "decisions" on the ability of Judge Odio-Benito to sit in cases, the matter can be re-considered by the Judges, as issues of fact and law are routinely considered by judges who, in their professionalism, are presumed to be able to objectively reconsider prior decisions; and

v. That the motion was not raised in a timely fashion.

4. On the 15th and 17th September 1999 respectively, the Appeals Chamber issued two decisions pertaining to the correct procedure for disposing of the Motion. On 15 September 1999, the Presiding Judge of the Appeals Chamber, Judge Hunt, issued a decision entitled "Referral of Application to the Bureau under Rule 15(B)" ("Referral"), in which the appellant's application was remitted to the Bureau for consideration. On 17 September 1999, the Appeals Chamber issued a "Decision on Motion to Disqualify Judges Pursuant to Rule 15 or in the Alternative that Certain Judges Recuse Themselves" ("Decision") in which it disposed of the Motion on grounds of incompetence, holding that the subject matter of the Motion was not a matter for the consideration of the Appeals Chamber, that it was instead to be regarded as an application to the Presiding Judge pursuant to Rule 15(B) and noting in this regard the Appeals Chamber's referral of the matter to the Bureau of 15 September 1999.

5. In memoranda accompanying the Referral, Judge Hunt set forth his view that there was no necessity for the judges in question to disqualify themselves or for them to be disqualified from hearing the Celebici appeal, on the following grounds:

i. That the deliberations of the Plenary were not, and were never intended to be, a determination of the rights of any party in the Celebici case as the determination of the rights of any party to proceedings before the Tribunal is not the function of a Plenary meeting of the judges of the Tribunal. In any event, views expressed at such a meeting could not bind the judges should the issue discussed arise later for determination in proceedings before the Tribunal, in the same way that it could not reasonably be argued that all the judges who discuss amendments to be made to the Rules of Procedure and Evidence at a Plenary meeting are thereby disqualified from subsequently determining the meaning of those rules when such an issue arises in proceedings before the Tribunal.

ii. That conferral with each of the judges in question in accordance with Rule 15(B) merely served to confirm that no factual basis existed to demonstrate that the judges should disqualify themselves on this matter.

II. DISCUSSION

(A) THE APPLICABLE LAW

6. The Bureau holds the view that a distinction must be drawn between two different issues: (i) that of the requirements for a person to serve as a Judge of the ICTY and the connected question of what conduct or situations are incompatible with the discharge of judicial functions, and (ii) the issue of the grounds of disqualification of a Judge from sitting in a particular case.

7. The first issue is regulated by Article 13 of the Statute of the International Tribunal. In paragraph 1, this Article provides, *inter alia,* that Judges must be persons "of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to the highest judicial offices". Paragraph 4 of the same provision provides *inter alia* that the "terms and conditions of service shall be those of the judges of the International Court of Justice". This provision thus indirectly refers to Article 16 of the Statute of the International Court of Justice, which provides that "(1) No member of the Court may exercise any political or administrative function, or engage in any other occupation of a professional nature. (2) Any doubt on this point shall be settled by the decision of the Court". Thus, to serve as a judge of the ICTY a person elected by the General Assembly pursuant to Article 13(2) of the Statute must both possess the requirements set out in Article 13(1) and not exercise any political or administrative function or engage in any other occupation of a professional nature. In other words, both positive and negative requirements are prescribed by the relevant rules. That this is the regulation applicable to the issue in question has been confirmed both by a decision of the Fourth Plenary Meeting of the Judges of the ICTY and by the practice of the Tribunal.
In case of doubt or dispute on the question whether a Judge meets the requirements at issue, in particular the negative requirements just mentioned, it is for the President to seek to resolve the matter in conference with the Judge. Either at the request of the Judge concerned or *proprio motu,* the President may submit the question to the plenary assembly of the Judges, which, in the exercise of its administrative functions, passes on the matter.

8. The issue of disqualification of Judges is different. A Judge may recuse himself or herself or be disqualified from hearing a particular case when, pursuant to Rule 15(A), he or she "has a personal interest [in] [...] or has or has had any association" with the case "which might affect his or her impartiality". Pursuant to Rule 15(B), decisions on this matter, at the request of any party to the case, are made by the Presiding Judge of a Chamber or, at the request of the Presiding Judge, by the Bureau.

9. The two issues set out so far are different. The first issue relates to the question of whether or not a Judge possesses all the necessary requirements for serving as a Judge of the Tribunal. This is a matter of an administrative nature, internal to the Tribunal. It

can only be settled by the relevant bodies of the Tribunal. If these bodies are satisfied that the Judge does not fulfil one of the requisite conditions, for instance because he or she has engaged in political or administrative functions incompatible with the judicial function, the Judge is duty bound either to abandon those incompatible functions or to resign from the position of Judge.
By contrast, the other issue is a judicial matter, which may be raised not only by the Judge concerned but also by any party to the proceedings before a Trial Chamber or the Appeals Chamber. It relates to the right of a Judge to sit in a specific case. If the Judge does not fulfil the requirements referred to in Rule 15(B), he or she is disqualified from hearing that particular case, although he or she is fully entitled to continue to exercise the functions of a Judge of the Tribunal and sit in other cases.

10. Of course, there may be some overlap between the two issues. This may happen when a party to a trial or appellate proceedings claims that the fact that a Judge sitting in that case has engaged in political, administrative or professional activities entails the consequence that this Judge has a "personal interest" in the case or has some "association" with the case causing the Judge to be biased and hence to lack the required impartiality. Clearly, in this case the party raising the issue of disqualification must show that the alleged incompatibilities with the judicial function are such as to bring about a lack of impartiality in the case at issue. In other words, that party must show a link between the activity allegedly incompatible with the judicial function and the particular case at issue. It would not be sufficient for that party to claim merely that the Judge in question is exercising a political, administrative or professional activity incompatible with his or her judicial functions. This is an administrative matter reserved to the Judges for any decision. As stated above, it is only for the President or the Plenary assembly of Judges to pass on this matter. If, instead, it can be shown that the activity incompatible with the discharge of judicial functions has a direct and specific impact upon the impartiality of a Judge in a particular case before a Chamber, then the matter comes within the purview of the disqualification procedure. In that case, it is to be settled pursuant to Sub-Rule 15(B).

(B) THE CASE AT ISSUE

11. In this case, as stated above, the three appellants against conviction claim that Judges Riad, Wang and Nieto-Navia should be disqualified from hearing the appeal against conviction. The basis for their disqualification is said to be as follows: One of the grounds of appeal relates to the proper constitution of the Trial Chamber in Celebici; in the appellants' view the Chamber was not properly constituted because Judge Odio Benito, by her election as Vice-President of Costa Rica, became disqualified from serving as a Judge and sitting in Celebici and her impartiality could be apprehended as having been compromised. As in Plenary meetings of the Tribunal the three aforementioned Judges pronounced on the question of whether Judge Odio Benito could serve as a Judge after her election to the position of Vice-President of Costa Rica, they have allegedly formed a prejudgement upon one of the issues to be determined in the appeal.

12. It must be noted that the question of whether the position of Vice-President of Costa Rica was compatible with the discharge of the judicial functions by Judge Odio Benito was raised, at the administrative level, by the then President Cassese on 23 May 1997, in a meeting with Judge Odio Benito, when it became known that she was

running as a candidate for that position. Judge Odio Benito responded to President Cassese in a letter of 16 October 1997 in which she specified that, if elected, she would not take office before the end of her functions as a Judge sitting in Celebici and in addition undertook, if elected, to fulfil her judicial functions on a full time basis. In the light of this commitment, the then President Cassese decided that Judge Odio Benito was entitled to run as a candidate for the position of Vice-President. Nevertheless, he felt that it was advisable to submit the matter to the Plenary. This was done in October 1997. The Fourteenth Plenary assembly of all Judges, in the discharge of administrative functions, endorsed the decision of the President. The matter arose again in March 1998, after the election, on 1 February 1998, of Judge Odio Benito to the position of Second Vice-President of Costa Rica. President McDonald noted the renewed commitment of Judge Odio Benito not to assume the functions of Second Vice-President nor, in case of permanent or temporary absence of the President or the First Vice-President, the functions of President of Costa Rica, prior to the termination of her tenure as a Judge. Judge Odio Benito further undertook not to be diverted by anything from the fulfilment of her mandate as a Judge until November 1998. In light of these commitments, President McDonald decided that there was no incompatibility between Judge Odio Benito's judicial duties and her new status of Second Vice-President of Costa Rica. President McDonald too felt it was advisable to submit the matter to the Seventeenth Plenary. This was done on 11 March 1998. The Plenary assembly of Judges, again exercising its administrative functions, unanimously endorsed President McDonald's decision.

13. It should be emphasised that (i) the Judges assembled at the Fourteenth and Seventeenth Plenary Meetings only passed on the administrative issue of whether or not the election of Judge Odio Benito to the position of Second Vice-President of Costa Rica amounted to a circumstance incompatible with her judicial functions and (ii) this decision was not made with reference to any specific question as to whether Judge Odio Benito was disqualified from sitting in Celebici. Actually, it was only on 25 May 1998, namely more than two months after the administrative decision by the Seventeenth Plenary, that a motion was filed by defence counsel in Celebici asking that Judge Odio Benito take no further part in the proceedings in that case.

14. It follows from the above that the three Judges concerned by the Motion for disqualification currently under discussion took part only in the administrative decision made on 11 March 1998 concerning the general question of whether, pursuant to Article 13 of the Statute of the ICTY and Article 16 of the Statute of the International Court of Justice, Judge Odio Benito was entitled to continue to exercise her functions as a Judge of the International Tribunal. They did not pronounce upon, nor did they contribute to the taking of, any judicial decision on a specific judicial matter that at the time had not yet arisen: the question of whether Judge Odio Benito should be disqualified from sitting in Celebici on the basis that her election to the position of Second Vice-President of Costa Rica entailed an interest in or an association with that case, thus creating a lack of impartiality. This question, raised in the Defence Motion of 25 May 1998, was decided by the Bureau, on which none of the three aforementioned Judges was serving, in its decision of 4 September 1998.

15. In light of the above, the Bureau holds the view that the fulfilment by a Judge of his or her duty to take part in a collegiate decision of an administrative nature on the administrative issue discussed so far cannot amount to a ground for subsequently

disqualifying such a judge, sitting in the Appeals Chamber, from discharging a judicial function (i.e., pronouncing upon the question, raised by the three appellants in their appeal against conviction, of whether Judge Odio Benito, by her election as Second Vice-President of Costa Rica, became disqualified from sitting in Celebici and whether her impartiality could in any event be perceived as having been compromised).

16. The Bureau therefore considers that the appellants have failed to satisfy the requirements set out in Sub-Rule 15(A). In particular, they have failed to show that Judges Riad, Wang and Nieto-Navia have a personal interest in the question of whether Judge Odio Benito was entitled to sit in Celebici or have any association with this question which might affect their impartiality.

17. For these reasons, the Bureau unanimously decides that Judges Riad, Wang and Nieto-Navia are not disqualified under Sub-Rule 15(A) of the Rules of Procedure and Evidence from sitting on the appellate proceedings in Celebici.

III. DISPOSITION

18. The Bureau unanimously decides, under Sub-Rule 15(B) of the Rules, that Judges Riad, Wang and Nieto-Navia are not disqualified from serving on the Appeals Chamber to hear the appeal against conviction in Celebici.

_____
Gabrielle Kirk McDonald
President

Dated this 25th day of October 1999
At The Hague
The Netherlands

Judge Shahabuddeen appends a Declaration to this Decision.

[Seal of the Tribunal]

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D10636-10146
FILED ON: 16/11/98

UNITED
NATIONS

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Case No.: IT-96-21-T

Date: 16 November 1998

Original: English

IN THE TRIAL CHAMBER

Before: **Judge Adolphus G. Karibi-Whyte, Presiding**
Judge Elizabeth Odio Benito
Judge Saad Saood Jan

Registrar: **Mrs. Dorothee de Sampayo Garrido-Nijgh**

Judgement of: **16 November 1998**

PROSECUTOR

v.

ZEJNIL DELALIĆ
ZDRAVKO MUCIĆ also known as "PAVO"
HAZIM DELIĆ
ESAD LANDŽO also known as "ZENGA"

JUDGEMENT

The Office of the Prosecutor:

Mr. Grant Niemann
Ms. Teresa McHenry

Counsel for the Accused:

Ms. Edina Rešidović, Mr. Eugene O'Sullivan, for Zejnil Delalić
Ms. Nihada Buturović, Mr. Howard Morrison, for Zdravko Mucić
Mr. Salih Karabdić, Mr. Thomas Moran, for Hazim Delić
Ms. Cynthia McMurrey, Ms. Nancy Boler, for Esad Landžo

(e) Unlawful Confinement of Civilians

27. Zejnil Delalić and Zdravko Mucić, along with Hazim Delić are charged under count 48 of the Indictment (paragraph 36) with the unlawful confinement of civilians, a grave breach punishable under Article 2(g) of the Statute, for their alleged acts and omissions as superiors with respect to the unlawful confinement of numerous civilians in the Čelebići prison-camp between May and October 1992. Zdravko Mucić and Zejnil Delalić are also charged with direct responsibility in relation to the foregoing charge.

(f) Plunder of Private Property

28. Zdravko Mucić, along with Hazim Delić, is charged under count 49 of the Indictment with plunder, a violation of the laws or customs of war punishable under Article 3(e) of the Statute, for their alleged acts and omissions as superiors with respect to the following events alleged to have been perpetrated by themselves and their subordinates in the Čelebići prison-camp:

> The plunder of money, watches and other valuable property belonging to persons detained at the Čelebići camp between May and September 1992. (Indictment at paragraph 37 paraphrased.)

Zdravko Mucić is also charged with direct responsibility in relation to the foregoing charge.

29. Having outlined the offences charged in the Indictment and the alleged role of the accused therein, it is appropriate to set out the procedural history of the present case, both prior to trial and during the trial itself.

C. Procedural History

30. Towards the close of investigations into the events which occurred in the Čelebići prison-camp during the recent conflict in Bosnia and Herzegovina, the Prosecutor, acting on information regarding the whereabouts of several individuals deemed to be suspects in relation to these events, made two separate requests to Germany and Austria for the provisional arrest of Zejnil Delalić and Zdravko Mucić, respectively, under Rule 40 of the Rules. Pursuant to these requests, both suspects

760. The Trial Chamber has further been presented with testimony relating to the status of Zdravko Mucić from Risto Vukalo,[804] whose testimony is rejected by the Defence on the ground that the witness allegedly claimed at trial that his prior statement to the Prosecution was procured by duress, Witness T,[805] whose testimony is viewed by the Defence with considerable suspicion, Milovan Kuljanin,[806] Witness J,[807] Witness R[808] and Petko Grubač,[809] all of whom knew Mr. Mucić as the commander of the Čelebići prison-camp. The Defence also submits that General Divjak did not know the function of Mr. Mucić in the prison-camp. It is difficult to appreciate the criticism of these various witnesses on this issue.

761. The Trial Chamber is concerned with evidence of the actual exercise of authority by Mr. Mucić as commander in the Čelebići prison-camp. The more complex issue of the precise scope of duties which attached to this status is clearly irrelevant to this question. There is, however, sufficient concrete evidence that Mr. Mucić was, before the end of May 1992, present in the Čelebići prison-camp and was exercising *de facto* authority over the prison-camp and its personnel. The Trial Chamber has critically analysed the evidence and has come to the view that the only issue which concerns us in the testimony is whether Mr. Mucić was the commander of the Čelebići prison-camp during the relevant period.

762. Reliable evidence in this respect was given by Witness D. There is nothing in the personal circumstances of this witness which would render acknowledging the fact that Mr. Mucić was the commander of Čelebići prison-camp advantageous to him. Witness D worked closely with Mr. Mucić in relation to the classification of the detainees. He is thus in a position to know the exact status of Mr. Mucić. The Trial Chamber is completely satisfied that his testimony is credible and not in any sense tainted with self-serving disclosures.

763. The actual exercise of *de facto* authority by Zdravko Mucić was not confined to the areas considered above. Mr. Mucić extended his authority to the control of the Čelebići prison-camp and its personnel. It is a cardinal requirement of the exercise of command authority that there must also be exercise of superior authority over the institution and its personnel.

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[803] *See* T. 5763.
[804] *See* T. 6255-T. 6256.
[805] *See* T. 6673-T. 6674.
[806] *See* T. 7046-T. 7047.
[807] *See* T. 7444.
[808] *See* T. 7808-T. 7809.
[809] *See* T. 5968.

764. There is evidence before the Trial Chamber of the control by Zdravko Mucić of the detainees who would leave or be transferred from the Čelebići prison-camp to another detention facility.[810] Mr. Mucić had the authority to release detainees. Exhibit 75, signed by him, is a release document in respect of the detention of Branko Gotovac.[811] There is also Exhibit 84, signed by Mr. Mucić for Mirko Kuljanin and Exhibit 91, signed by Mr. Mucić which is the release document for Milojka Antić.[812] Mr. Mucić also signed Exhibit 158, a release document for Witness B,[813] and Exhibit 159 which is the release document for Zoran Ninković.

765. Similarly, Zdravko Mucić had authority over the guards. This has been established through the testimony of Dragan Kuljanin[814] and Witness B.[815] Mr. Mucić also had control over visits to the detainees, which were only allowed by his permission.[816] In her testimony before the Trial Chamber, Milojka Antić described the authority of Mr. Mucić as total: "[i]n the camp he was in charge. He was asked about everything".[817]

766. Witness P also testified to the exercise of the authority by Mr. Mucić over the guards. This witness further testified to hearing Mr. Mucić speaking to Major Kevrić as commander of the prison-camp, requesting that additional food be brought to the detainees.[818]

767. Zdravko Mucić had all the powers of a commander to discipline camp guards and to take every appropriate measure to ensure the maintenance of order. Mr. Mucić himself admits he had all such necessary disciplinary powers. He could confine guards to barracks as a form of punishment and for serious offences he could make official reports to his superior authority at military headquarters.[819] Further, he could remove guards, as evidenced by his removal of Esad Landžo in October 1992.[820]

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[810] *See* T. 1331.
[811] Dated 30 Aug. 1992.
[812] *See* T. 1814.
[813] *See* T. 5065-T. 5066.
[814] *See* T. 2350-T. 2351.
[815] *See* T. 5044.
[816] *See* Exhibit 110.
[817] *See* T. 1815.
[818] See T. 4574-T. 4575.
[819] *See* Exhibit 101-1, pp. 15, 54-55.
[820] *See* Exhibit 101-1, p. 55.

UNITED
NATIONS

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Case No. IT-95-17/1-A

Date: 21 July 2000

Original: English

IN THE APPEALS CHAMBER

Before: **Judge Mohamed Shahabuddeen, Presiding**
Judge Lal Chand Vohrah
Judge Rafael Nieto-Navia
Judge Patrick Lipton Robinson
Judge Fausto Pocar

Registrar: **Mrs. Dorothee de Sampayo Garrido-Nijgh**

Judgement of: **21 July 2000**

PROSECUTOR

v.

ANTO FURUND@IJA

JUDGEMENT

Counsel for the Prosecutor:

Mr. UpawansaYapa
Mr. Christopher Staker
Mr. Norman Farrell

Counsel for the Accused:

Mr. Luka S. Miseti}
Mr. Sheldon Davidson

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B. Discussion

172. Before proceeding to consider this matter further, the Appeals Chamber makes two observations.

173. First, the Appellant states that he first discovered Judge Mumba's associations and personal interest in the case after judgement was rendered, and for this reason, only then raised the matter before the Bureau.[234] Although the Appeals Chamber has decided to consider this matter further, given its general importance,[235] it would point out that information was available to the Appellant at trial level, which should have enabled him to discover Judge Mumba's past activities and involvement with the UNCSW. The Appeals Chamber notes, in this context, public documentation issued by the International Tribunal, including, for example, its published yearbooks which contain sections devoted to biographies of the Judges elected to serve at the International Tribunal.[236] In addition, Public Information Service of the Tribunal, which is responsible for ensuring public awareness of the International Tribunal's activities, regularly publishes Bulletins and releases information on the International Tribunal's web-site. Both the Yearbook and the Public Information Service of the Tribunal provide official information to the public regarding such issues as the election of new Judges to the International Tribunal and details of a Judge's legal background. The information was freely available for the Appellant to discover.

174. The Appeals Chamber considers that it would not be unduly burdensome for the Appellant to find out the qualifications of the Presiding Judge of his trial. He could have raised the matter, if he considered it relevant, before the Trial Chamber, either pre-trial or during trial. On this basis, the Appeals Chamber could find that the Appellant has waived his right to raise the matter now and could dismiss this ground of appeal.

175. These observations however, should not be construed as relieving an individual Judge of his or her duty to withdraw from a particular case if he or she believes that his or her impartiality is in question. This is in fact what Rule 15(A) of the Rules calls for when it says that the Judge shall in any such circumstance withdraw. The Appeals Chamber finds that Judge Mumba had no such duty for the reason that she had no potentially disqualifying personal interest or associations.

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[234] Appellant's Amended Brief, p. 121. The Appellant raised the matter before the Bureau by filing on 3 February 1999 the "Defendant's Post Trial Application to the Bureau of the Tribunal for the Disqualification of Presiding Judge Mumba, Motion to Vacate Conviction and Sentence, and Motion for a New Trial."

[235] *Tadi}* Appeals Judgment, paras. 247 and 281.

[236] *E.g.*, Yearbook of the International Tribunal (1997) stated that Judge Mumba was a member of the UNCSW from 1992-1995 (pp. 26-27).

UNITED
NATIONS

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Case No.: IT-95-17/1-T
Date: 10 December 1998
Original: English

IN THE TRIAL CHAMBER

Before: **Judge Florence Ndepele Mwachande Mumba, Presiding**
Judge Antonio Cassese
Judge Richard May

Registrar: **Mrs. Dorothee de Sampayo Garrido-Nijgh**

Judgement of: **10 December 1998**

PROSECUTOR

v.

ANTO FURUND@IJA

JUDGEMENT

The Office of the Prosecutor:

Ms. Brenda Hollis
Ms. Patricia Viseur-Sellers
Ms. Michael Blaxill

Counsel for the Accused:

Mr. Luka Miseti}
Mr. Sheldon Davidson

as a spectator in civilian dress, a SA (*Stürmabteilung*) "parade" in which two political opponents of the NSDAP (*Nationalsozialistische Deutsche Arbeiterpartei*) were exposed to public humiliation. P had followed the "parade" without taking any active part. The court found that P,

> followed the parade only as a spectator in civilian clothes, although he was following a service order by the SA for a purpose yet unknown . . . His conduct cannot even with certainty be evaluated as objective or subjective approval. Furthermore, silent approval that does not contribute to causing the offence in no way meets the requirements for criminal liability.[230]

P was found not guilty. He may have lacked the necessary *mens rea*. But in any event, his insignificant status brought the effect of his "silent approval" below the threshold necessary for the *actus reus*.

209. It appears from the *Synagogue* and *Pig-cart parade* cases that presence, when combined with authority, can constitute assistance in the form of moral support, that is, the *actus reus* of the offence. The supporter must be of a certain status for this to be sufficient for criminal responsibility. This emphasis on the accused's authority was also affirmed in *Akayesu*. Jean-Paul Akayesu was the *bourgmestre*, or mayor, of the Commune in which atrocities, including rape and sexual violence, occurred. That Trial Chamber considered this position of authority highly significant for his criminal liability for aiding and abetting: "The Tribunal finds, under Article 6(1) of its Statute, that the Accused, having had reason to know that sexual violence was occurring, aided and abetted the following acts of sexual violence, by allowing them to take place on or near the premises of the bureau communal and by facilitating the commission of such sexual violence through his words of encouragement in other acts of sexual violence which, *by virtue of his authority*, sent a clear signal of official tolerance for sexual violence, without which these acts would not have taken place: [. . .]".[231] Furthermore, it can be inferred from this finding that assistance need not be tangible. In addition, assistance need not

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[230] *Strafsenat. Urteil vom 10. August 1948 gegen L. u. a.* StS 37/48 (*Entscheidungen*, Vol. I, pp. 229 and 234).
[231] Case No. ICTR-96-4-T, para. 692, emphasis added.

Chamber held that the accused "intentionally assisted directly and substantially in the common purpose of the group" to commit the offence.[253]

(b) International Instruments

227. The two international instruments useful for these purposes are the 1996 Draft Code of Crimes Against the Peace and Security of Mankind adopted by the International Law Commission, and the Rome Statute. Neither instrument is legally binding internationally. The Draft Code was adopted in 1996 by the United Nations International Law Commission, a body consisting of outstanding experts in international law, including governmental legal advisers, elected by the United Nations General Assembly. The Draft Code was taken into account by the General Assembly: in its resolution 51 (160) of 30 January 1997 it expressed its "appreciation" for the completion of the Draft Code and among other things drew the attention of the States participating in the Preparatory Committee on the Establishment of an International Criminal Court to the relevance of the Draft Code to their work.[254] In the light of the above the Trial Chamber considers that the Draft Code is an authoritative international instrument which, depending upon the specific question at issue, may (i) constitute evidence of customary law, or (ii) shed light on customary rules which are of uncertain contents or are in the process of formation, or, at the very least, (iii) be indicative of the legal views of eminently qualified publicists representing the major legal systems of the world. As for the Rome Statute, at present it is still a non-binding international treaty (it has not yet entered into force). It was adopted by an overwhelming majority of the States attending the Rome Diplomatic Conference and was substantially endorsed by the General Assembly's Sixth Committee on 26 November 1998.[255] In many areas the Statute may be regarded as indicative of the legal views, i.e. *opinio juris* of a great number of States. Notwithstanding article 10 of the Statute, the purpose of which is to ensure that existing

[253] *Ibid.*, paras. 730 and 738.
[254] *See* operative para. 2 of the resolution.
[255] The significance of the Rome Statute has also been acknowledged by the Sixth Committee of the United Nations in a resolution entitled "Establishment of an international criminal court", dated 18 Nov. 1998 (A/C. 6/53/L. 9/Rev. 1), in which it "note[s] that a significant number of States have signed the Rome Statute"; "acknowledges the historic significance of the adoption of the Rome Statute", and; "calls upon

or developing law is not "limited" or "prejudiced" by the Statute's provisions, resort may be had *cum grano salis* to these provisions to help elucidate customary international law. Depending on the matter at issue, the Rome Statute may be taken to restate, reflect or clarify customary rules or crystallise them, whereas in some areas it creates new law or modifies existing law. At any event, the Rome Statute by and large may be taken as constituting an authoritative expression of the legal views of a great number of States.

228. The Code of Crimes against the Peace and Security of Mankind deals with aiding and abetting in article 2(3)(d), which would impose criminal responsibility upon an individual who "knowingly aids, abets or otherwise assists, directly and substantially, in the commission of such a crime, including providing the means for its commission".[256]

229. In the absence of specification, it appears that assistance can be either physical or in the form of moral support. Encouragement given to the perpetrators may be punishable, even if the abettor did not take any tangible action, provided it "directly and substantially" assists in the commission of a crime. This proposition is also supported by a passage from the International Law Commission's Commentary concerning *ex post facto* assistance:

> The Commission concluded that complicity could include aiding, abetting or assisting *ex post facto*, if this assistance had been agreed upon by the perpetrator and the accomplice prior to the perpetration of the crime.[257]

230. This conclusion implies that action which decisively encourages the perpetrator is sufficient to amount to assistance: the knowledge that he will receive assistance during or after the event encourages the perpetrator in the commission of the crime. From this perspective, willingness to provide assistance, when made known to the perpetrator, would also suffice, if the offer of help in fact encouraged or facilitated the commission of the crime by the main perpetrator.[258]

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all States to consider signing and ratifying the Rome Statute, and encourages efforts aimed at promoting awareness of the results of the Conference and of the provisions of the Rome Statute".

[256] *Report of the I.L.C.*, on the work of its forty-eighth session, G.A. Supp. No. 10 (A/51/10) 1996, p. 18.

[257] *Ibid.*, p. 24.

[258] *See* the *Rohde* case.

(c) Conclusion

232. On the issue of the nature of assistance rendered, the German cases suggest that the assistance given by an accomplice need not be tangible and can consist of moral support in certain circumstances. While any spectator can be said to be encouraging a spectacle - an audience being a necessary element of a spectacle - the spectator in these cases was only found to be complicit if his status was such that his presence had a significant legitimising or encouraging effect on the principals. This is supported by the provisions of the International Law Commission Draft Code. In view of this, the Trial Chamber believes the use of the term "direct" in qualifying the proximity of the assistance and the principal act to be misleading as it may imply that assistance needs to be tangible, or to have a causal effect on the crime. This may explain why the word "direct" was not used in the Rome Statute's provision on aiding and abetting.

233. On the effect of the assistance given to the principal, none of the cases above suggests that the acts of the accomplice need bear a causal relationship to, or be a *conditio sine qua non* for, those of the principal. The suggestion made in the *Einsatzgruppen* and *Zyklon B* cases is that the relationship between the acts of the accomplice and of the principal must be such that the acts of the accomplice make a significant difference to the commission of the criminal act by the principal. Having a role in a system without influence would not be enough to attract criminal responsibility, as demonstrated by the case of the defendant Ruehl in the *Einsatzgruppen* case. This interpretation is supported by the German cases cited.

234. The position under customary international law seems therefore to be best reflected in the proposition that the assistance must have a substantial effect on the commission of the crime. This is the position adopted by the Trial Chamber.

235. In sum, the Trial Chamber holds that the *actus reus* of aiding and abetting in international criminal law requires practical assistance, encouragement, or moral support which has a substantial effect on the perpetration of the crime.

3. Mens Rea

(a) International Case Law

236. With regard to *mens rea*, the Trial Chamber must determine whether it is necessary for the accomplice to share the *mens rea* of the principal or whether mere knowledge that his actions assist the perpetrator in the commission of the crime is sufficient to constitute *mens rea* in aiding and abetting the crime. The case law indicates that the latter will suffice.

237. For example in the *Einsatzgruppen* case,[260] knowledge, rather than intent, was held to be the requisite mental element.

238. The same position was taken in *Zyklon B* where the prosecution did not attempt to prove that the accused acted with the intention of assisting the killing of the internees. It was accepted that their purpose was to sell insecticide to the SS (for profit, that is a lawful goal pursued by lawful means). The charge as accepted by the court was that they knew what the buyer in fact intended to do with the product they were supplying.

239. Two of the not guilty verdicts in *Schonfeld* also provide an indication of the *mens rea* necessary to amount to being "concerned in the killing". Both concerned drivers who claimed to have followed instructions without knowing the purpose of the mission, and were therefore found not guilty. Despite having made a physical contribution to the commission of the offence, they had no knowledge that they were doing so.

240. In the *Hechingen Deportation* case, the court of first instance considered the *mens rea* required for aiding and abetting and concluded that this mental element encompassed both the knowledge of the crime being committed by the principals and the awareness of supporting, by aiding and abetting, the criminal conduct of the principals.[261] As

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[260] This is reflected in passages quoted from the *Einsatzgruppen* case in relation to Klingelhoefer and Fendler, pp. 568-573.

[261] "As far as the *mens rea* is concerned, whether the accused's conduct is punishable or not depends on whether he intentionally acted as an aider and abettor. The aider and abettor's intent (*Gehilfenvorsatz*) requires in the first place, that he knew the conduct he was supporting by his participation; he must have been aware that the action requested of him by the Gestapo served a persecution on racial grounds. As a

> crime would not be held accountable under the present sub-paragraph.[265]

243. Therefore, it is not necessary for an aider and abettor to meet all the requirements of *mens rea* for a principal perpetrator. In particular, it is not necessary that he shares and identifies with the principal 's criminal will and purpose, provided that his own conduct was with knowledge. That conduct may in itself be perfectly lawful; it becomes criminal only when combined with the principal 's unlawful conduct.

244. Reference should also be made to article 30 of the Rome Statute, which provides that, "[u]nless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and *knowledge*".[266]

(c) Conclusions

245. The above analysis leads the Trial Chamber to the conclusion that it is not necessary for the accomplice to share the *mens rea* of the perpetrator, in the sense of positive intention to commit the crime. Instead, the clear requirement in the vast majority of the cases is for the accomplice to have knowledge that his actions will assist the perpetrator in the commission of the crime. This is particularly apparent from all the cases in which persons were convicted for having driven victims and perpetrators to the site of an execution. In those cases the prosecution did not prove that the driver drove for the purpose of assisting in the killing, that is, with an intention to kill. It was the knowledge of the criminal purpose of the executioners that rendered the driver liable as an aider and abettor. Consequently, if it were not proven that a driver would reasonably

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[265] *Report of the I.L.C.*, p. 24.

[266] Emphasis added. Art. 30, reads:
"1. Unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge.
2. For the purposes of this article, a person has intent where:
(a) In relation to conduct, that person means to engage in the conduct;
(b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events.

have known that the purpose of the trip was an unlawful execution, he would be acquitted.

246. Moreover, it is not necessary that the aider and abettor should know the precise crime that was intended and which in the event was committed. If he is aware that one of a number of crimes will probably be committed, and one of those crimes is in fact committed, he has intended to facilitate the commission of that crime, and is guilty as an aider and abettor.

247. Knowledge is also the requirement in the International Law Commission Draft Code, which may well reflect the requirement of *mens rea* in customary international law. This is the standard adopted by this Tribunal in the *Tadi} Judgement*, although sometimes somewhat misleadingly expressed as "intent".[267]

248. One exception to this requirement of knowledge is the *Rohde* case, which appears to require no *mens rea* at all. However, this case is based on English law and procedure under the Royal Warrant. Furthermore, it is out of line with the other British cases, which do require knowledge. At the other end of the scale is the appeal court decision in the *Hechingen Deportation* case, which required that the accomplice share the *mens rea* of the perpetrator. However, the high standard proposed by this case is not reflected in the other cases.

249. In sum, the Trial Chamber holds the legal ingredients of aiding and abetting in international criminal law to be the following: the *actus reus* consists of practical assistance, encouragement, or moral support which has a substantial effect on the perpetration of the crime. The *mens rea* required is the knowledge that these acts assist the commission of the offence. This notion of aiding and abetting is to be distinguished from the notion of common design, where the *actus reus* consists of participation in a joint criminal enterprise and the *mens rea* required is intent to participate.

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3. For the purposes of this article, "knowledge" means awareness that a circumstance exists or a consequence will occur in the ordinary course of events. "Know" and "knowingly" shall be construed accordingly."

[267] Case No. IT-94-1-T, paras. 675-677.

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04 November 2011

UNITED
NATIONS

	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991	Case No.	IT-06-90-A
		Date:	4 November 2011
		Original:	English

IN THE APPEALS CHAMBER

Before: **Judge Theodor Meron, Pre-Appeal Judge**

Registrar: **Mr. John Hocking**

Decision of: **4 November 2011**

PROSECUTOR

v.

ANTE GOTOVINA
MLADEN MARKAČ

PUBLIC

DECISION ON MOTION TO STRIKE GOTOVINA'S ABANDONED GROUNDS OF APPEAL

The Office of the Prosecutor:
Ms. Helen Brady and Mr. Douglas Stringer

Counsel for Ante Gotovina:
Mr. Gregory Kehoe, Mr. Luka Mišetić, Mr. Payam Akhavan, and Mr. Guénaël Mettraux

Counsel for Mladen Markač:
Mr. Goran Mikuličić, Mr. Tomislav Kuzmanović, Mr. John Jones, and Mr. Kai Ambos

RECALLING that in carrying out its mandate under Article 25 of the Statute of the Tribunal, the Appeals Chamber "depends upon the focused contributions of the parties", and that it is the responsibility of the parties to "present their case clearly, logically and exhaustively so that the Appeals Chamber may fulfill its mandate in an efficient and expeditious manner";[9]

NOTING that in a notice of appeal, the appellant must set forth the grounds of appeal and "indicate the substance of the alleged errors and the relief sought",[10] the purpose of which is to provide notice to a respondent on the scope of the appeal from the time a notice of appeal is filed;[11]

RECALLING that if a ground of appeal is alleged *only* in a notice of appeal and is not elaborated in the relevant appellant's brief, the Appeals Chamber will consider that ground of appeal to be abandoned;[12]

RECALLING that the benefit of striking out parts of a submission is to guarantee the fairness of the proceedings and to clarify for the parties, and the public, which arguments have been considered by the Chamber in reaching a particular decision;[13]

CONSIDERING that in context, the issues noted by the Prosecution are unlikely to cause confusion;

CONSIDERING that a preliminary decision to strike grounds and sub-grounds of appeal from the Notice of Appeal is thus unnecessary at this stage of the proceedings;

FOR THE FOREGOING REASONS,

DENY the Motion.

[8] Response, para. 5.
[9] *Prosecutor v. Ljube Boškoski and Johan Tarčulovski*, Case No. IT-04-82-A, Decision on Boškoski Defence Motion to Strike Out Paragraphs from Prosecution Appeal Brief, 19 May 2009, para. 7.
[10] Rule 108 of the Rules; *Prosecutor v. Sefer Halilović*, Case No. IT-01-48-A, Appeals Judgement, 16 October 2007, para. 44.
[11] *In the Case Against Florence Hartmann*, Case No. IT-02-54-R77.5-A, Decision on Motions to Strike and Requests to Exceed Word Limit, 6 November 2009, para. 12; *Prosecutor v. Naser Orić*, Case No. IT-03-68-A, Decision on Prosecution's Motion for an Order Striking Defence Notice of Appeal and Requiring Refiling, 3 October 2006, p. 4.
[12] *See Prosecutor v. Pavle Strugar*, Case No. IT-01-42-A, Appeals Judgement, 17 July 2008, para. 265; *In the Case Against Florence Hartmann*, Case No. IT-02-54-R77.5-A, Decision on Further Motions to Strike, 17 December 2009, para. 12.
[13] *Prosecutor v. Momir Nikolić*, Case No. IT-02-60/1-A, Decision on Prosecution's Motion to Strike, 20 January 2005, para. 25.

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UNITED NATIONS	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991	Case No.	IT-06-90-T
		Date:	15 April 2011
		Original:	English

IN TRIAL CHAMBER I

Before: **Judge Alphons Orie, Presiding**
Judge Uldis Ķinis
Judge Elizabeth Gwaunza

Registrar: **Mr John Hocking**

Judgement of: **15 April 2011**

PROSECUTOR

v.

ANTE GOTOVINA
IVAN ČERMAK
MLADEN MARKAČ

PUBLIC

JUDGEMENT
VOLUME I OF II

Office of the Prosecutor

Mr Alan Tieger
Mr Stefan Waespi
Ms Prashanti Mahindaratne
Ms Katrina Gustafson
Mr Edward Russo
Mr Saklaine Hedaraly
Mr Ryan Carrier

Counsel for Ante Gotovina

Mr Luka Mišetić
Mr Gregory Kehoe
Mr Payam Akhavan

Counsel for Ivan Čermak

Mr Steven Kay, QC
Ms Gillian Higgins

Counsel for Mladen Markač

Mr Goran Mikuličić
Mr Tomislav Kuzmanović

49. This is the Trial Chamber's position with regard to a number of exhibits.

50. Exhibit P2402 is a report entitled "Military Operation Storm and its Aftermath," published by the Croatian Helsinki Committee and edited by Žarko Puhovski.[110] The report contains un-sourced statements and double entries.[111] Furthermore, during examination of Puhovski in court it became apparent that there were errors in the book.[112] For these reasons, the Trial Chamber decided not to rely on exhibit P2402 in relation to information described therein if uncorroborated by other evidence.

51. Exhibit P744 is a human rights report listing various events which was compiled by Robert Williams from a variety of sources, including Philip Berikoff.[113] The report contains un-sourced hearsay information, and neither Berikoff nor Williams specified the sources in their testimonies. The report was furthermore inconsistent with other evidence from Berikoff, notably with regard to timing.[114] For these reasons, the Trial Chamber decided not to rely on the report in relation to information described therein if uncorroborated by other evidence.

52. Exhibit P541 is a list of alleged human rights violations from UNMO Team Gračac. Steenbergen had no knowledge of its preparation or the information contained therein.[115] The Gotovina Defence objected to its admission, and urged the Chamber to give it the appropriate weight considering that Steenbergen did not establish its origins.[116] For these reasons, the Trial Chamber decided not to rely on the report in relation to information described therein if uncorroborated by other evidence.

53. Exhibit P2417 is a map allegedly signed by Gotovina, apparently depicting troop movements between 4 and 8 August 1995. The Defence did not object to its admission into evidence.[117] It is unclear whether the map depicts actual or planned troop movements, nor are all parts of the map legible. Considering this, the Trial Chamber decided not to rely on exhibit P2417 on its own to establish presence of troops.

[110] P2316 (Zarko Puhovski, witness statement, 14 June 2007), paras 14-15; Žarko Puhovski, T. 15907.
[111] E.g. P2402 (Croatian Helsinki Committee, "Military Operation Storm and Its Aftermath", 2001), pp. 143, 153; Žarko Puhovski, T. 16087.
[112] E.g. P2402 (Croatian Helsinki Committee, "Military Operation Storm and Its Aftermath", 2001), p. 146; Žarko Puhovski, T. 16062-16064.
[113] Philip Berikoff, T. 7609, 7682; Robert Williams, T. 9646.
[114] See e.g. Philip Berikoff, T. 7610.
[115] Herman Steenbergen, T. 5434.
[116] Herman Steenbergen, T. 5434-5436.
[117] T. 17183.

courtroom and in detention.[3619] In sum, the Trial Chamber does not find that Mladen Markač's comportment in the courtroom and in detention amounts to a mitigating circumstance. The Markač Defence has pointed to testimonies by several witnesses, as evidence of Mladen Markač's good character, *inter alia* lending assistance to "victims".[3620] Even taken on a balance of probabilities, this evidence is not sufficient for the Trial Chamber to assess whether Mladen Markač has a good character which it could consider as a mitigating factor.

8.3.3 General practice regarding the prison sentences in the courts of the former Yugoslavia

2611. The Trial Chamber is required to consider "the general practice regarding prison sentences in the courts of the former Yugoslavia" in determining the appropriate penalty. This does not mean that the Trial Chamber is obliged to conform to that practice.[3621] The Tribunal may impose a sentence in excess of that which would be applicable under the relevant law in the former Yugoslavia, and the Appeals Chamber has held that this sentencing practice does not violate the principle of *nulla poena sine lege* because a defendant would have been aware that the crimes for which he or she is indicted constitute serious violations of international humanitarian law, punishable by the most severe of penalties.[3622] Moreover, the Trial Chamber may diverge from the sentencing practice of the former Yugoslavia if this practice is inadequate in light of international law.[3623]

2612. Article 24 (1) of the Statute and Rule 101 (B) (iii) of the Rules refer to actual practice in courts of the former Yugoslavia. It is however settled practice within the

[3619] In this regard, the Trial Chamber finds that it was understandable that Mladen Markač did not appear in the courtroom in one instance in protest against the arrests of members of the Gotovina Defence team and the search of the Gotovina Defence's premises by the Croatian authorities in December 2009 (see T. 26003-26004).
[3620] Markač Defence Final Brief, paras 313-316.
[3621] *Tadić* Appeal Sentencing Judgement, para. 21; *Čelebići* Appeal Judgement, paras 813, 816 and 820; *Jelisić* Appeal Judgement, para. 117; *Kupreškić et al.* Appeal Judgement, para. 418; *Kunarac et al.* Appeal Judgement, paras 347-349; *Krstić* Appeal Judgement, para. 260; *Blaškić* Appeal Judgement, paras 681-682; *Kordić and Čerkez* Appeal Judgement, para. 1085; *Dragan Nikolić* Appeal Sentencing Judgement, paras 17, 69; *Jokić* Appeal Sentencing Judgement, para. 38; *Galić* Appeal Judgement, para. 398; *Hadžihasanović and Kubura* Appeal Judgement, paras 335, 346; *Krajišnik* Appeal Judgement, paras 749, 811; *Boškoski and Tarčulovski* Appeal Judgement, para. 212.
[3622] *Tadić* Appeal Sentencing Judgement, para. 21; *Čelebići* Appeal Judgement, para. 817; *Krstić* Appeal Judgement, para. 262; *Blaškić* Appeal Judgement, para. 681; *Stakić* Appeal Judgement, para. 398; *Simić et al.* Appeal Judgement, para. 264; *Krajišnik* Appeal Judgement, para. 750.
[3623] *Kunarac et al.* Appeal Judgement, para. 377.

UNITED
NATIONS

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Case No. IT-01-47-A

Date: 22 April 2008

Original: English

IN THE APPEALS CHAMBER

Before: **Judge Fausto Pocar, Presiding**
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Liu Daqun
Judge Theodor Meron

Registrar: **Mr. Hans Holthuis**

Judgement of: **22 April 2008**

PROSECUTOR

v.

ENVER HADŽIHASANOVIĆ
AMIR KUBURA

PUBLIC

JUDGEMENT

The Office of the Prosecutor:

Mr. Peter Kremer
Ms. Shelagh McCall
Mr. Marwan Dalal
Mr. Xavier Tracol
Ms. Barbara Goy
Mr. Steffen Wirth
Ms. Katharina Margetts
Mr. Matteo Costi

Counsel for the Defence:

Ms. Edina Rešidović and Mr. Stéphane Bourgon for Enver Hadžihasanović
Mr. Fahrudin Ibrišimović and Mr. Rodney Dixon for Amir Kubura

to activities of plunder and the need to prevent them [but] does not mention acts of destruction".[863] The Appeals Chamber concurs with the Trial Chamber that, given the evidence taken as a whole, the inference that the 7th Brigade "must have received" orders from the 3rd Corps Command on 4 November 1993 does not establish, by itself, Kubura's knowledge of his subordinates' acts of wanton destruction.

295. Second, the Appeals Chamber considers that Kubura's knowledge of the acts of wanton destruction cannot automatically be inferred from his awareness of the plunder in Vareš on 4 November 1993. Indeed, the Trial Chamber's finding regarding Kubura's knowledge of the plunder in Vareš on 4 November 1993 rests on a much broader evidentiary basis. The Trial Chamber reached this conclusion on the basis of the aforementioned 4 November 1993 Order from the OG *Istok*, which specifically referred to acts of plunder but not of wanton destruction being committed in Vareš.[864] The Trial Chamber also relied on a 7th Brigade 2nd Battalion 11 November 1993 Report, which noted the 7th Brigade's collection of war booty in Vareš but did not mention acts of wanton destruction.[865] Furthermore, the Trial Chamber relied on Kubura's knowledge of and failure to punish his subordinates' past acts of plunder.[866] The Trial Chamber made no such findings with respect to any past acts of wanton destruction by Kubura's subordinates. Thus, while there was a sufficient evidentiary basis for the Trial Chamber to conclude that Kubura had knowledge of the acts of plunder in Vareš, it was reasonable for it to conclude that his knowledge as regards the acts of wanton destruction was not established beyond reasonable doubt.

296. In light of the foregoing, the Appeals Chamber finds that the Prosecution failed to establish that no reasonable trier of fact could have concluded, on the basis of all the admitted evidence, that Kubura's knowledge of wanton destruction in Vareš on 4 November 1993 was not established beyond reasonable doubt. The Prosecution's second ground of appeal is dismissed and Kubura's acquittal under Count 5 of the Indictment is confirmed.

[863] Trial Judgement, para. 1851.
[864] Trial Judgement, para. 1986, citing Exhibit P675 (Order from Abdulah Ahmić, ABiH 6th Corps Operational Group *Istok* (East) Commander, dated 4 November 1993).
[865] Trial Judgement, para. 1986, citing Exhibit P468 (ABiH 3rd Corps, 7th Brigade, 2nd Battalion Combat Report, dated 11 November 1993).
[866] Trial Judgement, para. 1982. *See* also Section VI(B): "Plunder in Vareš in November 1993".

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UNITED NATIONS

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Case No. IT-01-47-T

Date: 15 March 2006

Original: ENGLISH
French

IN THE TRIAL CHAMBER

Before: **Judge Jean-Claude Antonetti**
Judge Vonimbolana Rasoazanany
Judge Bert Swart

Registrar: **Mr Hans Holthuis**

Judgement of: **15 March 2006**

THE PROSECUTOR

v.

ENVER HADŽIHASANOVIĆ
AMIR KUBURA

JUDGEMENT

The Office of the Prosecutor:

Mr Daryl A. Mundis
Ms Tecla Henry-Benjamin
Mr Stefan Waespi
Mr Matthias Neuner

Counsel for the Defence:

Ms Edina Rešidović and Mr Stéphane Bourgon for Enver Hadžihasanović
Mr Fahrudin Ibrišimović and Mr Rodney Dixon for Amir Kubura

III. EVIDENCE

270. The Chamber considers it appropriate to explain the approach it adopted to assess evidence and determine its probative value, whether such evidence was supported by documentary or visual aids, or if it came in the form of testimony of witnesses called by the Prosecution, Defence, or even the Chamber.

A. Scope of Direct and Cross-Examination

1. Broad Scope of Cross-Examination

271. From the day the trial began, the Chamber adopted a broad approach with regard to the scope of direct examinations and especially cross-examinations. Accordingly, in its Decision on the Defence Motion for Clarification of the Oral Decision of 17 December [...], the Chamber recalled that, pursuant to Rule 90(H), cross-examinations are not limited to issues raised in direct examination, and that questions going to the credibility of witnesses and to the case of the cross-examining party are permitted.[443] On that basis, the Chamber exercised its control and admitted questions intended to establish the historical, political, and military context at the time of the events, provided that the cross-examining party explain the objective and relevance of such questions to the Chamber before putting them to the witness.[444]

272. Mindful that these contextual questions could result in testimony being described as "hearsay" or "indirect", the Chamber recalled that Rule 89(C) applies equally to direct and indirect evidence. In cases where testimony was based on hearsay, the Chamber noted that to assess its probative value, it wished to know the source of the information, that is, insofar as possible, the identity of the initial source, how he might have learned of the facts, and the number of intermediaries through which the testimony had passed.

2. Restrictions

(a) Decision on Defence Motion regarding Cross-Examination of Witnesses by the Prosecution

273. The Chamber placed some restrictions on its flexible approach to questions that could be raised in cross-examination, in view of the stage of the trial and the content of the Indictment. Accordingly, in its Decision on Defence Motion regarding Cross-Examination of Witnesses by the

[443] Decision on Defence Motion for Clarification of the Oral Decision of 17 December 2003 Regarding the Scope of Cross-Examination Pursuant to Rule 90(H) of the Rules, 28 January 2004, p. 3.
[444] *Ibid.*, p. 4.

UNITED
NATIONS

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991

Case No. IT-04-84-A

Date: 19 July 2010

Original: English

IN THE APPEALS CHAMBER

Before: **Judge Patrick Robinson, Presiding**
Judge Fausto Pocar
Judge Liu Daqun
Judge Andrésia Vaz
Judge Theodor Meron

Registrar: **Mr. John Hocking**

Judgement: **19 July 2010**

PROSECUTOR

v.

RAMUSH HARADINAJ
IDRIZ BALAJ
LAHI BRAHIMAJ

PUBLIC

JUDGEMENT

The Office of the Prosecutor:
Mr. Peter Kremer
Mr. Marwan Dalal
Ms. Elena Martin Salgado

Counsel for Ramush Haradinaj:
Mr. Ben Emmerson
Mr. Rodney Dixon

Counsel for Idriz Balaj:
Mr. Gregor Guy-Smith
Ms. Colleen Rohan

Counsel for Lahi Brahimaj:
Mr. Richard Harvey
Mr. Paul Troop

that the evidence proved Mr. Balaj had the requisite *mens rea* for aiding and abetting."[176] He argues that the Trial Chamber applied the correct legal standard of "knowledge or awareness that his or her conduct assisted or facilitated the commission of the crime",[177] and properly concluded that this standard could not be met where there was no evidence that Idriz Balaj was aware that these murders were "even contemplated" at the time that he acted.[178]

57. The Appeals Chamber notes that, in relation to the *mens rea* element of aiding and abetting, the Trial Chamber articulated the legal standard as follows:

> The aider and abettor must have knowledge that his or her acts assist in the commission of the crime of the principal perpetrator. The aider and abettor must also be aware of the principal perpetrator's criminal acts, although not their legal characterization, and his or her criminal state of mind. The aider and abettor does not, however, need to know either the precise crime that was intended or the one that was actually committed; it is sufficient that he or she be aware that one of a number of crimes will probably be committed, if one of those crimes is in fact committed.[179]

The Appeals Chamber further notes that the Trial Chamber, by majority, found that "there is no evidence that Idriz Balaj knowingly contributed to or facilitated the commission of any of these murders, especially as there is no evidence that Idriz Balaj was aware at that time that these murders were or would be committed."[180]

58. The Appeals Chamber considers it firmly established that, to satisfy the *mens rea* requirement for aiding and abetting, "[i]t must be shown that the aider and abettor knew that his own acts assisted the commission of that specific crime by the principal" (for example, murder, extermination, rape, torture)[181] and that the aider and abettor was "aware of the essential elements of the crime which was ultimately committed by the principal".[182] Where the *mens rea* of the principal perpetrator is an element of the principal crime, the aider and abettor need not share the intent of the principal perpetrator,[183] but he or she must be aware of the intent of the principal perpetrator.[184] *Mens rea* can be established if the aider and abettor is not certain which of a number of crimes will ultimately be committed.[185] In this regard, where an accused "is aware that one of a number of crimes will probably be committed, and one of those crimes is in fact committed, he has

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[176] Balaj's Response Brief, para. 65.
[177] Balaj's Response Brief, para. 69.
[178] Balaj's Response Brief, para. 70.
[179] Trial Judgement, para. 145 (internal citations omitted).
[180] Trial Judgement, para. 242.
[181] *Aleksovski* Appeal Judgement, para. 163 (citing *Tadić* Appeal Judgement, para. 229); *see also Blaškić* Appeal Judgement, para. 45 (citing *Vasiljević* Appeal Judgement, para. 102); *Krnojelac* Appeal Judgement, para. 51.
[182] *Orić* Appeal Judgement, para. 43 (citing *Simić* Appeal Judgement, para. 86); *Aleksovski* Appeal Judgement, para. 162.
[183] *Krstić* Appeal Judgement, para. 140; *Krnojelac* Appeal Judgement, paras 51-52; *Simić* Appeal Judgement, para. 86.
[184] *Simić* Appeal Judgement, para. 86; *Brđanin* Appeal Judgement, para. 487; *Blagojević and Jokić* Appeal Judgement, para. 127; *Krstić* Appeal Judgment, paras 140-141.
[185] *Blaškić* Appeal Judgement, para. 50 (citing *Blaškić* Trial Judgement, para. 287); *Simić* Appeal Judgement, para. 86.

intended to facilitate the commission of that crime, and is guilty as an aider and abettor."[186] Accordingly, the Trial Chamber correctly set out the legal standard for the *mens rea* of aiding and abetting.[187]

59. Furthermore, the Appeals Chamber can identify no error on the part of the Trial Chamber in its application of the legal standard for the *mens rea* of aiding and abetting.[188] The requirement of knowledge that a crime would be committed by the principal perpetrator is in line with the jurisprudence of the Tribunal as set forth above. Moreover, the Appeals Chamber considers that the Trial Chamber did not reach its conclusion because Idriz Balaj "lacked certainty" that a crime would be committed but rather because it found that there was no evidence at all to establish that he was aware to any standard that by his actions he was assisting in the commission of a crime against the sisters.[189]

60. The Appeals Chamber considers that the evidence referred to by the Prosecution, at best, shows that Idriz Balaj put vulnerable women in contact with KLA soldiers who had a reputation for violence. The Prosecution does not point to any evidence as to what happened to the women between the time that they were last seen alive and the time that they were killed, in particular which KLA soldiers killed them or under what circumstances they were killed. As the Trial Chamber correctly noted, none of the evidence shows that Idriz Balaj was aware that a crime would be committed against the women at the relevant time.[190]

61. Accordingly, the Appeals Chamber concludes that the Trial Chamber did not err in finding that Idriz Balaj lacked the requisite *mens rea* for aiding and abetting the murder of sister "S", sister "M", and the mother of Witness 4. In view of this conclusion, the Appeals Chamber will not consider the Prosecution's contention in relation to the *actus reus* requirement.

62. Consequently, the Appeals Chamber dismisses this ground of appeal and the Trial Chamber's acquittal of Idriz Balaj for Count 14 stands.

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[186] *Blaškić* Appeal Judgement, para. 50 (citing *Blaškić* Trial Judgement, para. 287); *Simić* Appeal Judgement, para. 86.
[187] *See* Trial Judgement, para. 145.
[188] *See Blagojević and Jokić* Appeal Judgement, para. 223.
[189] Trial Judgement, para. 242.
[190] Trial Judgement, para. 242.

(a) Whether the Trial Chamber "presumed" that Witness 3 was beaten

198. Lahi Brahimaj notes the Trial Chamber's holding that "[t]he evidence does not indicate that Witness 6 saw the initial beating of Witness 3". Lahi Brahimaj asserts that, in drawing this conclusion, the Trial Chamber presumed that Witness 3 was beaten upon his arrival to Jablanica/Jabllanicë even though, according to Lahi Brahimaj and the evidence of Witness 6, Witness 3 was not beaten. According to Lahi Brahimaj, the evidence is equally consistent with a finding that the beating did not occur. Lahi Brahimaj further points out that neither the Prosecution nor the Trial Chamber questioned Witness 6 on whether Witness 3 could have been beaten without Witness 6's knowledge.[462]

199. The Prosecution responds that the Trial Chamber's consideration of Witness 6 and Witness 3's evidence was reasonable with regard to Witness 3's torture at the Jablanica/Jabllanicë compound.[463]

200. The Appeals Chamber does not agree with Lahi Brahimaj that the Trial Chamber presumed that Witness 3 was beaten and then proceeded to ignore contrary evidence. Rather, the Appeals Chamber finds that the Trial Chamber clearly considered the evidence of both Witness 6 and Witness 3 with regard to this issue and provided a reasoned opinion, which explicitly addressed the conflict between their testimony and why it preferred the latter's testimony over that of the former. Specifically, the Trial Chamber observed that Witness 6's testimony that Witness 3 was not beaten contradicts the evidence of Witness 3, but nevertheless accepted the evidence of Witness 3 on the basis that: (a) Witness 6 appeared to have little or no direct contact with Witness 3;[464] and (b) it was not clear from the evidence that Witness 6 saw Witness 3 as he escaped from the room. The Trial Chamber accordingly considered "that Witness 6 was not in a position to ascertain whether or not Witness 3 was beaten" and interpreted his testimony "to mean that he was not aware of Witness 3 being beaten."[465]

201. The Appeals Chamber recalls that a Trial Chamber may accept some parts of a witness's testimony and reject others.[466] The Trial Chamber therefore was not obliged to accept every aspect of Witness 6's evidence. The Trial Chamber had the advantage of observing both witnesses in

[461] *Kupreškić et al.* Appeal Judgement, para. 32; *Nchamihigo* Appeal Judgement, paras 281-282, 354; *Muvunyi* Appeal Judgement, paras 142-147.
[462] Brahimaj's Appeal Brief, para. 79.1; AT. 141-142 (Open Session).
[463] Prosecution's Response Brief, para. 41.
[464] In particular, the evidence did not indicate that Witness 6 saw the initial beating of Witness 3 or entered his room when bringing him food and water.
[465] Trial Judgement, para. 445.
[466] *Blagojević and Jokić* Appeal Judgement, para. 82 (citing *Kupreškić et al.* Appeal Judgement, para. 333). *See also Ntagerura et al.* Appeal Judgement, para. 214; *Kamuhanda* Appeal Judgement, para. 248).

person and was better positioned than the Appeals Chamber to assess the reliability and credibility of the evidence on this issue.[467]

202. Furthermore, the Appeals Chamber finds that Lahi Brahimaj's suggestion that the Prosecution or Trial Chamber should have questioned Witness 6 as to whether Witness 3 could have been beaten without Witness 6's knowledge is without merit. The Appeals Chamber finds that any answer on the part of Witness 6 to this question would be speculative and that, if Lahi Brahimaj considered that the answer to this question could have shed light on this issue, he could have raised it himself during the trial.

203. Considering the foregoing, the Appeals Chamber finds that the Trial Chamber discharged its duty of addressing the inconsistencies in the statements of these crucial witnesses and explaining why it preferred the testimony of one over the other in a reasoned opinion. Lahi Brahimaj has identified no error on the part of the Trial Chamber in this regard.

204. Accordingly, the Appeals Chamber rejects this argument.

(b) Whether the Trial Chamber erred in finding that Witness 6 did not enter the room where Witness 3 was detained

205. Lahi Brahimaj argues that the Trial Chamber's finding that the evidence did not indicate that Witness 6 entered Witness 3's room when bringing food and water contradicts the facts found by the Trial Chamber in paragraphs 418, 427, and 443 of the Trial Judgement.[468] Lahi Brahimaj also argues that Witness 6's testimony[469] demonstrates that Witness 6 must have entered the room in which Witness 3 and the other two detainees were housed.[470] Lahi Brahimaj points out that the Trial Chamber noted the testimony of Witness 6 that, on the same day at around 1:00 p.m., the man from Grabanica/Grabanicë managed to escape through the window in his room, while the man from Zahać/Zahaq and Pal Krasniqi were caught trying to do the same.[471] Finally, Lahi Brahimaj quotes six passages of Witness 6's evidence about how Witness 6, *inter alia*, assisted the two men in the room by, for example, bringing them food and water, which, according to Lahi Brahimaj, supports his position that Witness 6 had to have entered the room.[472] In light of the foregoing, Lahi Brahimaj avers that no reasonable trier of fact could have concluded that Witness 6 did not enter the room,

[467] *Čelebići* Appeal Judgement, paras 485, 496-498; *Furundžija* Appeal Judgement, para. 37.
[468] Brahimaj's Appeal Brief, para. 79.2.
[469] Witness 6, T. 5332-5337 (4 June 2007) (Open Session), T. 5237-5238 (1 June 2007) (Open Session).
[470] Brahimaj's Appeal Brief, para. 79.2.
[471] Brahimaj's Appeal Brief, para. 79.2; Trial Judgement, para. 443 (citing Witness 6, T. 5236-5238 (1 June 2007) (Open Session), T. 5338-5339, 5389-5390 (4 June 2007) (Open Session)). *See also* Trial Judgement, paras 418, 427.
[472] Brahimaj's Appeal Brief, para. 79.2 (citing T. 5237-5238 (1 June 2007) (Open Session), T. 5332-5333, 5335-5336 (4 June 2007) (Open Session)).

UNITED NATIONS	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991	Case No.	IT-04-84-T
		Date:	3 April 2008
		Original:	English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Frank Höpfel
Judge Ole Bjørn Støle

Registrar: Mr Hans Holthuis

Judgement of: 3 April 2008

PROSECUTOR

v.

RAMUSH HARADINAJ
IDRIZ BALAJ
LAHI BRAHIMAJ

PUBLIC

JUDGEMENT

Office of the Prosecutor

Mr David Re
Mr Gramsci di Fazio
Mr Gilles Dutertre
Mr Philip Kearney

Counsel for Ramush Haradinaj

Mr Ben Emmerson, QC
Mr Rodney Dixon
Ms Susan L. Park

Counsel for Idriz Balaj

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Ms Colleen Rohan

Counsel for Lahi Brahimaj

Mr Richard Harvey
Mr Paul Troop

handed over to the relatives and the commission issued a death certificate.[920] Body R-17 was wearing a blue dress with purple and white patterns over a hand-knitted vest.[921] Body R-17 was a female between 55 and 65 years old and between 156 and 161 centimetres tall.[922] The autopsy revealed a hand-gun bullet entry and exit wound on the left half of the pelvic bone, which, if inflicted in life, could have caused a haemorrhage and led to death.[923] On 19 September 1998, Vera Kovačević identified the body as Darinka Kovać (born Vujošević), based on clothing, the ossification of the spinal column and signs of a chronic, degenerative bone disease suffered in life, which caused severe ossification of the spinal column.[924] Vera Kovačević told the team that Vukosava Marković and her sister Darinka Kovać went missing on 21 April 1998.[925] Bodies R-10 and R-17 were handed over to the relatives and a death certificate was issued.[926] The witness did not take a DNA sample from R-17, because of the specific nature of the traditional identification.[927]

196. As referred to above, the Trial Chamber has heard hearsay evidence from Vera Kovačević that Vukosava Marković and Darinka Kovać went missing on 21 April 1998. In September 1998, two sets of remains were identified by traditional means as belonging to these two women. Both sets of remains had been found near the concrete wall at the Radonjić/Radoniq canal. In addition to general physical characteristics, the identification of Vukosava Marković was based in part on traces of bone injuries found on the remains that matched injuries sustained in life in a car crash. Likewise, in addition to general physical characteristics, the identification of Darinka Kovać was based in part on the symptoms of a bone disease, present in the remains, that she had suffered in life. The identification further considered a set of upper dentures found with the remains, that Darinka Kovać was known to wear. Also, for both sets of remains, Vera Kovačević identified pieces of clothing as ones that she had made herself. There are some discrepancies between the accounts of Vera Kovačević and Dušan Dunjić, concerning the identification of the clothing of Vukosava Marković. Although the

[920] P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 308; P635 (Death certificates), pp. 5-6; P672 (Autopsy report R-10), p. 8.
[921] P706 (Autopsy report R-17), p. 3.
[922] P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 399; P706 (Autopsy report R-17), p. 5.
[923] P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 401; P706 (Autopsy report R-17), pp. 2, 6.
[924] P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 404-408; Dušan Dunjić, T. 7208, 7350; P706 (Autopsy report R-17), pp. 2, 6-7.
[925] P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 305; P672 (Autopsy Report R-10), p. 7.
[926] P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 308, 409; Dušan Dunjić, T. 7351; P635 (Death certificates), pp. 5-6, 9-10; P672 (Autopsy report R-10), p. 8; P706 (Autopsy report R-17), p. 7.

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accounts differ, they are not necessarily contradictory and certain discrepancies concern ambiguous details such as the exact colour of clothing. Therefore, the Trial Chamber does not consider these discrepancies significant and notes that the identification of clothing was only one of the factors considered in the identification of the remains. As the remains could not be retrieved, they could not have been identified by DNA analysis. The Trial Chamber has heard evidence of traditional identification of other sets of remains which was later contradicted by DNA analysis. Nevertheless, considering the strong grounds for the traditional identification and the fact that the two sets of remains were discovered in close proximity to each other, the Trial Chamber finds that the remains labelled R-10 belong to Vukosava Marković, and the remains labelled R-17 belong to Darinka Kovać. The forensic medical evidence suggests that Vukosava Marković and Darinka Kovać were murdered. In section 6.1, above, the Trial Chamber has explained that the fact that a body was found in the Radonjić/Radoniq canal area is not in itself conclusive as to who committed the killing or with which group, if any, the perpetrator was affiliated. The Trial Chamber has not received any evidence about either of the women being in KLA custody. By late April 1998, Vukosava Marković and Darinka Kovać were among the last remaining Serbs in the village of Gornji Ratiš/Ratishë ë Eperm, which had fallen under KLA control on or around 21 April 1998. Further, Miloica Vlahović testified that she had heard from a man named Muhamet that Vukosava Marković and Darinka Kovać were killed in July 1998. Miloica Vlahović did not clarify the basis of Muhamet's information. Thus, the evidence is unsourced, and possibly multiple hearsay. Even if the two women went missing in KLA controlled territory and were among the last Serbs remaining in their village in late April 1998, this fact alone could not reasonably exclude the possibility that other forces or persons, unaffiliated with the KLA, committed the killing.

197. For these reasons, even assuming that Vukosava Marković and Darinka Kovać were murdered, the Trial Chamber finds that the evidence before it does not allow for a conclusion beyond a reasonable doubt as to who committed the murders of the two women, with which group, if any, the perpetrator was affiliated, or whether the murders occurred in KLA custody. The Trial Chamber has heard no evidence concerning Idriz Balaj's involvement in the death of either of the two women. The Trial Chamber concludes that all three Accused should be acquitted of this charge.

[927] Dušan Dunjić, T. 7350; P706 (Autopsy report R-17), pp. 6-7.

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Đakovica/Gjakovë municipality.[1547] In September 1998, officials at the MUP in Đakovica/Gjakovë told the witness that they had arrested Lëk and Krist Pervorfi, two KLA members from Dujak/Dujakë who had abducted Zdravko Radunović in Dujak/Dujakë.[1548] The officials further informed the witness that the two men had handed Zdravko Radunović over to their commander named "Vuk", and that Zdravko Radunović had subsequently been taken to Glođane/Gllogjan, in Dečani/Deçan municipality, where Ramush Haradinaj was in charge.[1549] In January 1999, the MUP in Peć/Pejë told the witness that Lëk and Krist Pervorfi had stated that Zdravko Radunović had been killed and that his remains had had been disposed of at Lake Radonjić/Radoniq.[1550]

316. The Trial Chamber has also received forensic medical evidence with regard to Zdravko Radunović (remains labelled "R-8/1"). ICMP DNA analysis identified the remains labelled R-8/1 as those of Zdravko Radunović.[1551] An autopsy conducted on 5 December 2003 described totally skeletonized, disarticulated and largely incomplete human remains.[1552] The cause of death could not be ascertained.[1553] Dušan Dunjić[1554] testified that remains R-8/1 were incomplete, with many bones missing.[1555] The remains had mistakenly been placed in the same body bag as body R-8.[1556] The part of the skull that was found showed a trace of a bullet exit wound.[1557]

317. As referred to above, the Trial Chamber received direct evidence that Zdravko Radunović was last seen on the morning of 16 July 1998 when he left for work, and last heard from during a telephone conversation at 1:30 p.m. on the same day, when he indicated that he was leaving Đakovica/Gjakovë for Dobrić/Dobriq. The MUP subsequently informed Witness 68 that Zdravko Radunović was abducted by KLA soldiers in Dujak/Dujakë, transferred to Glođane/Gllogjan, killed, and disposed of at

[1547] P1016 (Witness 68, witness statement, 9 October 2007), paras 10-11.
[1548] P1016 (Witness 68, witness statement, 9 October 2007), paras 12, 14-16; Witness 68, T. 9265-9268, 9273-9274.
[1549] Witness 68, T. 9267-9268.
[1550] Witness 68, T. 9266-9267, 9269, 9271-9272.
[1551] Agreed Facts, 26 November 2007, No. 52.
[1552] Agreed Facts, 26 November 2007, Nos 53-54.
[1553] Agreed Facts, 26 November 2007, No. 55.
[1554] P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 2-3, 23, 40, 151; P620 (CV of Dušan Dunjić), p. 2.
[1555] P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 278; P665 (Photographs of R-8 and R-8/1).
[1556] P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 276; P659 (Autopsy report R-8), p. 1; P662 (Photographs of R-8 and R-8/1); P663 (Autopsy report R-8/1), p. 1.

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Lake Radonjić/Radoniq. This hearsay account of Witness 68 is the only evidence before the Trial Chamber about the alleged abduction and subsequent events. It does not spell out the circumstances under which the MUP learned about the abduction. Moreover, it is multiple hearsay and Witness 68 does not specify her source. For these reasons the Trial Chamber will not rely on Witness 68's hearsay account of the alleged abduction and subsequent events. In September 1998, Zdravko Radunović's body was found at the Radonjić/Radoniq canal.

318. While at one autopsy, conducted on 5 December 2003, the cause of death of Zdravko Radunović could not be ascertained, Dunjić's autopsy report in 1998 noticed a trace of a bullet exit wound on the part of the skull that was found. Even assuming that Zdravko Radunović was murdered, KLA involvement has to be ascertained to prove the charges of this Count. In section 6.1, above, the Trial Chamber has explained that the fact that a body was found in the Radonjić/Radoniq canal area is not in itself conclusive as to who committed the killing or with which group, if any, the perpetrator was affiliated. The fact that Zdravko Radunović went to visit relatives in Dobrić/Dobriq, because they were under KLA attack a few days before, cannot establish a sufficient link between his disappearance and the KLA. As explained above, the Trial Chamber will not rely on Witness 68's hearsay account on the alleged abduction and subsequent events. For these reasons, the Trial Chamber finds that the evidence before it does not allow for a conclusion beyond a reasonable doubt as to who committed the murder, with which group, if any, the perpetrator was affiliated, or whether the murder occurred in KLA custody. The Trial Chamber therefore concludes that all three Accused should be acquitted of this charge.

6.12.8 Murder of Velizar Stošić

319. All three Accused are charged, as participants in a joint criminal enterprise, with the murder of Velizar Stošić in violation of the laws or customs of war. The Trial Chamber has heard relevant evidence from Miomir Stošić, as well as forensic medical evidence.

[1557] P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 281; P663 (Autopsy report R-8/1), pp. 1-2, 4; P666 (Photographs of R-8/1).

IT-02-54-R77.5-A 7831797
A1797 - A1791
17 DECEMBER 2009

UNITED
NATIONS

	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991	Case No.	IT-02-54-R77.5-A
		Date:	17 December 2009
		Original:	English

IN THE APPEALS CHAMBER

Before:	**Judge Patrick Robinson, Presiding** **Judge Andrésia Vaz** **Judge Theodor Meron** **Judge Burton Hall** **Judge Howard Morrison**
Registrar:	**Mr. John Hocking**
Decision:	**17 December 2009**

IN THE CASE AGAINST FLORENCE HARTMANN

PUBLIC

DECISION ON FURTHER MOTIONS TO STRIKE

***Amicus Curiae* Prosecutor**
Mr. Bruce MacFarlane

Counsel for Appellant
Mr. Karim A. A. Kahn, Lead Counsel
Mr. Guénaël Mettraux, Co-Counsel

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IV. Discussion

10. As acknowledged by both the Appellant and the *Amicus* Prosecutor, the Appellant was ordered to re-file her appeal brief with no more than 9,000 words. In the beginning of its re-filed brief, the Appellant informs the Appeals Chamber as follows:

> The word-limit set by the Appeals Chamber in its Decision of 6 November 2009 has proved inadequate to fully flesh out all grounds of appeal as would have been necessary in the circumstances. ... Because of the Appeals Chamber's decision not to grant any extension of words, and with a view to meet the word limit, the Defence has had to renounce arguing a number of grounds of appeal in its Brief. The Defence notes, however, that this should not be interpreted as a waiver of its right to raise the issues and facts pertaining to these grounds if ever necessary, appropriate or relevant. Nor should it be interpreted as a waiver of Ms Hartmann's fundamental rights. The Defence submits, furthermore, that the Appeals Chamber would have the inherent power, in fairness and with a view to protect the interests of justice, to consider the substance of any of the sub-grounds that could not be fleshed out in the Brief by referring to the detailed notice of these grounds as is contained in the Notice of Appeal.[20]

11. From an examination of the appeal brief, which bears a word count of 8,998 words, it is clear that the Appellant was able to come within the 9,000 word limit by removing spaces between words and characters throughout the footnotes. Footnotes, of course, count toward the overall word limit, pursuant to paragraph 6 of the Practice Direction on the Length of Briefs and Motions. The Appellant therefore seems to have "tricked" Microsoft Word's automatic word-count function into counting a footnote consisting of several words as a single word. Such an approach is contrary to both the spirit and letter of the relevant Practice Directions. Under the present circumstances, the Appeals Chamber considers that the appropriate remedy is to order the Appellant to re-file her appeal brief in conformity with the relevant Rules and Practice Directions, as well as the 6 November Decision. The *Amicus* Prosecutor shall have the opportunity to re-file his response, and the Appellant her reply, if any. The Appeals Chamber emphasises that this is not an opportunity for the parties to add fresh arguments to these filings.[21]

12. The Appeals Chamber now turns to the *Amicus* Prosecutor's request to strike from the appeal brief all references adopting arguments from other filings. The Appeals Chamber has previously held that, pursuant to Rule 111 of the Rules, the proper place for pleading arguments in support of a particular ground of appeal, as well as any supporting authority, is the appeal brief and not the notice of appeal.[22] Moreover, "allowing the appellant to submit arguments in a notice of appeal which are not repeated in the appeal brief would put the respondent in a disadvantageous

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[19] Reply, para. 6.
[20] Florence Hartmann's Appellant Brief, 20 November 2009, paras 6–7 (footnotes omitted).
[21] *See Prosecutor v. Halilović*, Case No. IT-01-48-A, Decision on Prosecution's Motion to Strike Annexes to the Respondent's Brief, 6 September 2006, para. 12.
[22] *Prosecutor v. Orić*, Case No. IT-03-68-A, Decision on Prosecution's Motion for an Order Striking Defence Notice of Appeal and Requiring Refiling, 3 October 2006 ("*Orić* Decision of 3 October"), p. 4 & n. 16; *cf. Prosecutor v. Orić*,

situation as the respondent responds to the appeal brief and not to the notice of appeal".[23] The Appellant therefore cannot simply refer in her appeal brief to other documents, most notably the notice of appeal, and expect those grounds of appeal to be preserved. The Appeals Chamber therefore, under the present circumstances, intends to consider as abandoned any grounds of appeal not argued in the re-filed appeal brief.[24] In this regard, the Appeals Chamber has already stated that "[t]he quality and effectiveness of an appellant's brief are not contingent on the length of the submissions, but on the cogency and clarity of the arguments presented."[25]

13. The Appeals Chamber finds no merit in the Appellant's argument that the *Amicus* Prosecutor has conducted this matter so as to "see her cards". The *Amicus* Prosecutor, within a reasonable amount of time, made a motion to strike the initial notice of appeal and brief because it did not conform to the relevant requirements, *and that motion succeeded on its merits*. The present Motion has also succeeded in substantial part. No gamesmanship on the part of the *Amicus* Prosecutor has been demonstrated by the Appellant. Moreover, the Appellant cannot complain about differences in argumentation in the *Amicus* Prosecutor's re-filed respondent's brief. The Appellant's arguments, pursuant to the order of the Appeals Chamber, have been re-worked and refined, and it is reasonable that the *Amicus* Prosecutor's brief must now meet the present state of the Appellant's arguments, not the previous ones, which no longer control this appeal.

14. In light of the fact that the Appeals Chamber will order the Appellant to re-file her appeal brief and does not intend, at this stage of the proceedings, to consider any grounds of appeal raised in the notice of appeal that are not argued in the appeal brief, it is not necessary to order a re-filing of the notice of appeal. It is also not necessary to order a tracked-changes version of the appeal brief, as requested by the *Amicus* Prosecutor. However, should the Appellant, in re-filing her appeal brief, wish to reorganise her grounds of appeal in order to meet the word limit, then she must also correspondingly reorganise her notice of appeal and then re-file both.

15. The Appeals Chamber is concerned at the progress of this appeal and the manner in which the Appellant and her counsel are approaching it. Faced with a clear order from the Appeals Chamber to file an appeal brief that conformed to the relevant Rules and Practice Directions, counsel have not done so and continue to engage in a manner of litigation that has necessitated a third filing of the appeal brief. This is unfortunate, and the Appeals Chamber urges the Appellant to ensure that she complies fully with the order of the Appeals Chamber.

Case No. IT-03-68-A, Decision on the Motion to Strike Defence Reply Brief and Annexes A–D, 7 June 2007, paras 8–12 (striking annexes to reply brief because they contained argumentation).

[23] *Orić* Decision of 3 October, p. 4; *see also* n. 16.

[24] *See Prosecutor v. Strugar*, Case No. IT-01-41-A, Judgement, 17 July 2008, para. 265 & n. 659.

[25] 6 November Decision, para. 24.

V. Disposition

16. For the foregoing reasons and pursuant to Rule 111 of the Rules and paragraphs 8 and 20 of the Practice Direction on Written Appeal Proceedings, paragraphs (C)(2) and (6)–(8) of the Practice Direction on the Length of Briefs and Motions, and paragraph 17 of the Practice Direction on Formal Requirements, the Appeals Chamber hereby:

(a) GRANTS the Motion, in part;

(b) ORDERS as follows:

a. The Appellant shall re-file her appeal brief, which shall not exceed 9,000 words, and her notice of appeal (only if necessary in accordance with the terms of this decision), by no later than 15 January 2010;

b. The *Amicus* Prosecutor shall re-file his response, which shall not exceed 9,000 words, by no later than 22 January 2010;

c. The Appellant shall re-file her reply, if any, which shall not exceed 3,000 words, by no later than 26 January 2010;

(c) DENIES the Appellant's request for purportedly new arguments not in the original *Amicus* Prosecutor's brief to be disregarded; and

(d) DISMISSES the Motion in all other respects.

Done in English and French, the English text being authoritative.

Judge Patrick Robinson
Presiding

Dated this seventeenth day of December 2009
At The Hague
The Netherlands

[Seal of the Tribunal]

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UNITED
NATIONS

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Case No.: IT-95-10-A
Date: 5 July 2001
Original: English

IN THE APPEALS CHAMBER

Before: **Judge Mohamed Shahabuddeen, Presiding**
Judge Lal Chand Vohrah
Judge Rafael Nieto-Navia
Judge Patricia M. Wald
Judge Fausto Pocar

Registrar: **Mr. Hans Holthuis**

Judgement of: **5 July 2001**

PROSECUTOR

v.

GORAN JELISI]

JUDGEMENT

Counsel for the prosecution:

Mr. Upawansa Yapa
Mr. Geoffrey Nice
Mr. Morten Bergsmo
Mr. Fabricio Guariglia

Counsel for the defence:

Mr. William Clegg
Mr. Jovan Babi}

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26. However, as indicated above, the Trial Chamber also decided against the right of the prosecution to be heard on the substantive question of whether its evidence was insufficient to sustain a conviction. The Trial Chamber's decision was rendered orally on 19 October 1999, and then put in writing on 14 December 1999. Taking the two together, it is clear that the Trial Chamber considered that, where it was acting *proprio motu*, the prosecution had no right to be heard at all; such a right was not accorded by the Rules and could not be based upon the principle *audi alteram partem*.[52] Was this decision correct?

27. In the view of the Appeals Chamber, the fact that a Trial Chamber has a right to decide *proprio motu* entitles it to make a decision whether or not invited to do so by a party; but the fact that it can do so does not relieve it of the normal duty of a judicial body first to hear a party whose rights can be affected by the decision to be made.[53] Failure to hear a party against whom the Trial Chamber is provisionally inclined is not consistent with the requirement to hold a fair trial.[54] The Rules must be read on this basis, that is to say, that they include a right of the parties to be heard in accordance with the judicial character of the Trial Chamber. The availability of this right to the prosecution and its exercise of the right can be of importance to the making of a correct decision by the Trial Chamber: the latter could benefit in substantial ways from the analysis of the evidence made by the prosecution and from its argument on the applicable law.[55]

28. The prosecution therefore had a right to be heard on the question of whether the evidence was sufficient to sustain a conviction;[56] it was denied that right. Counsel for the respondent rightly concedes this.[57]

29. The prosecution's first ground of appeal succeeds. The question of remedy is discussed under the prosecution's third ground of appeal.

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[52] Trial transcript, 19 October 1999, p. 2330. (*Audi alteram partem* means to hear the other side.)
[53] See generally *R. v. Barking and Dagenham Justices*, ex parte *Director of Public Prosecutions* [1995] Crim LR 953 ("*Barking* case"), and *Director of Public Prosecution v. Cosier*, Q.B.D., 5 April 2000 ("*Cosier* case").
[54] See *Cosier* case, *supra*.
[55] See *Cosier* case, *supra*. For a more general observation on the importance of not deciding without first hearing counsel's arguments, see Judge *ad hoc* Barwick's dissenting opinion in *Nuclear Tests (Australia v. France), I.C.J. Reports 1974*, p. 442.
[56] See *Barking* and *Cosier* cases, *supra*.
[57] Skeleton argument, paras 2.1-2.4, pp. 2-3.

100. In this case the cross-appellant has alleged an error in the exercise of the Trial Chamber's discretion. It falls on the cross-appellant to show that the Trial Chamber has erred by imposing a sentence outside the discretionary framework provided by the Statute and the Rules. The Statute provides in Article 24 that penalties shall be limited to imprisonment. Rule 101(A) of the Rules provides that "[a] convicted person may be sentenced to imprisonment for a term up to and including the remainder of the convicted person's life". Thus, it falls within the Trial Chamber's discretion to impose life imprisonment. The Trial Chamber has a broad discretion as to which factors it may consider in sentencing and the weight to attribute to them.

101. As stated above, the Appeals Chamber considers that the sentence imposed by the Trial Chamber must be individualised and it is generally not useful to compare one case to another unless the cases relate to the same offence committed in substantially similar circumstances. The present case differs considerably from the *Erdemovi}* case as to the offences and circumstances, and from the *Tadi}* case as to circumstances. For example, *Erdemovi}* was found guilty of only one count, namely a count of violations of the laws or customs of war. For the purpose of sentencing, duress, substantive cooperation with the prosecution and remorse were factors taken into account by the Chamber, which are not relevant in the present case. *Tadi}* was found guilty of more than one crime, including two murders. A comparison between the present case and these two cases, as well as other cases, is, in this instance, of limited guidance. Further, the Appeals Chamber in the *Delali}* appeal judgement[133] and the *Aleksovski* appeal judgement[134] endorsed the following finding by the Trial Chamber in *Kupre{ki}*:

> The sentence to be imposed must reflect the inherent gravity of the criminal conduct of the accused. The determination of the gravity of the crime requires a consideration of the particular circumstances of the case, as well as the form and degree of the participation of the accused in the crime.[135]

102. As to the alleged failure to consider the remorse of the cross-appellant as genuine, the Trial Chamber was not convinced that "the remorse which Goran Jelisi} allegedly expressed to the expert psychiatrist was sincere" and therefore did not consider it a mitigating factor.[136] Counsel for the cross-appellant submits that the Trial Chamber "misdirected itself as to the burden that the accused had to discharge in order to convince them that he [the cross-appellant] had remorse". He submits that it was not for the cross-appellant to have to satisfy the Court that the remorse was genuine and the Trial Chamber should have accepted expressions of remorse that were accepted by an expert

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[133] *Delali}* appeal judgement, para. 731, pp. 258-259.
[134] *Aleksovski* appeal judgement, para. 182, p. 75.
[135] *Prosecutor v. Zoran Kupre{ki} et al.*, Case No.: IT-95-16-T, Judgement, 14 January 2000, ("the *Kupre{ki}* trial judgement"), para. 852, p. 318.
[136] Judgement, para. 127, p. 39.

UNITED
NATIONS

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Case No. IT-01-42/1-A

Date: 30 August 2005

Original: English

IN THE APPEALS CHAMBER

Before: **Judge Inés Mónica Weinberg de Roca, Presiding**
Judge Mohamed Shahabuddeen
Judge Florence Ndepele Mwachande Mumba
Judge Mehmet Güney
Judge Wolfgang Schomburg

Registrar: **Mr. Hans Holthuis**

Judgement of: **30 August 2005**

PROSECUTOR

v.

MIODRAG JOKIĆ

JUDGEMENT ON SENTENCING APPEAL

Counsel for the Prosecution:

Mr. Norman Farrell
Ms. Marie Ursula Kind

Counsel for the Appellant:

Mr. Žarko Nikolić
Mr. Eugene O'Sullivan

26. The Appeals Chamber is aware that this issue of concurrent convictions has not been appealed by either party and that the Appellant appealed only his sentence. There is, however, an insoluble nexus between a conviction and a sentence. Also, in the case of an error of law the Appeals Chamber has the discretionary power to correct this error *proprio motu* if the interests of justice so require. As the Appeals Chamber held in the *Mucić et al* case, "[a]s part of the [International] Tribunal, [the Appeals Chamber] also has an inherent power, deriving from its judicial function, to control its proceedings in such a way as to ensure that justice is done".[67] Thus, the Appeals Chamber has the discretionary power to correct an error of law in relation to the issue of concurrent convictions for individual and superior responsibility. The underlying rationale is that an appropriate sentence can in general only be based on a correct qualification of the criminal conduct. As regards the sentence, the Appeals Chamber bears in mind that such a re-qualification of the conviction, when it occurs *proprio motu* in a sentencing appeal proceeding, can never be to the detriment of the accused. The Appeals Chamber also notes that it was invited by the parties to address the issue of concurrent convictions.[68]

27. Based on settled jurisprudence and in the light of the discussion above, only one conviction under each count can be entered against the Appellant pursuant to Article 7(1) of the Statute. Thus, the Appeals Chamber vacates the Appellant's convictions for Counts 1 through 6 insofar as they are based on a finding of the Appellant's superior responsibility under Article 7(3) of the Statute.

28. However, the Trial Chamber was required to take the Appellant's superior position into account as an aggravating factor at sentencing, as it was agreed upon by the parties and accepted by the Trial Chamber that the Appellant held a leadership position.[69]

29. The Trial Chamber expressly considered the Appellant's leadership position in its discussion of aggravating circumstances and held:

> [...] when determining the sentence, the Trial Chamber considers in aggravation the position of Miodrag Jokić and the influence of this position on the overall situation.[70]

Thus, the Trial Chamber fully recognized, as an aggravating factor, that the Appellant held a position of authority and the power of a high-ranking officer over others committing the crimes charged under Counts 1 through 6 as is reflected in the sentence imposed.[71]

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[67] *Mucić et al.* Judgment on Sentence Appeal, para. 16 (citations omitted).
[68] *See supra*, para. 22.
[69] Sentencing Judgement, paras 59-62, 68.
[70] *Ibid.*, para. 62; *see also* para. 68.
[71] *Cf. Kajelijeli* Appeal Judgement, paras 316-319.

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UNITED
NATIONS

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Case No. IT-95-14/2-A

Date: 17 December 2004

Original: English

IN THE APPEALS CHAMBER

Before: **Judge Wolfgang Schomburg, Presiding**
Judge Fausto Pocar
Judge Florence Ndepele Mwachande Mumba
Judge Mehmet Güney
Judge Inés Mónica Weinberg de Roca

Registrar: **Hans Holthuis**

Judgement of: **17 December 2004**

PROSECUTOR

v.

DARIO KORDIĆ
AND
MARIO ČERKEZ

JUDGEMENT

The Office of the Prosecutor:

Mr. Norman Farrell
Ms. Helen Brady
Ms. Marie-Ursula Kind and Ms. Michelle Jarvis

Counsel for Dario Kordić:

Mr. Mitko Naumovski, Mr. Turner T. Smith, Jr. and Mr. Stephen M. Sayers

Counsel for Mario Čerkez:

Mr. Božidar Kovačić and Mr. Goran Mikuličić

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III. APPLICABLE LAW

A. Planning, instigating and ordering pursuant to Article 7(1) of the Statute

25. The Appeals Chamber notes that the Trial Chamber convicted Kordić for planning, instigating, and ordering crimes pursuant to Article 7(1) of the Statute.[18] The Trial Chamber's legal definitions of these modes of responsibility have not been appealed by any of the Parties. However, the Appeals Chamber deems it necessary to set out and clarify the applicable law in relation to these modes of responsibility insofar as it is necessary for its own decision.

26. The *actus reus* of "planning" requires that one or more persons design the criminal conduct constituting one or more statutory crimes that are later perpetrated.[19] It is sufficient to demonstrate that the planning was a factor substantially contributing to such criminal conduct.

27. The *actus reus* of "instigating" means to prompt another person to commit an offence.[20] While it is not necessary to prove that the crime would not have been perpetrated without the involvement of the accused, it is sufficient to demonstrate that the instigation was a factor substantially contributing to the conduct of another person committing the crime.[21]

28. The *actus reus* of "ordering" means that a person in a position of authority instructs another person to commit an offence.[22] A formal superior-subordinate relationship between the accused and the perpetrator is not required.[23]

29. The *mens rea* for these modes of responsibility is established if the perpetrator acted with direct intent in relation to his own planning, instigating, or ordering.

30. In addition, the Appeals Chamber has held that a standard of *mens rea* that is lower than direct intent may apply in relation to ordering under Article 7(1) of the Statute. The Appeals Chamber held that a person who orders an act or omission with the awareness of the substantial likelihood that a crime will be committed in the execution of that order, has the requisite *mens rea* for establishing responsibility under Article 7(1) of the Statute pursuant to ordering. Ordering with such awareness has to be regarded as accepting that crime.[24]

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[18] Trial Judgement, paras 829, 834.
[19] See Trial Judgement, para. 386.
[20] See Trial Judgement, para. 387.
[21] *Cf.* Trial Judgement, para. 387.
[22] Trial Judgement, para. 388.
[23] Trial Judgement, para. 388.
[24] *Blaškić* Appeal Judgement, para. 42.

31. The Appeals Chamber similarly holds that in relation to "planning", a person who plans an act or omission with the awareness of the substantial likelihood that a crime will be committed in the execution of that plan, has the requisite *mens rea* for establishing responsibility under Article 7(1) of the Statute pursuant to planning. Planning with such awareness has to be regarded as accepting that crime.

32. With respect to "instigating", a person who instigates another person to commit an act or omission with the awareness of the substantial likelihood that a crime will be committed in the execution of that instigation, has the requisite *mens rea* for establishing responsibility under Article 7(1) of the Statute pursuant to instigating. Instigating with such awareness has to be regarded as accepting that crime.

B. The responsibility under Article 7(1) and Article 7(3) of the Statute

33. In the *Aleksovski* Appeal Judgement, the Appeals Chamber observed that the accused's "superior responsibility as a warden seriously aggravated [his] offences"[25] in relation to those offences of which he was convicted for his direct participation.[26] While the finding of superior responsibility in that case resulted in an aggravation of sentence, there was no entry of conviction under both heads of responsibility in relation to the count in question. In the *Čelebići* Appeal Judgement, the Appeals Chamber stated:

> Where criminal responsibility for an offence is alleged *under one count* pursuant to both Article 7(1) and Article 7(3), and where the Trial Chamber finds that both direct responsibility and responsibility as a superior are proved, even though only one conviction is entered, the Trial Chamber must take into account the fact that both types of responsibility were proved in its consideration of sentence. This may most appropriately be considered in terms of imposing punishment on the accused for two separate offences encompassed in the one count. Alternatively, it may be considered in terms of the direct participation aggravating the Article 7(3) responsibility (as discussed above) *or* the accused's seniority or position of authority aggravating his direct responsibility under Article 7(1).[27]

34. The provisions of Article 7(1) and Article 7(3) of the Statute connote distinct categories of criminal responsibility. However, the Appeals Chamber considers that, in relation to a particular count, it is not appropriate to convict under both Article 7(1) and Article 7(3) of the Statute.[28] Where both Article 7(1) and Article 7(3) responsibility are alleged under the same count, and where the legal requirements pertaining to both of these heads of responsibility are met, a Trial Chamber

[25] *Blaškić* Appeal Judgement, para. 90, referring to *Aleksovski* Appeal Judgement, para. 183.
[26] *Blaškić* Appeal Judgement, para. 90, referring to *Čelebići* Appeal Judgement, para. 745.
[27] *Blaškić* Appeal Judgement, para. 90, referring to *Čelebići* Appeal Judgement, para. 745 (emphasis added).
[28] *Blaškić* Appeal Judgement, para. 91, referring to the *Blaškić* Trial Judgement, para. 337.

is no requirement in law that the actor possess a "persecutory intent" over and above a discriminatory intent.[135]

112. In addition, the Appeals Chamber considers that a person who orders, plans or instigates an act or omission with the awareness of the substantial likelihood that a crime will be committed in the execution of that order, plan or instigation, has the requisite *mens rea* for establishing liability under Article 7(1) of the Statute pursuant to ordering, planning or instigating. Ordering, planning or instigating with such awareness has to be regarded as accepting that crime. Thus, an individual who orders, plans or instigates an act with the awareness of a substantial likelihood that persecutions as a crime against humanity will be committed in the execution of the order, plan or instigation, may be liable under Article 7(1) of the Statute for the crime of persecutions.[136]

3. Murder pursuant to Article 5(a) of the Statute

113. The elements of murder as a crime against humanity are undisputed.[137]

4. Imprisonment pursuant to Article 5(e) of the Statute

114. The Appeals Chamber notes the finding of the Trial Chamber that imprisonment of civilians is unlawful where

- civilians have been detained in contravention of Article 42 of Geneva Convention IV, *i.e.* that they are detained without reasonable grounds to believe that the security of the Detaining Power makes it absolutely necessary;
- the procedural safeguards required by Article 43 of Geneva Convention IV are not complied with in respect of detained civilians, even where initial detention may have been justified; and
- the imprisonment occurs as part of a widespread or systematic attack directed against a civilian population.[138]

115. The Appeals Chamber finds that not all of these elements necessarily have to be met in order to establish liability for unlawful confinement pursuant to Article 5(e) of the Statute: the existence of an international armed conflict, an element of Articles 42 and 43 of Geneva Convention IV, is not required for imprisonment as a crime against humanity.

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[135] *Blaškić* Appeal Judgement, para. 165.
[136] *Blaškić* Appeal Judgement, para. 166.
[137] *Cf.* Trial Judgement, para. 236.
[138] Trial Judgement, para. 303.

trial.[261] The basis of Čerkez's argument is that there was no reason in this case to depart from the procedural practice of the International Tribunal, which would have allowed Čerkez more time.[262]

188. Regarding the general allegations of the Prosecution's late and new disclosure of evidence, the Prosecution submits that where this occurred, it was not through fault of the Prosecution, but due to objective reasons[263], and that where Čerkez sought access to materials not subject to the disclosure obligations of the Prosecution, he could have employed the solution available to him under Rule 66(B) but decided not to do so.[264] As to the "Zagreb Materials", the Prosecution explained at trial the reasons for the late disclosure, stating that they had only recently been received from the Republic of Croatia, and had been provided to the defence as soon as possible.[265]

189. The Prosecution responds further that, as regards Čerkez's claim of an unfair trial for lack of time to prepare, Čerkez has failed to prove that the Trial Chamber erred in law in not granting him an extension of time.[266]

190. In a decision of 1 December 2000, the Trial Chamber considered the arguments of the parties regarding the admission of the Zagreb Materials. The Trial Chamber correctly stated the relevant test for the admission of new evidence[267], and proceeded to exclude a large number of exhibits from admissibility for various reasons, *inter alia*: (1) the document(s) had already been admitted; (2) the material had already been produced in other proceedings before the International Tribunal and therefore had been available to the Prosecution when it presented its case; (3) the material was not sufficiently significant to warrant admission at so late a stage of the proceedings; (4) the material was cumulative and did not add to the voluminous material already in evidence; or (5) the material was based on anonymous sources or hearsay statements that were incapable of then being tested by cross-examination. Furthermore, the probative value of some of the evidence was found to be so reduced that it is substantially outweighed by the need to ensure a fair trial; "to admit it at this stage of the proceedings would violate the accused's right to a fair trial" as the Defence would have had no opportunity to cross-examine witness.[268] The Trial Chamber voiced its disapproval of any conduct of the Prosecution threatening the defence's ability to prepare its

[261] Čerkez Appeal Brief, p. 36.
[262] See, section IV.D.2.(b) *infra*.
[263] Prosecution Response, para. 9.7, notably the "consistent pattern of obstructionism adopted by Croatia's previous regime." See footnote 619.
[264] Prosecution Response, para. 9.10.
[265] T. 26552, 26559.
[266] Prosecution Response, para. 9.3. The Trial Chamber refused Čerkez's oral request for an extension of time, T. 26562.
[267] *Prosecutor v. Kordić and Čerkez*, Decision on Prosecutor's Submissions Concerning "Zagreb Exhibits" and Presidential Transcripts, 1 December 2000, Case No.: IT-95-14/2-T, 1 December 2000, para. 36; T. 27358.
[268] *Prosecutor v. Kordić and Čerkez*, Decision on Prosecutor's Submissions Concerning "Zagreb Exhibits" and Presidential Transcripts, Case No.: IT-95-14/2-T, 1 December 2000, para. 40.

case.[269] Yet, in considering its duty to ensure that a trial be fair and at the same time expeditious, the Trial Chamber declined to grant an adjournment and effectively refused to admit the majority of the evidence, thereby expressing that the interests of the defence could thus be safeguarded.

191. In connection with Čerkez's general allegations of the Prosecution's late and new disclosure of evidence, the Appeals Chamber does not find that the Prosecution disclosed evidence late so as to ambush the Accused. The Prosecution has amply demonstrated that circumstances beyond its control were at play in securing evidence from the Republic of Croatia.

192. The Appeals Chamber considers, however, that Rule 127(A) of the Rules requires the moving party to show good cause for an extension of time. Already in its decision of 11 September 2001, the Appeals Chamber considered Čerkez's motion and identified the misapprehension in this approach:

> It cannot be "good cause" for an extension of time to be granted to Čerkez to file his Respondent's Brief to the prosecution's Appellant's Brief simply because the prosecution has shown "good cause" for an extension of time to file its Respondent's Brief to the Appellant's Briefs filed by Čerkez and Kordić. That is to read into the right to equality of *arms* a right to equality of *relief*, even when the circumstances are quite different in each case and provide no basis whatsoever for granting equal relief.[270]

193. For this argument to succeed, Čerkez must prove that by not granting him an extension of time which would have enabled him to testify, the Trial Chamber committed an error of law. He has failed to do so. This argument is dismissed.

(b) Did alleged late and new disclosure preclude Čerkez from preparing his final trial brief?

194. Čerkez submits that the Trial Chamber erred by not allowing him the delay he requested in order to prepare his Final Trial Brief properly.[271] According to Čerkez, the Trial Chamber's decision[272] to deny an extension of time to prepare his Final Trial Brief or testimony was "flagrantly *in contrario* to the present practice of the Tribunal", especially in the context of the Prosecution's "almost continuous disclosure process".[273] Because his right to an expeditious trial is secondary to his right to adequate time, and in light of new evidence constantly being disclosed by the Prosecution, Čerkez argues that he was deprived adequate time and facilities for the preparation of his Final Trial Brief.

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[269] T. 26554-57.
[270] *Prosecutor v. Kordić and Čerkez*; Decision on Application by Mario Čerkez for Extension of Time to File his Respondent's Brief, Case No.: IT-95-14/2-A, 11 September 2001, para. 9 (emphasis in original).
[271] The Trial Chamber's Decision denying the motion for an extension was given orally on 20 November 2000, T. 27196.
[272] Čerkez Appeal Brief, pp 33-40.
[273] Čerkez Appeal Brief, pp 34, 37.

was based on his role in a campaign and not on his involvement in the day-to-day operations of the attacks.[1399]

973. The Appeals Chamber notes that the Trial Chamber did not make an explicit finding that Kordić had the requisite *mens rea*. The Trial Chamber only found "that in those cases where Kordić participated in the HVO attacks, he intended to commit the crimes associated with them and did so. His role was a political leader and his responsibility under Article 7(1) was to plan, instigate and order the crimes."[1400]

974. The Appeals Chamber notes that the Trial Chamber held in relation to persecutions that

> there was a campaign of persecution throughout the Indictment period in Central Bosnia (and beyond) aimed at the Bosnian Muslims. This campaign was led by the HDZ-BiH and conducted through the instruments of the HZ H-B and the HVO and orchestrated from Zagreb.[1401]

The Appeals Chamber concluded that there was persecutions in Busovača in January 1993, in the Lašva Valley in April 1993, and in Kiseljak in June 1993, and deemed it not to be necessary to identify the main orchestrators of this campaign. Only the responsibility of Kordić is relevant for the Appeals Chamber. It considers that following the meeting on 15 April 1993, a general plan existed to expel the Muslim civilians and to destroy civilian houses, a plan which had no military justification, but was aimed at the civilian population.

975. At the meeting on 15 April 1993, the order to attack at 05:30 a.m. and the order that "all Muslim men of military age were to be killed while the civilians were not to be killed, but expelled and the houses set on fire" were discussed, and the Trial Chamber found at paragraph 631 of the Trial Judgement that Kordić was present at the meeting of politicians which authorised the 16 April 1993 attack; that he thus participated as the senior regional politician in the planning of the military operation and attack against Ahmići (and other Lašva Valley villages), an operation which was aimed at "cleansing" these areas of Muslims.

976. The Appeals Chamber considers that this general plan included the whole of the Lašva Valley and that the crimes explicitly discussed were to kill military aged men, expel civilians, and destroy houses. For these crimes Kordić had direct intent. Kordić approved the general plan knowing that these crimes would be committed, and with the awareness of the substantial likelihood that other crimes such as killings of civilians, unlawful detention of civilians, and plunder would be

[1399] Prosecution Response, paras 5.24-5.26.
[1400] Trial Judgement, para. 834.
[1401] Trial Judgement, para. 827.

cumulative convictions, which has been consistently followed by the International Tribunal[1433] and the International Criminal Tribunal for Rwanda.[1434] It held that:

> reasons of fairness to the accused and the consideration that only distinct crimes may justify multiple convictions, lead to the conclusion that multiple criminal convictions entered under different statutory provisions but based on the same conduct are permissible only if each statutory provision involved has a materially distinct element not contained in the other. An element is materially distinct from another if it requires proof of a fact not required by the other.
>
> Where this test is not met, the Chamber must decide in relation to which offence it will enter a conviction. This should be done on the basis of the principle that the conviction under the more specific provision should be upheld. Thus, if a set of facts is regulated by two provisions, one of which contains an additional materially distinct element, then a conviction should be entered only under that provision.[1435]

1033. When applying the *Čelebići* test, what must be considered are the legal elements of each offence, not the acts or omissions giving rise to the offence. What each offence requires, as a matter of law, is the pertinent inquiry. The Appeals Chamber will permit multiple convictions for the same act or omission where it clearly violates multiple distinct provisions of the Statute, where each statutory provision contains a materially distinct element not contained in the other(s), and which element requires proof of a fact which the elements of the other statutory provision(s) do not.[1436] The cumulative convictions test serves twin aims: ensuring that the accused is convicted only for distinct offences, and at the same time, ensuring that the convictions entered fully reflect his criminality.

1034. The Appeals Chamber now turns to the question of the permissibility of cumulative convictions with regard to the specific crimes at issue in this case when applying the above test.

1. The law applicable to cumulative convictions under Articles 2, 3 and 5

1035. With regard to cumulative convictions under Article 2 (grave breaches of the Geneva Conventions of 1949) and Article 3 (violations of the laws or customs of war) of the Statute, the Appeals Chamber has specifically held that wilful killing under Article 2(a) of the Statute contains a materially distinct element not present in the crime of murder under Article 3 of the Statute,[1437] namely that the victim be a protected person, an element which requires proof of a fact not required by the elements of murder under Article 3. The definition of a protected person includes and goes

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[1433] See *e.g., Jelisić* Appeal Judgement, para. 82; *Kupreškić et al.* Appeal Judgement, paras 387-388; *Kunarac et al.* Appeal Judgement, para. 176.
[1434] See *Musema* Appeal Judgement, paras 358-370. In *Musema*, the Appeals Chamber held that convictions for genocide under Article 2 of the Statute and for extermination as a crime against humanity under Article 3 of the Statute, based on the same set of facts, are permissible under the *Čelebići* test. *Ibid.*, paras 369-370.
[1435] *Čelebići* Appeal Judgement, paras 412-3.
[1436] *Kunarac et al.* Appeal Judgement, para. 173. Whether the same conduct violates two distinct statutory provisions is a question of law, *ibid.*, para. 174.

the Trial Chamber in this case. It found that the offences under Articles 2 and 5 each contain an additional element not required by the other (thereby permitting cumulative convictions) but that the Article 3 offence does not contain an additional required element and is, accordingly, subsumed.[1444] The Appeals Chamber agrees that while cumulative convictions under Articles 3 and 5 are permissible,[1445] in circumstances where such convictions would result in an impermissibly cumulative conviction with Article 2, the Article 3 crime must fall away.

2. The law applicable to *intra*-Article 5 convictions

1039. It has previously been held in *Krnojelac, Vasiljević,* and *Krstić,* that *intra*-Article 5 convictions under the Statute for persecutions as a crime against humanity with other crimes against humanity found in that Article, are impermissibly cumulative. In *Vasiljević* and *Krstić,* the Appeals Chamber stated that the appellant could not be convicted both for murder and persecutions under Article 5(a) and (h) of the Statute, on the basis of the same acts.[1446] It was reasoned that where a charge of persecutions is premised on murder and is proven, the Prosecution need not prove an additional fact in order to secure the conviction for murder because the offence is subsumed by the offence of persecutions, which requires proof of a materially distinct element of discriminatory intent in the commission of the act.[1447] Similarly, the Appeals Chamber in these cases, as well as in *Krnojelac*, held that convictions for persecutions under Article 5(h) and for other inhumane acts under Article 5(i) on the basis of the same conduct are impermissibly cumulative "since the crime of persecution in the form of inhumane acts subsumes the crime against humanity of inhumane acts."[1448]

1040. The Appeals Chamber considers that cogent reasons warrant a departure from this jurisprudence[1449] as an incorrect application of the *Čelebići* test to *intra*-Article 5 convictions. These cases are in direct contradiction to the reasoning and proper application of the test by the Appeals Chambers in *Jelisić, Kupreškić, Kunarać, and Musema.* As stated above, the Appeals Chamber in *Čelebići* expressly rejected an approach that takes into account the actual conduct of the accused as determinative of whether multiple convictions for that conduct are permissible. Rather, what is required is an examination, as a matter of law, of the elements of each offence in the Statute that pertain to that conduct for which the accused has been convicted. It must be considered

[1444] Trial Judgement, para. 820.
[1445] *Jelisić* Appeal Judgement, para. 82.
[1446] *Vasiljević* Appeal Judgement, para. 146; *Krstić* Appeal Judgement, para. 231.
[1447] *Krstić* Appeal Judgement, para. 231-232.
[1448] *Krnojelac* Appeal Judgement, para. 188; *Vasiljević* Appeal Judgement, para. 146; *Krstić* Appeal Judgement, para. 231.
[1449] *Aleksovski* Appeal Judgement, paras 107, 109.

whether each offence charged has a materially distinct element not contained in the other; that is, whether each offence has an element that requires proof of a fact not required by the other offence.

1041. The first pair of *intra*-Article 5 cumulative convictions at issue in this case is persecutions as a crime against humanity under Article 5(h) of the Statute and murder as a crime against humanity under Article 5(a) of the Statute. The Appeals Chamber finds that the definition of persecutions contains materially distinct elements not present in the definition of murder under Article 5 of the Statute: the requirement of proof that an act or omission discriminates in fact *and* proof that the act or omission was committed with specific intent to discriminate. Murder, by contrast, requires proof that the accused caused the death of one or more persons, regardless of whether the act or omission causing the death discriminates in fact or was specifically intended as discriminatory, which is not required by persecutions. Thus, cumulative convictions on the basis of the same acts under Article 5 of the Statute are permissible in relation to these crimes.

1042. The second pair of *intra*-Article 5 cumulative convictions at issue in this case is persecutions and other inhumane acts as a crime against humanity under Article 5(i) of the Statute. The Appeals Chamber finds that the definition of persecutions contains materially distinct elements not present in the definition of other inhumane acts under Article 5 of the Statute: the requirement of proof that an act or omission discriminates in fact *and* proof that the act or omission was committed with specific intent to discriminate. Other inhumane acts, by contrast, require proof that the accused caused serious bodily or mental harm to the victim(s), regardless of whether the act or omission causing the harm discriminates in fact or was specifically intended as discriminatory, which is not required by persecutions. Thus, cumulative convictions on the basis of the same acts are permissible in relation to these crimes under Article 5 of the Statute.

1043. Finally, the third pair of *intra*-Article 5 cumulative convictions at issue in this case is persecutions and imprisonment as a crime against humanity under Article 5(e) of the Statute. The Appeals Chamber finds that the definition of persecutions contains materially distinct elements not present in the definition of imprisonment under Article 5 of the Statute: the requirement of proof that an act or omission discriminates in fact *and* proof that the act or omission was committed with specific intent to discriminate. On the other hand, the offence of imprisonment requires proof of the deprivation of the liberty of an individual without due process of law, regardless of whether the deprivation of liberty discriminates in fact or was specifically intended as discriminatory, which is not required by persecutions. Thus, cumulative convictions on the basis of the same acts are permissible in relation to these crimes under Article 5 of the Statute.

UNITED
NATIONS

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Case No. IT-00-39-A

Date: 17 March 2009

Original: English

IN THE APPEALS CHAMBER

Before: **Judge Fausto Pocar, Presiding**
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Andrésia Vaz
Judge Theodor Meron

Acting Registrar: **Mr. John Hocking**

Judgement of: **17 March 2009**

PROSECUTOR

v.

MOMČILO KRAJIŠNIK

PUBLIC

JUDGEMENT

The Office of the Prosecutor:

Mr. Peter M. Kremer QC
Ms. Shelagh McCall
Ms. Barbara Goy
Ms. Katharina Margetts
Mr. Steffen Wirth
Ms. Anna Kotzeva
Mr. Matteo Costi
Ms. Julia Thibord

Momčilo Krajišnik *pro se*

Counsel for Momčilo Krajišnik on JCE:
Mr. Alan M. Dershowitz
Mr. Nathan Z. Dershowitz

***Amicus Curiae*:**
Mr. Colin Nicholls QC

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impossible that the three Judges of the Trial Chamber were able to deliberate carefully on the voluminous evidence and produce such a comprehensive Trial Judgement in less than a month.[343]

131. The Prosecution responds that there is no objective evidence to establish bias or error in the Trial Chamber's fact finding based solely on the number of days of deliberation. The Prosecution submits that *Amicus Curiae* does not demonstrate how preparatory work has overreached into the area of deliberation, he simply asserts that the period of time was "self-evidently insufficient".[344] However, general comments on the length of deliberation do not support a valid ground of appeal; instead, "the alleging party must show some manifest error on the face of the findings demonstrating where the chamber has erred, or giving rise to a reasonable inference that the deliberative process was compromised as alleged".[345] The Prosecution concludes:

> *Amicus curiae* does not show any failure to take relevant materials into account, or where account has been taken of irrelevant material. He does not show objective bias by pointing to manifestly unreasonable findings of fact or law which show a concluded view was reached prior to the close of the case.[346]

132. *Amicus Curiae* replies that "[t]he permissible period of non-delegable deliberation here is so short that the reasonable observer might well apprehend that significant conclusions on the evidence had either been reached prior to the close of the parties' cases or were made by people other than the Trial Judges."[347]

(b) Analysis

133. The Appeals Chamber recalls that before taking up duties, every Judge of the Tribunal solemnly declares that he will perform his or her duties and exercise his or her powers honourably, faithfully, impartially and conscientiously.[348] There is a strong presumption that the Judges act in accordance with this oath.[349] A party must adduce sufficient evidence to rebut this presumption.[350] The Appeals Chamber is not convinced that *Amicus Curiae* has done so here.

> assessments and conclusions in respect of earlier evidence would already have been reached. Not only does this give an appearance of bias, it might also result in actual bias.

[343] *Amicus Curiae*'s Appeal Brief, paras 123-124.
[344] Prosecution's Response to *Amicus Curiae*, paras 48-49.
[345] Prosecution's Response to *Amicus Curiae*, para. 49. *See* also *ibid.*, para. 50, quoting para. 19 of *SZHNE v. Minister of Immigration and Multicultural & Indigenous Affairs*, [2006] FCA 597, 22 May 2006 (Australia):

> The fact that a judgement is delivered *ex tempore* is not itself an appealable error. The proper question is whether the evidence and submissions of a party were properly considered and not how long the evidence and submissions were under consideration.

[346] Prosecution's Response to *Amicus Curiae*, para. 51.
[347] *Amicus Curiae*'s Reply, para. 33.
[348] Rule 14 of the Rules.
[349] *Furundžija* Appeal Judgement, para. 197.
[350] *Ibid.*

134. Just as general observations on the length of the Trial Judgement, or of particular parts of the Trial Judgement, usually do not suffice to show an error of law because of a lack of reasoned opinion,[351] general comments on the length of the deliberations are insufficient to show improprieties in the deliberative process. Here, *Amicus Curiae* claims that it was impossible to deliberate properly on such a complex case in only 18 working days, but he brings no evidence to substantiate this claim. In particular, he fails to show that conclusions were reached by other persons than the Judges or that preparatory work overreached into the area of deliberation. In this connection, the Appeals Chamber considers that in cases of the size and complexity of the case at stake, given that as a matter of fairness judgements must be issued in a reasonable time, preparatory work can and should be done as the case goes. This is not to suggest that decisions should be taken by others than the Judges or that any improper decisions should be taken by the Judges in advance of hearing all the evidence. However, there are numerous steps than can and should be taken which will place the Bench in the best situation possible following closing arguments to prepare a reasoned, clear and concise judgement within a reasonable time frame. Against this background, the Appeals Chamber cannot infer that the deliberation process was corrupted. This sub-ground is dismissed.

8. Concluding remark

135. The Appeals Chamber has dismissed *Amicus Curiae*'s assertion that Krajišnik's trial was unfair. That said, the Appeals Chamber notes that certain aspects of the conduct of the trial were not free from defects and may have created an appearance of unfairness. However, based on a holistic assessment of the trial record and the additional evidence on appeal, the Appeals Chamber is not satisfied that *Amicus Curiae* has shown that these defects amount to a miscarriage of justice which would undermine the fairness of the trial received by Krajišnik. This ground of appeal is therefore dismissed in its entirety.

B. Alleged failure to provide a reasoned opinion (Ground 2)

1. Submissions

136. *Amicus Curiae* submits that the Trial Chamber erred in law by failing to provide a sufficiently reasoned judgement,[352] opting for an "illustrative approach" instead of giving reasons as to why certain witnesses or exhibits were found credible and others not.[353] He argues in particular

[351] *Kvočka et al.* Appeal Judgement, para. 25.
[352] *Amicus Curiae*'s Notice of Appeal, paras 25-28; *Amicus Curiae*'s Appeal Brief, paras 125-138.
[353] *Amicus Curiae*'s Appeal Brief, paras 129-132. In this connection, *Amicus Curiae* refers specifically to paragraphs 292 and 889 of the Trial Judgement.

of insider witnesses.[364] The Prosecution concludes that, in any event, Krajišnik was convicted "on the basis of a whole tapestry of evidence, including contemporaneous documents, intercepts, and important international witnesses", and that *Amicus Curiae* has failed to show that no reasonable trial chamber could have found Krajišnik guilty based on this evidence taken as a whole.[365]

138. *Amicus Curiae* replies that the Trial Chamber did adopt an illustrative approach and that the earlier parts of the Trial Judgement invoked by the Prosecution merely provide a background and context to the judgement, but that they are devoid of in-depth analysis of individual responsibility for crimes. In particular, he claims that the parts of the Trial Judgement addressing the commission of crimes and Krajišnik's responsibility are not sufficiently linked.[366] *Amicus Curiae* further submits that the individual witnesses referred to in his Appeal Brief are of "objectively adverse credibility", and that the Trial Chamber nevertheless extensively relied upon their evidence without adequately explaining why it was considered reliable.[367] *Amicus Curiae* also contends that there is no presumption that the Trial Chamber evaluated all the evidence.[368]

2. Analysis

(a) The requirement to provide a reasoned opinion

139. As recently recalled by the Appeals Chamber:

> The fair trial requirements of the Statute include the right of each accused to a reasoned opinion by the Trial Chamber under Article 23 of the Statute and Rule 98*ter*(C) of the Rules. A reasoned opinion ensures that the accused can exercise his or her right of appeal and that the Appeals Chamber can carry out its statutory duty under Article 25 to review these appeals. The reasoned opinion requirement, however, relates to a Trial Chamber's judgement rather than to each and every submission made at trial.[369]

As a general rule, a Trial Chamber "is required only to make findings on those facts which are essential to the determination of guilt on a particular count";[370] it "is not required to articulate every

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[364] Prosecution's Response to *Amicus Curiae*, para. 60. The Prosecution illustrates the "[Trial] Chamber's sound approach in assessing reliability of evidence" by referring to the Trial Chamber's assessment of the testimonies of Witnesses Đerić and Mandić as reflected in paragraphs 267 and 1085 of the Trial Judgement (Prosecution's Response to *Amicus Curiae*, para. 61). The Prosecution adds that, by simply listing impugned paragraphs and through the mere naming of "insider witnesses" without adequate reasoning, *Amicus Curiae* fails to explain why no reasonable trier of fact could have relied on the evidence in question (Prosecution's Response to *Amicus Curiae*, paras 62-63).
[365] Prosecution's Response to *Amicus Curiae*, para. 64.
[366] *Amicus Curiae*'s Reply, paras 35-36.
[367] *Amicus Curiae*'s Reply, paras 37-40. The *Amicus Curiae* avers that the Trial Judgement contains no reflection of the Trial Chamber's assurance that it would treat this evidence with caution (*Amicus Curiae*'s Reply, para. 38).
[368] *Amicus Curiae*'s Reply, para. 40.
[369] *Limaj et al.* Appeal Judgement, para. 81 (references omitted). *See* also *Hadžihasanović and Kubura* Appeal Judgement, para. 13; *Naletilić and Martinović* Appeal Judgement, para. 603; *Kvočka et al.* Appeal Judgement, paras 23 and 288.
[370] *Hadžihasanović and Kubura* Appeal Judgement, para. 13.

step of its reasoning for each particular finding it makes"[371] nor is it "required to set out in detail why it accepted or rejected a particular testimony."[372] However, the requirements to be met by the Trial Chamber may be higher in certain cases.[373] It will be "necessary for any appellant claiming an error of law because of the lack of a reasoned opinion to identify the specific issues, factual findings or arguments, which he submits the Trial Chamber omitted to address and to explain why this omission invalidated the decision."[374]

(b) Whether the Trial Chamber erred in using an "illustrative approach"

140. *Amicus Curiae* contends that the Trial Chamber used an "illustrative approach" with regard to the evidence it considered, and that it failed to provide adequate reasons for its findings. *Amicus Curiae* refers more specifically to paragraphs 292 and 889 of the Trial Judgement, which read as follows:

> 292. The Chamber notes that there is no practical way of presenting in detail all the evidence it has heard and received during the trial. The Chamber has been able to present only the most relevant parts of the evidence in detail, but generally has had to confine itself to presenting evidence in a summarized form.
>
> 889. Second, the Chamber cannot possibly discuss here all the evidence relevant to the Accused's responsibility which it received in the course of two-and-a-half years of trial and subsequently analysed. Having carefully deliberated on this vast amount of evidence, what the Chamber can (and must) do is to illustrate the types of fact that underlie its conclusions, so that these conclusions are sufficiently explained.

141. The Appeals Chamber is not convinced that these paragraphs demonstrate the Trial Chamber's failure to provide adequate reasons for its decision. The Trial Chamber does not have to refer to the testimony of every witness or every piece of evidence on the trial record; it is to be presumed that the Trial Chamber evaluated all the evidence before it.[375] In fact, the Trial Chamber specifically stated that it had "carefully deliberated" on the evidence presented to it. Both impugned passages merely stress the fact that the Trial Chamber could not *present and discuss* "all the evidence" in the judgement, a statement which cannot, by itself, be equated with a failure to *examine* the evidence in question, nor with a failure to provide sufficient reasons for the conclusions reached in the Trial Judgement. The Appeals Chamber considers that the approach taken by the Trial Chamber in the impugned paragraphs was not in error.

142. The Appeals Chamber also recalls that it is necessary for any appellant claiming an error of law based on the lack of a reasoned opinion to identify the specific issues, factual findings or

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[371] *Musema* Appeal Judgement, para. 18. *See* also *Brđanin* Appeal Judgement, para. 39.
[372] *Musema* Appeal Judgement, para. 20.
[373] *Kvočka et al.* Appeal Judgement, para. 24.
[374] *Kvočka et al.* Appeal Judgement, para. 25 (reference omitted). *See* also *Halilović* Appeal Judgement, para. 7; *Brđanin* Appeal Judgement, para. 9.

> Trial Chamber may find some parts of a witness's testimony credible, and rely on them, while rejecting other parts as not credible.[388]

The Appeals Chamber notes that the Trial Chamber did not identify the witnesses for whose testimonies it considered "great caution" to be required, nor did it expressly examine the reliability of each of these witnesses individually. Nevertheless, the Trial Chamber implicitly explained its acceptance of certain parts of the evidence in question: in referring to other evidence, it showed that it accepted the impugned testimony because it considered it to be in agreement with other evidence adduced.[389] The Appeals Chamber is thus of the view that the Trial Judgement provided sufficient reasons for its decision to allow Krajišnik to exercise his right of appeal.

148. As to the argument that the Trial Chamber did not assess the evidence in question with the required caution, the Appeals Chamber considers that the above statement of the Trial Chamber[390] cannot, of course, in itself establish an irrefutable presumption that the evidence given by each of these witnesses was indeed examined by the Trial Chamber with caution. However, it is a clear indication that the Trial Chamber, in its evaluation of the evidence in question, was well aware of the potential risks related to its use. Already during the trial, the Trial Chamber stressed its approach of special caution and emphasised an "extra degree of suspicion and scrutiny" with regard to a witness who might have an interest in testifying before the Trial Chamber.[391] While the Trial Judgement does not expressly reflect the Trial Chamber's evaluation of the evidence given by the impugned witnesses, its cautious approach towards this evidence is apparent from its assessment of the evidence as a whole and, in particular, from its reliance on numerous pieces of evidence for its findings.[392]

149. In particular, the Appeals Chamber considers that *Amicus Curiae* has failed to show any error by the Trial Chamber when examining the testimonies before it, nor has he demonstrated that the Trial Chamber erroneously relied on this evidence for findings essential to the determination of

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[388] Trial Judgement, para. 1203 (internal footnotes omitted).
[389] In this context, the Appeals Chamber also notes the Trial Chamber's general explanation of its approach in dealing with evidence it considered unreliable or irrelevant when it stated that it "has, on occasions, explicitly refuted some evidence. However, it has generally simply disregarded evidence when, after having considered the record as a whole, it deemed it unreliable or irrelevant for the purpose of reaching an informed decision." (Trial Judgement, para. 22).
[390] Trial Judgement, para. 1203.
[391] *See* Decision on the Defence's Motion to Preclude Miroslav Deronjić from Giving Testimony Prior to Being Sentenced, 16 February 2004 ("Decision on Deronjić's Testimony"), paras 9-10, where the Trial Chamber acknowledged that a person in Mr. Deronjić's position, who had pleaded guilty but had not yet been sentenced, "might be tempted to improve his chances before the sentencing panel by giving untruthful evidence to this Chamber that significantly assists the Prosecution's case", and thus stated that it would "exercise particular caution in scrutinizing, weighing up, and finding corroboration for the evidence that Deronjić places before it" and that it would "closely control the examination of the witness".
[392] *Cf. Ntagerura et al.* Appeal Judgement, para. 174, stating that "[i]ndividual items of the evidence, such as the testimony of different witnesses, or documents admitted into evidence, have to be analysed in the light of the entire body of evidence adduced. Thus, even if there are some doubts as to the reliability of the testimony of a certain witness,

Krajišnik's guilt. The Appeals Chamber stresses that the mere listing of witnesses of allegedly "doubtful credibility" by *Amicus Curiae* and the enumeration of paragraphs of the Trial Judgement which, according to him, rely erroneously on these witnesses, is insufficient in itself to substantiate an error of the Trial Chamber. In any event, the examples summarily provided by *Amicus Curiae*[393] do not contain any indication of an error by the Trial Chamber in its assessment of the evidence as a whole. In fact, in most of these examples, the testimony of the impugned witnesses is but one of several pieces of evidence relied upon by the Trial Chamber in reaching its findings.[394]

150. Moreover, the Trial Chamber's cautious approach in its assessment of the reliability of the challenged witness testimonies is further evidenced by the correct exercise of its discretion to rely on specific parts of these testimonies and to reject other parts as not credible.[395] Indeed, the assessment whether to rely on the evidence given by a person who might have certain interests while testifying before the Tribunal will vastly depend on the specific context of the provided information, as correctly reflected in the analysis of the Trial Chamber.[396]

151. In light of these considerations, the Appeals Chamber finds that *Amicus Curiae* has failed to show that the Trial Chamber erred when examining the evidence of witnesses of allegedly "doubtful credibility" and has failed to demonstrate that the Trial Chamber erroneously relied on their evidence in convicting Krajišnik. *Amicus Curiae* has not shown any error in the Trial Chamber's approach when assessing the evidence as a whole.

152. For the foregoing reasons, the Appeals Chamber dismisses this ground of appeal of *Amicus Curiae*.

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that testimony may be corroborated by other pieces of evidence leading the Trial Chamber to conclude that the witness is credible."

[393] *Amicus Curiae*'s Appeal Brief, fns 237 and 240.

[394] The Appeals Chamber also notes that, in some cases, the challenged evidence relied upon by the Trial Chamber (*see*, for example, Trial Judgement, paras 953, 958 and 1022) is based on evidence stemming from the Indictment period. The Trial Chamber's reliance on these specific, contemporaneous phone intercepts can therefore not reflect an intention of the witness to "implicate the accused person before the Tribunal" (*Ntagerura et al.* Appeal Judgement, para. 204) and is therefore unsuitable to show that the Trial Chamber did not apply the required caution when assessing the evidence of potentially interested witnesses testifying before it.

[395] *See, inter alia, Blagojević and Jokić* Appeal Judgement, para. 82.

[396] This is evidenced, *inter alia*, by the Trial Chamber's graded assessment of the testimony given by Momčilo Mandić, one of the witnesses claimed by *Amicus Curiae* to be of "objectively adverse credibility" (*Amicus Curiae*'s Reply, para. 37. *See* also *Amicus Curiae*'s Appeal Brief, para. 138 and fn. 237). While in paragraph 1085 of the Trial Judgement, the Trial Chamber chose to rely on Mr. Mandić's opinion, which it found to be equivalent to Witness Đerić's assessment, and concluded that Mr. Mandić's opinion was correct "in light of all the evidence"; in other parts of the Trial Judgement, the Trial Chamber, "in view of the evidence on the record", rejected the evidence provided by Mr. Mandić (Trial Judgement, para. 267).

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UNITED NATIONS

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Case No. IT-00-39-T

Date: 24 March 2005

Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Joaquín Martín Canivell
Judge Claude Hanoteau

Registrar: Mr. Hans Holthuis

Decision of: 24 March 2005

PROSECUTOR

v.

MOMČILO KRAJIŠNIK

DECISION ON THIRD AND FOURTH PROSECUTION MOTIONS FOR JUDICIAL NOTICE OF ADJUDICATED FACTS

Office of the Prosecutor
Mr. Mark B. Harmon
Mr. Alan Tieger
Mr. Thomas Hannis

Counsel for the Accused
Mr. Nicholas Stewart, QC
Ms. Chrissa Loukas

17. The Chamber finally recalls that the admission of adjudicated facts from previous proceedings leaves unaffected the Chamber's function of assessing their relevance and weight, taking into consideration the evidence in the present case in its entirety.

III. DISCUSSION

18. The Chamber has proceeded to apply the previous principles to the items submitted by the Prosecution. With respect to the Defence's submissions that certain items contain legal characterizations, the Chamber notes that item 489 (previously 677) – the only item still pending from that category – does not contain any characterization that is essentially legal in nature, but rather refers to the mental state of those who established and perpetuated the conditions of detention in KP Dom.

19. With respect to the Defence's submissions that items 620 and 243a are not sufficiently distinct and concrete, are subject to reasonable dispute between the parties in this case and impact on the right of the Accused to a fair trial, the Chamber agrees that item 444 (previously 620) – the only item still pending from that category – is not a distinct factual finding of a Trial Chamber relevant for the Indictment period in this case.

20. With respect to the Defence's submissions on items 1062 to 1080, the Chamber notes that only nine of these items remain on the list (items renumbered 638 to 646). These nine items all refer to the Višegrad municipality, and the Chamber understands the findings as referring to that municipality only. The fact that they are all based on a report which will probably be tendered into evidence in this case is immaterial.

21. With respect to the Defence's submissions on items 1034-1039, 1048-1049, 1052-1057, 1065, 1069, 1070-1072, 1074, 1076, the Chamber finds that items 613-617 (previously 1035-1039), 626-627 (previously 1048-1049), 630-632 (previously 1052-1054), 634 (previously 1057), 642-644 (previously 1069-1070 and 1072), and 646 (previously 1074) – *i.e.*, the remaining items on the revised list – are distinct and concrete factual findings of a previous Trial Chamber. The Chamber only finds it necessary to reword item 631 (previously

UNITED
NATIONS

	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991	Case No:	IT-98-33-A
		Date:	19 April 2004
		Original:	English

IN THE APPEALS CHAMBER

Before: **Judge Theodor Meron, Presiding**
Judge Fausto Pocar
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Wolfgang Schomburg

Registrar: **Mr. Hans Holthuis**

Judgement: **19 April 2004**

PROSECUTOR

v.

RADISLAV KRSTIĆ

JUDGEMENT

Counsel for the Prosecution:

Mr. Norman Farrell
Mr. Mathias Marcussen
Ms. Magda Karagiannakis
Mr. Xavier Tracol
Mr. Dan Moylan

Counsel for the Defendant:

Mr. Nenad Petrušić
Mr. Norman Sepenuk

241. The relevant provisions on sentencing are Articles 23 and 24 of the Statute, and Rules 100 to 106 of the Rules of Procedure and Evidence. These provisions constitute factors to be taken into consideration by the Trial Chamber when deciding a sentence on conviction.[396] They do not constitute binding limitations on a Chamber's discretion to impose a sentence,[397] which must always be decided according to the facts of each particular case.[398]

242. The jurisprudence of the ICTY and ICTR has also generated a body of relevant factors to consider during sentencing.[399] The Appeals Chamber has emphasised, however, that it is "inappropriate to set down a definitive list of sentencing guidelines for future reference,"[400] given that the imposition of a sentence is a discretionary decision. The Appeals Chamber has further explained that only a "discernible error" in the exercise of that sentencing discretion by the Trial Chamber may justify a revision of the sentence.[401]

243. It is therefore for the Appeals Chamber to determine whether the Trial Chamber committed a discernible error in imposing a sentence of 46 years on Radislav Krstić.

1. The arguments concerning the gravity of the crimes Radislav Krstić has committed and his participation therein

244. Both the Defence and the Prosecution have submitted arguments concerning the gravity of the crimes alleged. The Prosecution argues that in light of the gravity of the crimes Krstić committed, he should be sentenced to life imprisonment.[402] The Defence focuses on the Trial Chamber's recognition of Krstić's limited participation in the events of July 1995 and submits that the sentence was unduly harsh.[403]

245. As discussed above, the Appeals Chamber will consider arguments relating to sentencing only insofar as they allege the commission of a discernible error in the Trial Chamber's exercise of

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[396] Rule 101(B). *See also Čelebići* Appeal Judgement, para. 716 ("These 'general guidelines' amount to an obligation on the Trial Chamber to take into account aggravating and mitigating circumstances, ... the gravity of the offence, the individual circumstances of the convicted person and the general practice regarding prison sentences in the courts of the former Yugoslavia.").
[397] *Čelebići* Appeal Judgement, para. 780. *See also Kambanda* Appeal Judgement, para. 124 (while the Trial Chamber is bound by the Rules to consider the mitigating factors, the weight to be accorded to those factors "is a matter for the discretion of the Trial Chamber.").
[398] *Jelisić* Appeal Judgement, para. 101; *see also* Trial Judgement para. 700.
[399] See below.
[400] *Čelebići* Appeal Judgement, para. 715. *See also Furundžija* Appeal Judgement, para. 238.
[401] *Vasiljević* Appeal Judgement, para. 9. *See also Jelisić* Appeal Judgement, para. 99; *Čelebići* Appeal Judgement para. 725; *Furundžija* Appeal Judgement, para. 239; *Aleksovski* Appeal Judgement, para. 187; *Tadić* Judgement in Sentencing Appeals, para. 22.
[402] Prosecution's Appeal Brief, paras. 4.1 *et seq*; and para. 4.23.
[403] Defence Response, paras. 51 - 64.

UNITED
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	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia since 1991	Case No.	IT-98-33-T
		Date:	02 August 2001
		Original:	English

IN THE TRIAL CHAMBER

Before: **Judge Almiro Rodrigues, Presiding**
Judge Fouad Riad
Judge Patricia Wald

Registrar: **Mr. Hans Holthuis**

PROSECUTOR

v.

RADISLAV KRSTIC

JUDGEMENT

The Office of the Prosecutor:

Mr. Mark Harmon
Mr. Peter McCloskey
Mr. Andrew Cayley
Ms. Magda Karagiannakis

Counsel for the Accused:

Mr. Nenad Petrušic
Mr. Tomislav Višnji}

(i) Criminal Participation

706. The Prosecutor argues that General Krsti}'s "direct, conscious and deliberate participation in creating and furthering the criminal plan as the Chief of Staff and Commander of the Troops which committed the offences, which evidences his intent and willingness to participate in the commission of the crimes, serves as an aggravating factor". The Prosecutor argues that General Krsti}'s "penultimate command after General Mladi}, and/or the fact that he was in a position to order the prevention, cessation or punishment" of the crimes serve as aggravating factors.[1490]

707. The Trial Chamber has already examined the criminal responsibility of the accused in order to decide on his guilt. The same elements should not be reviewed a first time as a constitutive element of the crime and a second time as an aggravating circumstance.

708. Direct criminal participation under Article 7 (1), if linked to a high-rank position of command, may be invoked as an aggravating factor. In determining a sentence, both Tribunals have mentioned the three most direct forms of participation, "planning, ordering, instigating", as possible aggravating circumstances in the case of a highly placed accused.[1491] So it is in the case of genocide. Because an accused can commit genocide without the aid and co-operation of others, provided he has the requisite intent, a one-man genocidal agent could be viewed differently from the commander of an army or the president of a State, who has enlisted the resources of an army or a nation to carry out his genocidal effort. The Trial Chamber finds that the direct participation of a high level superior in a crime is an aggravating circumstance, although to what degree depends on the actual level of authority and the form of direct participation.

709. A high rank in the military or political field does not, in itself, lead to a harsher sentence. But a person who abuses or wrongly exercises power deserves a harsher sentence than an individual acting on his or her own. The consequences of a person's acts are necessarily more serious if he is at the apex of a military or political hierarchy and uses his position to commit crimes.[1492] It must be noted though that current case law of the Tribunal does not evidence a discernible pattern of the

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some jurisdictions, the judge cannot consider any other aggravating circumstances than those provided by the law, e.g. French Criminal Code, articles 132.71 *et seq.* (in general) for instance; Dutch Criminal Code, Articles 10, 57, 421-423 for instance.

[1490] Prosecution Final Trial Brief, para. 471.

[1491] *Kambanda* Judgement, para. 44, *Kupre{ki}* Judgement, para. 862; *Rutaganda* Judgement, para. 470 and *Akayesu* Judgement, para. 36.

[1492] *Rutaganda* Judgement, para. 469: "the fact that a person in a high position abused his authority and committed crimes is to be viewed as an aggravating factor." *Kambanda* Judgement, para. 44. In this regard, the Appeals Chamber reduced the sentence imposed on Du{ko Tadi} from 25 to 20 years stating that "there is a need for sentences to reflect the relative significance of the role of the [accused] and [...to take into account] his level in the command structure, [which] was law.", *Tadi}* Sentencing Judgement III, paras 55-57.

Tribunal imposing sentences on subordinates that differ greatly from those imposed on their superiors.[1493]

(ii) Premeditation and Motives of Crimes

710. The Prosecutor also argues that the "premeditation involved in the genocide and deportation is clearly an aggravating circumstance in the case, given General Krsti}'s critical role in planning this massive crime".[1494]

711. Premeditation[1495] may "constitute an aggravating circumstance when it is particularly flagrant" and motive "to some extent [is] a necessary factor in the determination of sentence after guilt has been established."[1496]. When a genocide or a war crime, neither of which requires the element of premeditation, are in fact planned in advance, premeditation may constitute an aggravating circumstance.[1497] Premeditated or enthusiastic participation in a criminal act necessarily reveals a higher level of criminality on the part of the participant.[1498] In determining the appropriate sentence, a distinction is to be made between the individuals who allowed themselves to be drawn into a maelstrom of violence, even reluctantly, and those who initiated or aggravated it and thereby more substantially contributed to the overall harm. Indeed, reluctant participation in the crimes may in some instances be considered as a mitigating circumstance.

712. The Trial Chamber agrees with the Prosecutor on the relevance of premeditation as an aggravating factor in the abstract but, based on the sequence of General Krsti}'s delayed participation in the genocidal scheme initiated by General Mladi} and others, finds it not applicable to the situation.

(b) Mitigating Circumstances

713. Neither the Statute, the Rules nor the jurisprudence of the Tribunals define "mitigating" circumstances.[1499] A definition of what is a mitigating circumstance is provided in fact by the SFRY Criminal Code. Article 42(2) of the SFRY Criminal Code stated that the judge may determine whether "there are mitigating circumstances *which are such that they indicate that the*

[1493] Sentences imposed by the ICTY on subordinates are of an average of 15 years imprisonment as opposed to sentences imposed on superiors, which are of an average of 17 years imprisonment.
[1494] Prosecution Final Trial Brief, para. 471.
[1495] The Defense submits that the true motive for the murders of the Bosnian Muslim men, were vengeance and punishment, for failing to surrender following General Mladi}'s invitation to do so. Defence Closing Arguments, T. 10157.
[1496] *Bla{ki}* Judgement, para. 785.
[1497] *Serushago* Sentence, para. 30.
[1498] *Jelisi}* Judgement, paras 130-131; see also the *Tadi}* Sentencing Judgement, para. 57 and the *Tadi}* Sentencing Judgement II, para. 20: the enthusiastic support for the attack launched against the non-Serbian civilian population.
[1499] *Kordi}* Judgement, para. 848.

UNITED
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International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Case No.: IT-96-23& IT-96-23/1-A

Date: 12 June 2002

Original: French

IN THE APPEALS CHAMBER

Before: **Judge Claude Jorda, Presiding**
Judge Mohamed Shahabuddeen
Judge Wolfgang Schomburg
Judge Mehmet Güney
Judge Theodor Meron

Registrar: **Mr. Hans Holthuis**

Judgement of: **12 June 2002**

PROSECUTOR
V
DRAGOLJUB KUNARAC
RADOMIR KOVAC
AND
ZORAN VUKOVIC

JUDGEMENT

Counsel for the Prosecutor:

Mr. Anthony Carmona
Ms. Norul Rashid
Ms. Susan Lamb
Ms. Helen Brady

Counsel for the Accused:

Mr. Slavi{a Prodanovic and Mr. Dejan Savatic for the accused Dragoljub Kunarac
Mr. Momir Kolesar and Mr. Vladimir Rajic for the accused Radomir Kovac
Mr. Goran Jovanovic and Ms. Jelena Lopicic for the accused Zoran Vukovic

2. Discussion

127. After an extensive review of the Tribunal's jurisprudence and domestic laws from multiple jurisdictions, the Trial Chamber concluded: [156]

> the *actus reus* of the crime of rape in international law is constituted by: the sexual penetration, however slight: (a) of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; or (b) the mouth of the victim by the penis of the perpetrator; where such sexual penetration occurs without the consent of the victim. Consent for this purpose must be consent given voluntarily, as a result of the victim's free will, assessed in the context of the surrounding circumstances. The *mens rea* is the intention to effect this sexual penetration, and the knowledge that it occurs without the consent of the victim.[157]

128. The Appeals Chamber concurs with the Trial Chamber's definition of rape. Nonetheless, the Appeals Chamber believes that it is worth emphasising two points. First, it rejects the Appellants' "resistance" requirement, an addition for which they have offered no basis in customary international law. The Appellants' bald assertion that nothing short of continuous resistance provides adequate notice to the perpetrator that his attentions are unwanted is wrong on the law and absurd on the facts.

129. Secondly, with regard to the role of force in the definition of rape, the Appeals Chamber notes that the Trial Chamber appeared to depart from the Tribunal's prior definitions of rape.[158] However, in explaining its focus on the absence of consent as the *conditio sine qua non* of rape, the Trial Chamber did not disavow the Tribunal's earlier jurisprudence, but instead sought to explain the relationship between force and consent. Force or threat of force provides clear evidence of non-consent, but force is not an element *per se* of rape.[159] In particular, the Trial Chamber wished to explain that there are "factors ?other than force? which would render an act of sexual penetration *non-consensual or non-voluntary* on the part of the victim".[160] A narrow focus on force or threat of force could permit perpetrators to evade liability for sexual activity to which the other party had not consented by taking advantage of coercive circumstances without relying on physical force.

130. The Appeals Chamber notes, for example, that in some domestic jurisdictions, neither the use of a weapon nor the physical overpowering of a victim is necessary to demonstrate force. A threat to retaliate "in the future against the victim or any other person" is a sufficient *indicium* of

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[156] Trial Judgement, paras 447-456.
[157] *Ibid.*, para 460.
[158] See, e.g., *Furund`ija* Trial Judgement, para 185. Prior attention has focused on force as the defining characteristic of rape. Under this line of reasoning, force or threat of force either nullifies the possibility of resistance through physical violence or renders the context so coercive that consent is impossible.
[159] Trial Judgement, para 458.
[160] *Ibid.*, para 438.

(b) Rape and Enslavement

186. Equally meritless is the Appellants' contention that Kunarac's and Kovac's convictions for enslavement under Article 5(c) and rape under Article 5(g) of the Statute are impermissibly cumulative. That the Appellants also forced their captives to endure rape as an especially odious form of their domestic servitude does not merge the two convictions. As the Appeals Chamber has previously explained in its discussion of enslavement, it finds that enslavement, even if based on sexual exploitation, is a distinct offence from that of rape.[254] The Appeals Chamber, therefore, rejects this ground of appeal.

3. Article 3 of the Statute

(a) Scope of Article 3 of the Statute

187. The Appellants argue that Article 3 of the Statute does not apply to their actions because it is concerned only with battlefield violations (Hague law) and not with the protection of individual physical security. That Article 3 of the Statute incorporates customary international law, particularly Common article 3 of the Geneva Conventions, is clear from the discussions on the Statute in the Security Council on 25 May 1993, and has since then been confirmed in the consistent jurisprudence of the Tribunal.[255] Alone among the Articles of the Statute, Article 3 is illustrative, serving as a residual clause. It is not necessary to rehearse the arguments here and, therefore, this ground of appeal is rejected.

(b) Intra-Article Convictions under Article 3 of the Statute

188. The Appellants' argument against convictions for rape and torture are made also with regard to intra-Article convictions under Article 3 of the Statute. As with intra-Article convictions for rape and torture under Article 5 of the Statute, the Appellants argue that in the "absence of described distinct infliction of physical or mental pain... the infliction of physical or mental pain is brought down only to the very act of sexual intercourse, without the consent of the victim" and that the convicted person's conduct "can not be deemed to be both the case of a criminal offence of rape and the criminal offence of torture, because one act excludes the other".[256]

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[254] See *supra* 'Definition of the Crime of Enslavement'.
[255] *Tadic* Jurisdiction Decision, para 91; *^elebi}i* Appeal Judgement, para 133 and *Furund`ija* Trial Judgement, paras 131-133.
[256] *Kunarac* Appeal Brief, paras 144-145.

UNITED
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International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Case No.: IT-96-23-T&
IT-96-23/1-T

Date: 22 February 2001

Original: English

IN THE TRIAL CHAMBER

Before: **Judge Florence Ndepele Mwachande Mumba, Presiding**
Judge David Hunt
Judge Fausto Pocar

Registrar: **Mr. Hans Holthuis**

Judgement of: **22 February 2001**

PROSECUTOR

v.

DRAGOLJUB KUNARAC
RADOMIR KOVAC
AND
ZORAN VUKOVIC

JUDGEMENT

The Office of the Prosecutor:

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Mrs. Hildegard Uertz-Retzlaff
Ms. Peggy Kuo
Mr. Daryl Mundis

Counsel for the Accused:

Mr. Slavi{a Prodanovic and Ms. Maja Pilipovic for the accused Dragoljub Kunarac
Mr. Momir Kolesar and Mr. Vladimir Rajic for the accused Radomir Kovac
Mr. Goran Jovanovic and Ms. Jelena Lopicic for the accused Zoran Vukovic

under paragraph 10.1. The Trial Chamber therefore finds that this specific rape has not been proved beyond reasonable doubt.

727. The Trial Chamber finds that the incident described under paragraph 10.1 of the Indictment, apart from the alleged rape of J.G., has been proved beyond reasonable doubt. The Trial Chamber is satisfied that Dragoljub Kunarac was fully aware that the other girls, whom he took out of Ulica Osmana Đikica together with "Gaga" and DP 6, ie FWS-191, FWS-186 and J.G., were taken to the abandoned house also for the purpose of rape.

(ii) The rape, enslavement and outrages upon personal dignity of FWS-191 and FWS-186[1395]

728. Paragraph 10.2 of Indictment IT-96-23 alleges that FWS-186 and FWS-191 were kept in the abandoned house in Trnova~e for approximately 6 months starting on 2 August 1992. It further alleges that, during the time of their detention, FWS-191 was constantly raped by the accused Dragoljub Kunarac while FWS-186 was constantly raped by DP 6. Dragoljub Kunarac reserved FWS-191 for himself. According to paragraph 10.3, the girls were treated as personal property of the accused Kunarac and DP 6, they had to do household chores and they had to obey all demands.

729. The Trial Chamber is satisfied that the incidents charged under paragraphs 10.2 and 10.3 have been proved beyond reasonable doubt.

730. As to the alibi of Dragoljub Kunarac, the Trial Chamber refers to its findings above on the grounds of which it rejects the Defence arguments also with regard to the incidents described in paragraphs 10.2 and 10.3. The Trial Chamber notes that, in any case, Kunarac did not provide any alibi for the period after 8 August 1992.

731. As set out above with regard to the incident charged under paragraph 10.1, both FWS-191 and FWS-186 reliably identified the accused Dragoljub Kunarac.

732. The Trial Chamber is satisfied that FWS-191 and FWS-186 were kept in the Trnova~e house for five to six months, a period that the Trial Chamber accepts as falling under the time frame set out in the Indictment as "approximately 6 months".

[1395] Indictment IT-96-23, pars 10.2 and 10.3.

733. The Trial Chamber accepts the testimony of FWS-191 that she was kept in the Trnova~e house for about five to six months. As already discussed, the Trial Chamber reiterates that specific dates and exact time periods do not require to be proved beyond reasonable doubt due to the specific war context wherein the crimes concerned occurred. The Trial Chamber therefore accepts the testimony of FWS-186 that she stayed in the house in Trnova~e for about five months as supporting evidence of FWS-191. The Trial Chamber further finds that J.G. stayed only for a few days in the house in Trnova~e, as alleged in the Indictment and as was stated by FWS-186.

734. The Trial Chamber is satisfied that Dragoljub Kunarac constantly raped FWS-191 for about two months while she was kept in the house. Kunarac came to the Trnova~e house until the end of September, and that each time he came he would rape FWS-191. Although Kunarac broke his arm in an accident sometime in September 1992, he nevertheless continued to rape her. The testimony of FWS-191 is supported by that of FWS-186, who said that FWS-191 was raped by Kunarac for about one and a half to two months while the girls stayed at the house. She further remembered having seen Dragoljub Kunarac at some point with a plaster cast on his arm.

735. FWS-186 was raped by DP 6 continuously during her five-month stay at the Trnova~e house. She was obliged to have sexual intercourse with DP 6 whenever he returned to the house from Montenegro or from the frontlines. The Trial Chamber regards the testimony of FWS-186 as sufficient to prove the rapes by DP 6 in the Trnova~e house beyond reasonable doubt. Her testimony is supported by the testimony of FWS-191, who testified that FWS-186 was forced to have intercourse with DP 6 at the Trnova~e house whenever he was at the house until the summer of 1993.

736. The evidence provided by both witnesses is reliable and supported by the testimonies of other witnesses. FWS-175 who, as FWS-191 confirmed in her testimony, was also brought to the Trnova~e house, testified that FWS-186 was already there when she arrived and that she, FWS-175, noticed that FWS-186 was with DP 6.

737. FWS-192, the mother of FWS-191, testified that "Žaga" told her that her daughter was with him and that he would not bring her back. In addition to the testimony of FWS-191, who recounted having been allowed to write a letter to her mother at some point, FWS-192 testified that she received this letter from "Žaga" and DP 6. With regard to FWS-186,

FWS-192 further recounted that she was present when DP 6 admitted to FWS-185, the mother of FWS-186, that her daughter was with him. She recounted DP 6 having ordered FWS-185 to give him clothes for her daughter.

738. The Trial Chamber accepts the evidence of FWS-191 and FWS-186, and finds that both witnesses were treated as the personal property of Dragoljub Kunarac and DP 6 during their stay in the Trnova~e house as described in paragraph 10.3 of the Indictment.

739. The Trial Chamber accepts from FWS-191 that the girls at Trnova~e did anything they were ordered to do by the soldiers while being kept there. The testimonies of both FWS-191 and FWS-186 substantiated convincingly that the girls were kept in the house to be used by Dragoljub Kunarac and DP 6 for sexual services whenever the soldiers returned to the house.

740. The Trial Chamber further accepts that the witnesses were not free to go where they wanted to, even if, as FWS-191 admitted, they were given the keys to the house at some point. Referring to the factual findings with regard to the general background, the Trial Chamber accepts that the girls, as described by FWS-191, had nowhere to go, and had no place to hide from Dragoljub Kunarac and DP 6, even if they had attempted to leave the house. The Trial Chamber is satisfied that Kunarac and DP 6, both being Serb soldiers in the Foca area, were fully aware of this fact. The Trial Chamber accepts the evidence of FWS-191 and FWS-186 that the girls performed household chores for the soldiers whilst under captivity.

741. The Trial Chamber is satisfied that it has been proven beyond reasonable doubt that FWS-191 was raped by Dragoljub Kunarac and that FWS-186 was raped by DP 6, continuously and constantly whilst they were kept in the house in Trnova~e. Kunarac in fact asserted his exclusivity over FWS-191 by forbidding any other soldier to rape her. The Trial Chamber is satisfied that Kunarac was aware of the fact that DP 6 constantly and continuously raped FWS-186 during this period, as he himself did to FWS-191. It has not been established however that Kunarac provided DP 6 with any form of assistance, encouragement or moral support which had a substantial effect on the perpetration of the individual rapes. Kunarac continued to come to the house for about two months, but it has not been established, apart from the incident charged and described in paragraph 10.1, that he was present while DP 6 raped FWS-186. It has not been shown either how Kunarac's

presence or actions would have assisted DP 6 in his raping FWS-186; so loose is the connection between the events at the house and his sporadic presence there, it would stretch the concept of aiding and abetting beyond its limits with respect to the actual rapes by DP 6.

742. The Trial Chamber is satisfied that FWS-191 and FWS-186 were denied any control over their lives by Dragoljub Kunarac and DP 6 during their stay there. They had to obey all orders, they had to do household chores and they had no realistic option whatsoever to flee the house in Trnova~e or to escape their assailants. They were subjected to other mistreatments, such as Kunarac inviting a soldier into the house so that he could rape FWS-191 for 100 Deutschmark if he so wished. On another occasion, Kunarac tried to rape FWS-191 while in his hospital bed, in front of other soldiers. The two women were treated as the personal property of Kunarac and DP 6. The Trial Chamber is satisfied that Kunarac established these living conditions for the victims in concert with DP 6. Both men personally committed the act of enslavement. By assisting in setting up the conditions at the house, Kunarac also aided and abetted DP 6 with respect to his enslavement of FWS-186.

743. There is no evidence upon which it would be appropriate to convict the accused for outrages upon personal dignity that is not already covered by other convictions.

744. In summary, the Trial Chamber finds that:

(i) The allegations made in paragraph 10.1 of Indictment IT-96-23 have partly been proved beyond reasonable doubt. On 2 August, Dragoljub Kunarac personally raped FWS-191 and aided and abetted the rape of FWS-186 by DP 6.

(ii) The allegations made in paragraph 10.2 of Indictment IT-96-23 have been proved beyond reasonable doubt. For a period of about 6 months, FWS-186 and FWS-191 were kept in the house in Trnova~e. For a period of about 2 months, Dragoljub Kunarac sporadically visited the house and raped FWS-191 on those occasions.

(iii) The allegations made in paragraph 10.3 of Indictment IT-96-23 have been proved beyond reasonable doubt. While they were kept in the house in Trnovace, FWS-191 and FWS-186 were treated as the property of Dragoljub Kunarac and DP 6.

745. The Trial Chamber consequently finds the accused Dragoljub Kunarac GUILTY of rape under Counts 19 and 20, GUILTY of enslavement under Count 18 and NOT GUILTY of outrages upon personal dignity under Count 21.

2. Radomir Kovac (Indictment IT-96-23)

746. Counts 22 to 25 of Indictment IT-96-23 charge the accused Radomir Kovac with the rape, enslavement and outrages upon personal dignity of FWS-75, FWS-87, A.B. and A.S., as described in paragraphs 11.1 to 11.6 of the Indictment.

(a) The arrival of the girls at Radomir Kovac's apartment

747. Paragraph 11.1 of the Indictment alleges that, on or about 30 October 1992, FWS-75, FWS-87, A.S. and A.B. were taken from "Karaman's house" in Miljevina to Foca by Dragan Zelenovic, DP 1 and DP 6, and that they were subsequently handed over to the accused Radomir Kovac. Paragraph 11.2 alleges that Radomir Kovac detained FWS-75 and A.B. - between about 31 October 1992 until December 1992 - and FWS-87 and A.S. - from the same date until February 1993 - in a apartment over which he had control. The Indictment alleges that, while being so kept, the girls had to perform household chores, that they were frequently sexually assaulted and that they were beaten, threatened, psychologically oppressed and kept in constant fear.

748. The Trial Chamber is satisfied that it has been proven beyond reasonable doubt that, on or about 30 October 1992, FWS-75, FWS-87, A.S. and A.B. were taken from "Karaman's house" and brought by Dragan Zelenovic, DP 6 and DP 1 to the Lepa Brena building block in Foca. There, they were handed over to the accused Radomir Kovac. Another man named Jagos Kostic lived in Radomir Kovac's apartment.

749. The Trial Chamber is also satisfied that, while kept in Radomir Kovac's apartment, these girls were constantly raped, humiliated and degraded. They were sometimes beaten, slapped or threatened by one of the occupants of the apartment. The accused Kovac once slapped FWS-75 because she refused to sleep with a soldier whom he had brought in. Twelve-year old A.B. was sent in her place. Kovac also beat FWS-75 up on other occasions.

750. The Trial Chamber is satisfied that the girls could not and did not leave the apartment without one of the men accompanying them. When the men were away, they

would be locked inside the apartment with no way to get out. Only when the men were there would the door of the apartment be left open. Notwithstanding the fact that the door may have been open while the men were there, the Trial Chamber is satisfied that the girls were also psychologically unable to leave, as they would have had nowhere to go had they attempted to flee. They were also aware of the risks involved if they were re-captured.

751. While they were detained in Radomir Kovac's apartment, the girls were required to take care of the household chores, the cooking and the cleaning.

752. The Trial Chamber is satisfied that the girls' diet and hygiene was completely neglected by Radomir Kovac. When the men were in the apartment, the girls would get their left-over food. But Kovac sometimes left the girls behind without making sure that they would have sufficient food while he was away. On some occasions, witness DK, a cousin of the accused Radomir Kovac who lived on the floor below the accused's apartment, passed some food to the girls through the window. Considering that people were organising parties where food and drinks were served, that cafés and shops were open, that supply would be available from Montenegro, and that Kovac received food from the army, the Trial Chamber does not accept that the hunger of the girls while detained in Kovac's apartment was due to general shortage of food in Foca.

(b) FWS-75 and A.B.

753. Paragraph 11.3 of the Indictment alleges that FWS-75 and A.B. were detained in Radomir Kovac's apartment from about 31 October 1992 until about 20 November 1992, during which time they had to do household chores and sexually please soldiers, including Radomir Kovac. The Indictment alleges that Radomir Kovac and Jagos Kosti} frequently raped them. In addition, on an unknown date during this period, Kovac is alleged to have brought a soldier named Slavo Ivanovi} to the apartment and ordered FWS-75 to have sexual intercourse with him; when she refused, Kovac beat her. Paragraph 11.3 further alleges that, around 20 November 1992, Kovac took FWS-75 and A.B. from his apartment to a house near Hotel Zelengora where he handed them to other Serb soldiers. The two girls were kept in this house, which Kovac visited for about two weeks. Thereafter, they were taken to an apartment in Pod Masala, where they remained for about fifteen days before being eventually taken back to Kovac's apartment on or about 25 December 1992. The Indictment states that, during the whole period, the two girls were raped. Finally, paragraph

11.3 alleges that, on or about 25 December, when FWS-75 and A.B. were brought back to Kovac's apartment, Kovac sold A.B. to an unidentified soldier for 200 Deutschmark and that, on about 26 December, FWS-75 was handed over to DP 1.

754. The Trial Chamber is satisfied that it has been proven beyond reasonable doubt that FWS-75 and A.B. stayed for a few days in Radomir Kovac's apartment before being taken away by a Serb soldier named Vojkan Jadzic to another apartment in the vicinity of Hotel Zelengora. The two girls stayed at that apartment for about 15 days, during which they were constantly raped by at least ten or fifteen Serb soldiers. Kovac would come to this apartment from time to time, asking the girls how they were doing and if they had been abused, despite being was aware that they were being raped. The two girls were then taken to another apartment near Pod Masala by Serb soldiers, including Vojkan Jadzic. They stayed in that other apartment for about 7-10 days, during which time they continued to be raped.

755. One evening, Vojkan Jadzic took the girls back to Radomir Kovac's apartment where FWS-87 and A.S. were still being kept. The exact date of their being brought back to Kovac's apartment has not been established with precision. On the basis of the evidence, the Trial Chamber finds that FWS-75 and A.B. were taken back sometime between the first and the second week of December 1992. The Trial Chamber notes once again, for the reasons given above, that a discrepancy in the evidence given as to the exact date would not in itself be sufficient to discredit the evidence. The Trial Chamber also notes that as there has been no attempt to provide an alibi for this period, the precise date is of no importance.

756. The day after they had returned, A.B. and FWS-75 were taken from Radomir Kovac's apartment. A.B. was taken by a man called "Dragec", who gave Kovac 200 Deutschmarks in the process, while FWS-75 was handed over to DP 1 and Dragan "Zelja" Zelenovic. The Trial Chamber finds that this sexual exploitation of A.B. and FWS-75, in particular their sale, constitutes a particularly degrading attack on their dignity.

757. The Trial Chamber is satisfied that it has been proven beyond reasonable doubt that, while she was in Radomir Kovac's apartment, FWS-75 was raped by both Kovac and Jagos Kostic. She was once raped together with FWS-87 by Kovac while "Swan Lake" was playing in the background. In addition, she was raped by several other soldiers who would come to Kovac's apartment, including Vojkan Jadzic and the accused Zoran Vukovic. It

should be noted, however, that this latter rape was not charged against the accused Zoran Vukovic, and that the Trial Chamber will therefore not take it into consideration with respect to the accused Zoran Vukovic's conviction and sentencing, but will do so for purposes of identification and as circumstantial evidence for the required *mens rea* necessary to commit the other crimes against humanity with which he is charged.

758. While in Radomir Kovac's apartment, twelve-year old A.B. was raped by, among others, the accused Kovac, Slavo Ivanovic and "Zeljko".

759. The Trial Chamber is satisfied that the allegations made in paragraphs 11.3 of the Indictment have all been proved beyond reasonable doubt. The Trial Chamber finds that FWS-75 and A.B. were detained in Radomir Kovac's apartment for about a week, starting sometime at the end of October or early November 1992. The Trial Chamber finds that the accused Radomir Kovac had sexual intercourse with the two women in the knowledge that they did not consent, and that he substantially assisted other soldiers in raping the two women. He did this by allowing other soldiers to visit his apartment and to rape the women or by encouraging the soldiers to do so, and by handing the girls over to other men in the knowledge that they would rape them and that the girls did not consent to the sexual intercourse. Finally, the Trial Chamber is satisfied that it has been proven beyond reasonable doubt that, after about a week, Kovac handed the two women over to other soldiers whom he knew would most likely continue to rape and abuse them. Kovac eventually sold A.B. to an unidentified soldier, and handed over FWS-75 to DP 1, in the almost certain knowledge that they would be raped again.

(c) FWS-87 and A.S.

760. Paragraph 11.4 of the Indictment alleges that FWS-87 and A.S. were taken to Radomir Kovac's apartment together with FWS-75 and A.B., on or around 31 October 1992, and that they were kept in this apartment for a period of approximately four months. Paragraph 11.4 of the Indictment alleges that, during the entire period, both girls were raped by Radomir Kovac and Jagos Kosti}.

761. The Trial Chamber is satisfied that it has been proven beyond reasonable doubt that, while in Radomir Kovac's apartment, FWS-87 was raped by both Kovac and Jagos Kosti}. Kovac reserved FWS-87 for himself and raped her almost every night he spent in the apartment. Jagos Kosti} constantly raped A.S., and he took advantage of Kovac's absence

to rape FWS-87 too. He threatened her that if she reported this to Radomir Kovac he would kill her. Kova~ knew at all times that the girls did not consent to the sexual intercourse. Jagos Kosti} could rape A.S. because she was held by Kova~ in his apartment. Kova~ therefore also substantially assisted Jagos Kosti} in raping A.S., by allowing Jagos Kosti} to stay in his apartment and to rape A.S. there. The Trial Chamber notes that it has not been established beyond reasonable doubt that the accused Kova~ aided and abetted the rape of FWS-87 by Jagos Kostic. The evidence indicates that the fact that Jagos Kosti} raped FWS-87 was hidden from Kovac. Considering the two men's relationship and Jagos Kostic's threats to FWS-87, it seems very unlikely that Kovac could have envisaged the possibility that Jagos Kostic would rape FWS-87.

762. FWS-87 consistently denied any emotional relationship with the accused Radomir Kovac. The Trial Chamber notes that several Defence witnesses mentioned a letter with a heart drawn on the envelope which was allegedly sent by FWS-87 to Kovac. The Trial Chamber accepts, however, that FWS-87 did not send such a letter, and it notes the fact that, even by their own account, none of the Defence witnesses actually read the content of the letter, but only heard about it from Kovac. The relationship between FWS-87 and Kovac was not one of love as the Defence suggested, but rather one of cruel opportunism on Kovac's part, of constant abuses and domination over a girl who, at the relevant time, was only about 15 years old.

763. Radomir Kovac forced FWS-87 to go to cafés with him, at least once forcing her to wear an insignia of the VRS.

764. The Trial Chamber is also satisfied beyond reasonable doubt that, while in Radomir Kovac's apartment, A.S. was constantly raped by Jagos Kosti}.

765. The Trial Chamber is satisfied that FWS-87 and A.S. were held in Radomir Kovac's apartment for a period of about 4 months. Apart from the exact date of their departure, the allegations in paragraph 11.4 of the Indictment have been proved beyond reasonable doubt.

(d) The naked dancing

766. Paragraph 11.5 of the Indictment alleges that, on an unknown date between about 31 October 1992 and about 7 November 1992, while they were kept in Radomir Kovac's

apartment, FWS-75, FWS-87, A.S. and A.B. were forced to take off their clothes and to dance naked on a table while Kovac watched them.

767. The witnesses have described three instances when they, together or individually, were forced to dance or to stand naked on a table while Radomir Kovac would watch them. Only one of them was expressly charged in the indictment. The Trial Chamber is satisfied that this one instance has been proved beyond reasonable doubt.

768. FWS-87 testified, and the Trial Chamber accepts, that, on one of these occasions, the four girls, FWS-75, A.S., A.B. and herself, were there and that they were made to dance on a table while Radomir Kovac and Jagos Kostic were watching and pointing weapons at them.

769. A.S. testified, and the Trial Chamber accepts, that she, together with A.B. and FWS-87, were once made to strip and dance. Radomir Kovac, Jagos Kostic and possibly a third soldier watched them. Although she did not recall FWS-75 being present, A.S.'s testimony fully supports FWS-87's evidence of these events.

770. FWS-87 mentioned that the four girls, FWS-75, A.S., A.B. and herself were present on that occasion. The Trial Chamber notes that FWS-75 did not seem to recall this event, testifying instead about another incident when she, together with FWS-87 and A.B. were forced to stand naked on a table and then marched naked by Radomir Kovac in the streets of Foca.

771. Although FWS-75 may have been present on the first occasion too, as FWS-87's testimony suggests, the Trial Chamber is not satisfied beyond reasonable doubt that this was the case.

772. The Trial Chamber therefore holds that the events described in paragraph 11.5 of the Indictment have been proved beyond reasonable doubt with respect to FWS-87, A.S. and A.B., but not with respect to FWS-75. The Trial Chamber therefore finds that, sometime between about 31 October 1992 and about 7 November 1992, while in Radomir Kovac's apartment, FWS-87, A.S. and A.B. were forced to strip and dance naked on a table while Kovac watched them from the sofa, pointing weapons at them.

773. The accused Radomir Kovac certainly knew that, having to stand naked on a table, while the accused watched them, was a painful and humiliating experience for the three

women involved, even more so because of their young age. The Trial Chamber is satisfied that Kovac must have been aware of that fact, but he nevertheless ordered them to gratify him by dancing naked for him.

774. The Statute does not require that the perpetrator must intend to humiliate his victim, that is that he perpetrated the act for that very reason. It is sufficient that he knew that his act or omission could have that effect. This was certainly the case here.

(e) The selling of FWS-87 and A.S.

775. Paragraph 11. 6 of the Indictment alleges that, on or about 25 February 1993, FWS-87 and A.S. were sold by Radomir Kovac for 500 Deutschmarks each to two unidentified Montenegrin soldiers.

776. The Trial Chamber first notes that the Defence did not deny that a financial transaction took place between the accused Radomir Kovac and two Montenegrins shortly before the girls were taken away by these two Montenegrins. They submitted that the transaction was of a different sort, and claimed that it was Kovac who actually paid for the girls to be taken away to Montenegro.

777. In view of the treatment reserved by the accused Radomir Kovac for FWS-87 and A.S., which included an almost daily regime of rapes and other abuses, it is not credible to suggest that, after four months of constant intimidation and mistreatment, the accused suddenly decided to shield these two girls from the risks involved for a Muslim girl to live in Foca at the time and so to pay for them to be taken away. The Trial Chamber does not accept the accused's account.

778. The Trial Chamber is aware of one specific discrepancy in the accounts of the witnesses. FWS-87 said that 500 Deutschmarks was paid for each girl, whereas A.S. referred to 500 Deutschmarks for each girl plus a truckload of washing powder. But both agreed that they had been sold to two Montenegrins by Radomir Kovac. The Trial Chamber does not regard this discrepancy as destroying the credibility of the two witnesses.

779. The Trial Chamber finds that, sometime in February 1993, two Montenegrins came to Radomir Kovac's apartment. They went together with the accused to the living room while FWS-87 and A.S. were told to go to the kitchen. The two girls crept out of the kitchen into the corridor from where they listened to the conversation before rushing back to

the kitchen when they heard the men moving. FWS-87 heard that the two girls were being sold for 500 Deutschmarks each, but A.S. did not hear the exact words of the conversation. Not long after the transaction, possibly the next day, the two Montenegrins came back to take the girls away. While they were in the car with the two Montenegrins, these two men laughed at their being sold for such a small amount of money and, as A.S. recounted, also for a truck-load of washing powder.

780. Apart from this minor discrepancy concerning the precise amount for which the girls were sold, the Trial Chamber is satisfied that the events described in paragraph 11.6 of the Indictment have been proved beyond reasonable doubt. Radomir Kovac detained FWS-75 and A.B. for about a week, and FWS-87 and A.S. for about four months in his apartment, by locking them up and by psychologically imprisoning them, and thereby depriving them of their freedom of movement. During that time, he had complete control over their movements, privacy and labour. He made them cook for him, serve him and do the household chores for him. He subjected them to degrading treatments, including beatings and other humiliating treatments.

781. The Trial Chamber finds that Radomir Kova~'s conduct towards the two women was wanton in abusing and humiliating the four women and in exercising his *de facto* power of ownership as it pleased him. Kovac disposed of them in the same manner. For all practical purposes, he possessed them, owned them and had complete control over their fate, and he treated them as his property. The Trial Chamber is also satisfied that Kova~ exercised the above powers over the girls intentionally. The Trial Chamber is satisfied that many of the acts caused serious humiliation, of which the accused was aware.

782. For these acts, the Trial Chamber finds the accused Radomir Kova~ GUILTY of enslavement under Count 22; GUILTY of rape under Counts 23 and 24; and, finally, GUILTY of outrages upon personal dignity under Count 25.

3. Zoran Vukovic (Indictment IT-96-23/1)

783. The Trial Chamber first notes that the Defence of the accused Zoran Vukovi} seemed to suggest that he had not pleaded to the amended Indictment.[1396] Vukovi} had already pleaded to the original Indictment in which he was joined with other defendants not

[1396] Defence Final Trial Brief, p 272.

the Prosecutor at that stage felt she could not prove beyond a reasonable doubt could be considered for the purposes of sentencing.[1464] The specific incident related to the alleged participation of Zoran Vukovi} in the killing of one of the older men at Buk Bijela, an allegation made in the Prosecutor's Pre-Trial Brief.[1465] This incident was not charged in the Indictment. The Trial Chamber ordered the sentence and the accompanying footnote in the Pre-Trial Brief referring to the Prosecutor's view of using that incident as an aggravating circumstance to be deleted.[1466] The Trial Chamber made it clear that an accused "can only be sentenced for what [he has] been convicted for, and if [he has not] been convicted, [he] can't be sentenced for it."[1467] It was in the context of this discussion that the Trial Chamber also made clear its view that only circumstances that have been proved beyond reasonable doubt may be used in aggravation of a sentence.[1468]

850. Turning to the Prosecutor's closing arguments on 20 November 2000 with respect to her submissions on the alleged rapes of FWS-50 and FWS-75, the Prosecutor appears to have withdrawn her submission that the evidence relating to uncharged alleged rapes could be used in aggravation of Zoran Vukovi}'s sentence.[1469] Had she not done so, however, the view of the Trial Chamber is as follows. The Prosecutor does not appear to have argued that *any* uncharged criminal conduct should be considered in aggravation. She appeared rather to have argued that only uncharged acts and omissions that were part of the same course of conduct or common scheme or plan as the offence of conviction would be relevant for sentencing purposes. Even assuming, however, that the Defence was put on notice to put its case with respect to such uncharged acts and omissions, that those uncharged offences were established beyond reasonable doubt and that they can be said to be part of the same plan as the offence of conviction, the Trial Chamber would not allow such an uncharged crime being used as an aggravating circumstance. The reason is this: an offender can only be sentenced for conduct for which he has been convicted.[1470] Mitigating

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[1463] *Ibid.*
[1464] T 271-274.
[1465] T 271.
[1466] T 271-272; and Decision on Prosecutor's Motion to Withdraw One Sentence From the Prosecutor's Pre-trial Brief on Zoran Vukovi} Filed on 21 February 2000, 8 Mar 2000.
[1467] T 273.
[1468] T 274.
[1469] T 6226, 6227-6228, 6264 and 6338.
[1470] *Prosecutor v Delali} and Others*, Case IT-96-21-A, Judgement, 20 Feb 2001, par 763 ("The Appeals Chamber agrees that only those matters which are proved beyond reasonable doubt against an accused may be the subject of an accused's sentence or taken into account in aggravation of that sentence.")

and aggravating circumstances should of course also be considered when imposing sentence. Mitigating circumstances not directly related to the offence, such as co-operation with the Prosecutor, an honest showing of remorse and a guilty plea, may be considered. However, the position with respect to aggravating circumstances is quite different. Only those circumstances directly related to the commission of the offence charged and to the offender himself when he committed the offence, such as the manner in which the offence was committed, may be considered in aggravation. In other words, circumstances not directly related to an offence may not be used in aggravation of an offender's sentence for that offence. To permit otherwise would be to whittle away the purpose and import of an indictment. Either the Prosecutor should charge such conduct as an offence, or, where it is not directly related to another charged offence, she should desist from citing such conduct as an aggravating factor. The Trial Chamber understands that the multiplicity of humanitarian law violations committed during an armed conflict as part of a common criminal scheme often cannot be succinctly captured in an indictment. Considerations of fairness to the accused and judicial economy, however, outweigh the wish to have each and every crime committed during a war brought to light and adjudged in whatever way – that is something which this International Tribunal simply cannot do.

(c) Comparison of "*per se* gravity" of offences

851. The Trial Chamber considers it wrong to resort to some abstract comparison of the "*per se* gravity of the crimes", comparing the severity of crimes against humanity and violations of the laws or customs of war as suggested by the Prosecutor.[1471] The Prosecutor relies on a ruling in the *Tadi}* case in support of such an exercise.[1472] In that judgement, the Trial Chamber, solely on the basis that a crime against humanity, all else being equal, is a more serious offence than a war crime, considered that a heavier penalty should be imposed for the former crime.[1473] However, the Appeals Chamber in that case concluded that there is "in law no distinction between the seriousness of a crime against humanity and that of a war crime", finding that the Trial Chamber committed an error in determining that crimes against humanity should attract a higher sentence than war crimes.[1474] The Appeals Chamber in the *Aleksovski* case also held that there is in law no distinction between the

[1471] Prosecutor's Pre-Trial Brief I, par 230.
[1472] *Ibid*, fn 146.
[1473] *Prosecutor v Tadi}*, Case IT-94-1-T*bis*-R117, Sentencing Judgement, 11 Nov 1999, pars 27-29.

UNITED NATIONS

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Case No.: IT-95-16-A

Date: 23 October 2001

Original: English

IN THE APPEALS CHAMBER

Before: **Judge Patricia Wald, Presiding**
Judge Lal Chand Vohrah
Judge Rafael Nieto-Navia
Judge Fausto Pocar
Judge Liu Daqun

Registrar: **Mr. Hans Holthuis**

Judgement of: **23 October 2001**

PROSECUTOR

v

ZORAN KUPRE[KI]
MIRJAN KUPRE[KI]
VLATKO KUPRE[KI]
DRAGO JOSIPOVI]
VLADIMIR ŠANTIC

APPEAL JUDGEMENT

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B. Reconsideration of factual findings made by the Trial Chamber

1. General principles

28. Under this heading, the Appeals Chamber will discuss the standard that applies with respect to the reconsideration of factual findings by the Trial Chamber. The vast majority of the grounds of appeal raised by the Defendants in this case concerns alleged errors of fact. Several of the parties to the present appeal have also raised questions of a more general nature relating to the Appeals Chamber's review of errors of fact under Article 25(1)(b) of the Statute.[36] In light thereof, the Appeals Chamber considers it appropriate to elaborate upon this matter.

29. In order for the Appeals Chamber to overturn a factual finding by the Trial Chamber, an appellant must demonstrate that the Trial Chamber committed a factual error and the error resulted in a miscarriage of justice.[37] The appellant must establish that the error of fact was critical to the verdict reached by the Trial Chamber, thereby resulting in a "grossly unfair outcome in judicial proceedings, as when a defendant is convicted despite a lack of evidence on an essential element of the crime."[38] Consequently, it is not each and every error of fact that will cause the Appeals Chamber to overturn a decision of the Trial Chamber, but only one that has occasioned a miscarriage of justice.[39]

30. Pursuant to the jurisprudence of the Tribunal, the task of hearing, assessing and weighing the evidence presented at trial is left primarily to the Trial Chamber. Thus, the Appeals Chamber must give a margin of deference to a finding of fact reached by a Trial Chamber. Only where the evidence relied on by the Trial Chamber could not have been accepted by any reasonable tribunal of fact or where the evaluation of the evidence is "wholly erroneous" may the Appeals Chamber substitute its own finding for that of the Trial Chamber. It must be borne in mind that two judges, both acting reasonably, can come to different conclusions on the basis of the same evidence.[40]

31. As stated above, it is initially the Trial Chamber's task to assess and weigh the evidence presented at trial. In that exercise, it has the discretion to "admit any relevant evidence which it

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[36] *See, e.g.*, Josipovi} Appeal Brief, 8 and 20; Zoran Kupre{ki} Appeal Brief, para. 42 (questioning the probative value of a single identification witness); Zoran Kupre{ki} Appeal Brief, para. 83 (questioning acceptability of evidence in light of factors such as the passage of time between the events and the testimony, the possible influence of third persons, discrepancies, or the existence of stressful conditions at the time the events took place); Zoran Kupre{ki} Appeal Brief, para. 12 (arguing that the Trial Chamber is obliged to refer to all pieces of evidence relied upon or to refer to all pieces of possibly contradictory evidence); Zoran Kupre{ki} Appeal Brief, paras 23 and 50 (questioning reasoning as to why the evidence of one witness is preferred but not the evidence of another).
[37] *Furundžija* Appeal Judgement, para. 37 (citing *Serushago* Sentencing Appeal Judgement, para. 22).
[38] *Furund`ija* Appeal Judgement, para. 37 (quoting Black's Law Dictionary (7th ed., 1999)).
[39] *Furund`ija* Appeal Judgement, para. 37.
[40] *Tadi}* Appeal Judgement, para. 64; *Aleksovski* Appeal Judgement, para. 63; *^elebi}i* Appeal Judgement, paras 434 and 491; *Tadi}* Appeal Judgement, Separate Opinion of Judge Shahabuddeen, para. 30.

deems to have probative value", as well as to exclude evidence "if its probative value is substantially outweighed by the need to ensure a fair trial."[41] As the primary trier of fact, it is the Trial Chamber that has the main responsibility to resolve any inconsistencies that may arise within and/or amongst witnesses' testimonies. It is certainly within the discretion of the Trial Chamber to evaluate any inconsistencies, to consider whether the evidence taken as a whole is reliable and credible and to accept or reject the "fundamental features" of the evidence.[42] The presence of inconsistencies in the evidence does not, *per se*, require a reasonable Trial Chamber to reject it as being unreliable.[43] Similarly, factors such as the passage of time between the events and the testimony of the witness, the possible influence of third persons, discrepancies, or the existence of stressful conditions at the time the events took place do not automatically exclude the Trial Chamber from relying on the evidence. However, the Trial Chamber should consider such factors as it assesses and weighs the evidence.

32. The reason that the Appeals Chamber will not lightly disturb findings of fact by a Trial Chamber is well known. The Trial Chamber has the advantage of observing witnesses in person and so is better positioned than the Appeals Chamber to assess the reliability and credibility of the evidence.[44] Accordingly, it is primarily for the Trial Chamber to determine whether a witness is credible and to decide which witness' testimony to prefer, without necessarily articulating every step of the reasoning in reaching a decision on these points. This discretion is, however, tempered by the Trial Chamber's duty to provide a reasoned opinion, following from Article 23(2) of the Statute. In the *Furundžija* Appeal Judgement, the Appeals Chamber considered the right of an accused under Article 23 of the Statute to a reasoned opinion to be an aspect of the fair trial requirement embodied in Articles 20 and 21 of the Statute.[45]

33. It follows from the jurisprudence of the Appeals Chambers of both the ICTY and ICTR that the testimony of a single witness, even as to a material fact, may be accepted without the need for corroboration.[46] With the exception of the testimony of a child not given under solemn

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[41] Rules 89(C) and (D).
[42] *^elebi}i* Appeal Judgement, paras 485 and 496-498.
[43] *^elebi}i* Appeal Judgement, paras 485 and 496-498.
[44] *Furund`ija* Appeal Judgement, para. 37.
[45] *Furundžija* Appeal Judgement, para. 69. This decision recalls principles drawn from the case-law of the European Court of Human Rights, which indicate that "the extent to which this duty...applies may vary according to the nature of the decision" and "can only be determined in the light of the circumstances of the case". *Ruiz Torija* v *Spain*, 303 Eur. Ct. H. R. (series A) at para. 29 (1994). However, a "tribunal" is not obliged to give a detailed argument in respect of every argument. *See Van de Hurk* v *The Netherlands*, 288 Eur. Ct. H. R. (series A) at para. 61 (1994).
[46] *Tadi}* Appeal Judgement, para. 65; *Aleksovski* Appeal Judgement, para. 62; *^elebi}i* Appeal Judgement, para. 492 and 506; *Kayishema* Appeal Judgement, para. 154.

declaration,[47] the Trial Chamber is at liberty, in appropriate circumstances, to rely on the evidence of a single witness.

34. The Appeals Chamber notes, however, that a reasonable Trial Chamber must take into account the difficulties associated with identification evidence in a particular case and must carefully evaluate any such evidence, before accepting it as the sole basis for sustaining a conviction. Domestic criminal law systems from around the world recognise the need to exercise extreme caution before proceeding to convict an accused person based upon the identification evidence of a witness made under difficult circumstances. The principles developed in these jurisdictions acknowledge the frailties of human perceptions and the very serious risk that a miscarriage of justice might result from reliance upon even the most confident witnesses who purport to identify an accused without an adequate opportunity to verify their observations. In the well known United Kingdom case of *R.* v *Turnbull*, the court held that, when a witness has purported to identify the accused under difficult circumstances, the judge should "withdraw the case from the jury and direct an acquittal unless there is other evidence which goes to support the correctness of the identification...". It further underscored the need always to caution a jury about the dangers of identification evidence.[48]

35. The *Turnbull* principles are reflected in the jurisprudence of many other common law countries.[49] The High Court of Malaya, for example, has pointed out that

> [t]here have been many cases of wrongful convictions based on mistaken eyewitness identification. It has been held that evidence as to identity based on personal impressions, however bona fida, is perhaps of all classes of evidence the least to be relied upon, and therefore, unless supported by other facts, an unsafe basis for the verdict.[50]

36. Similarly, the Supreme Court of the United States, has emphasised that the

> 'influence of improper suggestion upon identifying witnesses probably accounts for more miscarriages of justice than any other single factor--perhaps it is responsible for more errors than all other factors combined'...And the dangers for the suspect are particularly grave when the witness' opportunity for observation was insubstantial, and thus his susceptibility to suggestion the greatest...the vagaries of eyewitness identification are well known; the annals of criminal law are rife with instances of mistaken identification....[51]

37. Despite the deference afforded to trial court findings of fact in domestic legal systems, particularly on issues of witness credibility, appellate courts have, on occasion, found the factual

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[47] Rule 90(B).

[48] *R.* v *Turnbull*, [1976] 63 Cr. App. R. 132.

[49] Regarding the position in Canada, *see R.* v *Carey* (1996), 113 C.C.C. (3d) 74 (requiring "a special warning on the frailties of eyewitness identification" be given to a jury by a trial court "whenever the defence alleges such identification to be mistaken...")(citations omitted); *see also R.* v *Mezzo*, [1983] 10 W.C.B. 247. Regarding the position in Australia, see *Domican* v *R.*, [1992] 106 A.L.R. 203 (1991).

[50] *Jafaar bin Ali* v *PP* [1998] 4 M.L.J. 406; *see also Arumugam s/o Muthusamy* v *PP* [1998] 3 M.L.J. 73.

UNITED
NATIONS

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Case No. IT-98-30/1-A

Date: 28 February 2005

Original: English

IN THE APPEALS CHAMBER

Before: **Judge Mohamed Shahabuddeen, Presiding**
Judge Fausto Pocar
Judge Florence Ndepele Mwachande Mumba
Judge Mehmet Güney
Judge Inés Mónica Weinberg de Roca

Registrar: **Mr. Hans Holthuis**

PROSECUTOR

v.

MIROSLAV KVOČKA
MLAĐO RADIĆ
ZORAN ŽIGIĆ
DRAGOLJUB PRCAĆ

JUDGEMENT

The Office of the Prosecutor:

Mr. Anthony Carmona
Ms. Helen Brady
Ms. Norul Rashid
Mr. David Re
Ms. Kelly Howick

Counsel for the Accused:

Mr. Krstan Simić for Miroslav Kvočka
Mr. Toma Fila for Mlađo Radić
Mr. Slobodan Stojanović for Zoran Žigić
Mr. Goran Rodić for Dragoljub Prcać

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opinion will not be defective as a result of a failure to refer to a witness, even one whose evidence contradicts the findings of the Trial Chamber.[72] In the Prosecution's view, the Trial Chamber is only required to make findings of those facts which are essential to a determination of guilt on a particular point, and is not required to make findings in relation to other facts which are not essential, even if they were expressly alleged in the indictment.[73]

23. The Appeals Chamber recalls that every accused has the right to a reasoned opinion under Article 23 of the Statute and Rule 98*ter*(C) of the Rules.[74] However, this requirement relates to the Trial Chamber's Judgement; the Trial Chamber is not under the obligation to justify its findings in relation to every submission made during the trial. The Appeals Chamber recalls that it is in the discretion of the Trial Chamber as to which legal arguments to address. With regard to the factual findings, the Trial Chamber is required only to make findings of those facts which are essential to the determination of guilt on a particular count. It is not necessary to refer to the testimony of every witness or every piece of evidence on the trial record.[75] It is to be presumed that the Trial Chamber evaluated all the evidence presented to it, as long as there is no indication that the Trial Chamber completely disregarded any particular piece of evidence. There may be an indication of disregard when evidence which is clearly relevant to the findings is not addressed by the Trial Chamber's reasoning, but not every inconsistency which the Trial Chamber failed to discuss renders its opinion defective. Considering the fact that minor inconsistencies commonly occur in witness testimony without rendering it unreliable, it is within the discretion of the Trial Chamber to evaluate it and to consider whether the evidence as a whole is credible, without explaining its decision in every detail.[76] If the Trial Chamber did not refer to the evidence given by a witness, even if it is in contradiction to the Trial Chamber's finding, it is to be presumed that the Trial Chamber assessed and weighed the evidence, but found that the evidence did not prevent it from arriving at its actual findings. It is therefore not possible to draw any inferences about the quality of a judgement from the length of particular parts of a judgement in relation to other judgements or parts of the same judgement.

24. The Appeals Chamber notes that, in certain cases, the requirements to be met by the Trial Chamber are higher. As an example of a complex issue, the Appeals Chamber considered the appraisal of witness testimony with regard to the identity of the accused:

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[71] *Ibid.*, para. 2.17.
[72] *Ibid.*, para. 2.18.
[73] *Ibid.*, para. 2.19.
[74] *Furundžija* Appeal Judgement, para. 69; *Kunarac et al.* Appeal Judgement, para. 41.
[75] *Čelebići* Appeal Judgement, para. 498; *Kupreškić et al.* Appeal Judgement, para. 39; *Kordić and Čerkez* Appeal Judgement, para. 382. *See* also above, para. 23.
[76] *Čelebići* Appeal Judgement, paras 481, 498; *Kupreškić et al.* Appeal Judgement, para. 32.

UNITED
NATIONS

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia since 1991

Case No. IT-98-30/1-T

Date: 2 November 2001

Original: English

IN THE TRIAL CHAMBER

Before: **Judge Almiro Rodrigues, Presiding**
Judge Fouad Riad
Judge Patricia Wald

Registrar: **Mr. Hans Holthuis**

PROSECUTOR

v.

MIROSLAV KVO^KA
MILOJICA KOS
MLA\O RADI]
ZORAN ŽIGI]
DRAGOLJUB PRCA]

JUDGEMENT

The Office of the Prosecutor:

Ms. Susan Somers
Mr. Kapila Waidyaratne
Mr. Daniel Saxon

Counsel for the Accused:

Mr. Krstan Simi} for Mr. Kvo~ka
Mr. @arko Nikoli} for Mr. Kos
Mr. Toma Fila for Mr. Radi}
Mr. Slobodan Stojanovi} for Mr. @igi}
Mr. Jovan Simi} for Mr. Prca}

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opinion will not be defective as a result of a failure to refer to a witness, even one whose evidence contradicts the findings of the Trial Chamber.[72] In the Prosecution's view, the Trial Chamber is only required to make findings of those facts which are essential to a determination of guilt on a particular point, and is not required to make findings in relation to other facts which are not essential, even if they were expressly alleged in the indictment.[73]

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[75] *Čelebići* Appeal Judgement, para. 498; *Kupreškić et al.* Appeal Judgement, para. 39; *Kordić and Čerkez* Appeal Judgement, para. 382. *See* also above, para. 23.
[76] *Čelebići* Appeal Judgement, paras 481, 498; *Kupreškić et al.* Appeal Judgement, para. 32.

3. Keraterm Camp

(a) Žigi}'s presence and duties in the Keraterm camp

612. Žigi} is the sole accused still charged with responsibility for crimes committed in the Keraterm camp.[987] The Prosecution submits that the accused was a guard at Keraterm for ten days in June 1992 and that he participated in repeated acts of brutality against the detainees in the camp.[988] In his unsworn statement, Žigi} said that his unit was assigned to secure the Keraterm investigation centre during a ten-day period in early June 1992, but that he spent no more than 8 hours working in the camp.[989] However, several witnesses have testified that during the month of June 1992, Žigi} entered the Keraterm camp on a daily basis.[990] According to Defense Witness DD/8, Žigi} was in Keraterm every day during his stay at the camp from 30 May to 5 June 1992.[991] Witness DD5 declared that he saw @igi} in Keraterm about ten times from 30 May until 13 June 1992.[992]According to Ervin Rami},[993] during every day of his detention at Keraterm, from 31 May to 5 August 1992, Žigi} abused detainees:

> I remember the first time. It was a Tuesday. A green Mercedes entered where I was. Four or five people stepped out. Žigi} was already in the camp, and they started beating up everyone without any reason. They just started beating everybody.[994]

613. Some Defense witnesses testified Žigi} brought food, water and cigarettes for the detainees in his mini-van.[995] That was allegedly his only duty at the camp. Several detainees testified that he gave cigarettes and food to detainees.[996] Detainees who collaborated with the Serb authorities at Keraterm testified that Žigi} offered to "protect" them and provided them with cigarettes, biscuits, or sweets.[997] According to Žigi}, the conditions were so dreadful that he avoided staying at the camp and tried to help the detainees by providing some with alcohol.[998]

614. The Trial Chamber however has received extensive and credible evidence confirming that Žigi} regularly entered the Keraterm camp in order to beat the detainees, as reported by the Security Chief of the camp in an official note addressed to Serb authorities.[999] While @igi} seemed able to

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[987] Charges relating to Keraterm and Trnopolje camps against the other four accused were dismissed by the Decision on the Defense Motions for the Judgement of Acquittal, 15 December 2000.
[988] Prosecution Final Trial Brief, para. 389.
[989] Zoran @igi}, T. 9457.
[990] Witness N, T.3892; Abdulah Brki}, T.4544; Hase I~i}, T.4642.
[991] Witness DD/8, T.10881.
[992] Witness DD5, T. 10069.
[993] Ervin Rami}, T.5613, 5625, 5617.
[994] Ervin Rami}, T.5618.
[995] Witness DD/7, T.10739; Witness DD/5, T.9961; Zeljko Gavranovi}, T. 10213; Stojanovi}, T. 10188; Witness DD6, T. 9843.
[996] Witness DD7, T. 9961; Witness DD1, T. 9654; Zeljko Gavranovi}, T. 10225.
[997] Witness DD/1, T.9523 and T.9651-9652; Witness DD/2, T.9736-9637; Witness DD/5, T.9961.
[998] Zoran @igi}, T.9459.
[999] Exhibit P 3/249.

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enter the camp at will, some shift leaders refused to allow Žigi} *carte blanche* to mistreat detainees at random in the Keraterm camp.[1000] Witness Y testified that toward the end of June, after the beating of one of the detainees, he heard someone (probably the shift leader, Kajin) informing Žigi}, "You're not going to do as you please. You will not be allowed into the camp anymore".[1001] But the other commanders of the camp allowed @igi} free reign. Hase I~i} described how Žigi} left an indelible impression upon detainees arriving in Keraterm:

> You know, my impression was that he wanted to leave the impression that he do [*sic*] with each one of us as he pleased, to kill whomever he wanted, beat, take out, or whatever. As a matter of fact, yes, he could do that, and he did do that.[1002]

615. Witnesses described how the detainees would say, "Hush, Žigi} is coming" and try to get to the back of the room to avoid being called out.[1003] Du{an Kne`evi} often accompanied @igi}. They would look for certain people, inspecting their identity cards and Žigi} would curse at the detainees.[1004] Witness Y testified that vehicles would approach in the night and people were subsequently called out of their place of detention. The inmates would say, "@iga and Du}a are coming again to kill".[1005]

616. The Defense asserts that Žigi} was intoxicated during many of the incidents alleged in the Amended Indictment, although it does not specify during which incidents @igi} was drinking.[1006]

(b) Beatings Resulting in the Death of Emsud Bahonji} and Sead Jusufagi}[1007]

617. Several witnesses testified how, over a period of several days, Emsud Bahonji}, a policeman, and Sead Jusufagi}, nicknamed "Car", were slowly beaten to death by Žigi} and others. Witness N testified that on 8 or 9 June 1992, Žigi} called Emsud Bahonji} out from room 2, asked him, "Will I have to feed your children?" and referred to Emsud Bahonji} as "sniper".[1008] Emsud Bahonji} was beaten upon his arrival at the camp and Žigi} then started beating and kicking him while making him sing. Emsud Bahonji} was subsequently returned to room 2 with extensive injuries.[1009] The next day, Zoran Žigi}, Dusan Kne`evi}, and Predrag Banovi} again called out Emsud Bahonji} and Sead Jusufagi}:

[1000] Hase I~i}, T.4632 and 4696.
[1001] Witness Y, T.3592-3593.
[1002] Hase I~i}, T.4636, 4643.
[1003] Safet Ta}i, T.3721; Witness AD, T.3754.
[1004] Safet Ta}i, T.3721.
[1005] Witness Y, T.3489.
[1006] Zoran @igi}, T. 9458, 9462; @igi} Final Trial Brief, paras 273.1, 274.1.
[1007] Amended Indictment, para. 37(a), counts 6-7.
[1008] Witness N, T.3892.
[1009] Safet Ta}i testified that Emsud Bahonji} had told him that if Žigi} "shows up again, he would be finished, if @igi} comes in, that he would be dead". T.3759.

748. The extreme gravity of the crimes committed by @igi} has already been noted by the Trial Chamber. The Defense asserts that many of the crimes were committed when Zigic was intoxicated. The Trial Chamber rejects @igi}'s claim that intoxication should be a mitigating factor and instead finds it an aggravating factor. However, because the issue was not raised by the Prosecution, it declines to treat it as an aggravating factor in this case.

749. @igi} was transferred to the Tribunal on 16 April 1998 and thus he has been in the custody of the Tribunal for just over 3½ years.

750. The Trial Chamber sentences @igi} to 25 years imprisonment, bearing in mind that the time spent in the custody of the Tribunal is to be deducted from the time to be served.[1187]

[1187] @igi} was in Bosnian Serb custody from 1996 until April 1998. This time should not be deducted, as it was served as punishment for another crime.

UNITED
NATIONS

	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991	Case No.	IT-03-66-A
		Date:	27 September 2007
		Original:	English

IN THE APPEALS CHAMBER

Before: **Judge Fausto Pocar, Presiding**
Judge Mohamed Shahabuddeen
Judge Andrésia Vaz
Judge Theodor Meron
Judge Wolfgang Schomburg

Registrar: **Mr. Hans Holthuis**

Judgement of: **27 September 2007**

PROSECUTOR

v.

FATMIR LIMAJ
HARADIN BALA
ISAK MUSLIU

PUBLIC

JUDGEMENT

The Office of the Prosecutor:

Ms. Helen Brady
Ms. Shelagh McCall
Mr. Steffen Wirth
Ms. Kristina Carey
Ms. Katharina Margetts
Ms. Barbara Goy

Counsel for Fatmir Limaj:

Mr. Michael Mansfield Q.C.
Mr. Karim A.A. Khan

Counsel for Haradin Bala:

Mr. Gregor D. Guy-Smith
Mr. Richard Harvey

Counsel for Isak Musliu:

Mr. Michael Topolski Q.C.
Mr. Steven Powles

121. In the alternative to Haradin Bala's criminal responsibility as a member of the systemic joint criminal enterprise, the Prosecution submits that he aided and abetted the cruel treatment and torture of detainees in the prison camp.[315]

122. The Appeals Chamber notes that the Indictment charges Haradin Bala with criminal responsibility under Article 7(1) of the Statute for having, *inter alia*, aided and abetted in the commission of these crimes.[316] This form of participation has been litigated at trial and the Trial Chamber found Haradin Bala guilty of having aided and abetted the torture of Witness L12 and an incident of cruel treatment of Witness L04. However, the Trial Chamber did not find him criminally responsible for having aided and abetted any other incident of cruel treatment or torture.[317]

123. The Appeals Chamber is not satisfied, however, that it is the only reasonable inference from the evidence that, in addition to the convictions for aiding and abetting already entered by the Trial Chamber, Haradin Bala incurs criminal responsibility for having aided and abetted the other instances of cruel treatment and torture of detainees in the Llapushnik/Lapušnik prison camp. While the findings of the Trial Chamber show that Haradin Bala played a pivotal role in the functioning of the prison camp,[318] it was open for a trier of fact to conclude that the evidence did not show beyond a reasonable doubt that Haradin Bala knowingly provided substantial assistance as an aider and abettor to each act of cruel treatment or torture in the prison camp. Apart from the evidence in relation to Haradin Bala's participation as a committer or an aider and abettor in specific incidents of cruel treatment and torture, which the Trial Chamber duly considered in paragraphs 654 through 663 of the Trial Judgement, it is a reasonable inference from the evidence to find that Haradin Bala did not provide substantial assistance with respect to other crimes.

2. Conclusion

124. Consequently, the Prosecution's first ground of appeal is rejected in its entirety.

B. Second ground of appeal: Sentence

125. In the alternative to its first ground of appeal, the Prosecution argues that the Trial Chamber erred in exercising its sentencing discretion by sentencing Haradin Bala to the manifestly inadequate sentence of 13 years of imprisonment.[319] The Prosecution argues that the Trial Chamber's error was three-fold. First, the sentence does not reflect the gravity of Haradin Bala's

[315] Prosecution Appeal Brief, para. 4.12.
[316] Indictment, para. 13.
[317] Trial Judgement, paras 653-663.
[318] Trial Judgement, paras 247, 251, 276 and 652.
[319] Prosecution Appeal Brief, para. 4.15.

UNITED
NATIONS

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia since 1991

Case No. IT-03-66-T

Date: 30 November 2005

Original: English

IN TRIAL CHAMBER II

Before: **Judge Kevin Parker, Presiding**
Judge Krister Thelin
Judge Christine Van Den Wyngaert

Registrar: **Mr Hans Holthuis**

Judgement of: **30 November 2005**

PROSECUTOR

v.

FATMIR LIMAJ
HARADIN BALA
ISAK MUSLIU

JUDGEMENT

The Office of the Prosecutor:

Mr Alex Whiting
Mr Julian Nicholls
Mr Colin Black
Mr Milbert Shin

Counsel for the Accused:

Mr Michael Mansfield Q.C. and Mr Karim A.A. Khan for Fatmir Limaj
Mr Gregor D. Guy-Smith and Mr Richard Harvey for Haradin Bala
Mr Michael Topolski Q.C. and Mr Steven Powles for Isak Musliu

has been perpetrated.[1701] While each case turns on its own facts, mere presence at the scene of a crime will not usually constitute aiding or abetting. However, where the presence bestows legitimacy on, or provides encouragement to, the actual perpetrator, that may be sufficient. In a particular case encouragement may be established by an evident sympathetic or approving attitude to the commission of the relevant act. For example, the presence of a superior may operate as an encouragement or support, in the relevant sense.[1702]

518. The *mens rea* required is knowledge that, by his or her conduct, the aider and abettor is assisting or facilitating the commission of the offence.[1703] This awareness need not have been explicitly expressed. It may, of course, be inferred from all relevant circumstances.[1704] The aider and abettor need not share the *mens rea* of the perpetrator, but he or she must be aware of the essential elements of the crime ultimately committed by the perpetrator,[1705] and must be aware of the perpetrator's state of mind.[1706] This is not to say that the aider and abettor must be aware of the specific crime that will be committed by the perpetrator. If the aider and abettor is aware that one of a number of crimes will probably be committed by the perpetrator, and one of those crimes is in fact committed, then he has intended to assist or facilitate the commission of that crime, and is guilty as an aider and abettor.[1707]

2. Responsibility under Article 7(3) of the Statute

519. Article 7(3) of the Statute provides:

> The fact that any of the acts referred to in articles 2 to 5 of the present Statute was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

The principle of individual criminal responsibility of superiors for failure to prevent or to punish crimes committed by subordinates is an established principle of international customary law,[1708] applicable to both international and internal armed conflicts.[1709]

1701 *Brđanin* Trial Judgement, para 271; *Blaškić* Appeals Judgement, para 48; *Krnojelac* Trial Judgement, para 88.
1702 *Brđanin* Trial Judgement, para 271.
1703 *Furundžija* Trial Judgement, para 249; *Tadić* Appeals Judgement, para 229; *Blaškić* Appeals Judgement, para 49; *Vasiljević* Appeals Judgement, para 102.
1704 *Čelebići* Trial Judgement, para 328; *Tadić* Trial Judgement, para 676.
1705 *Aleksovski* Appeals Judgement, para 162; *Krnojelac* Trial Judgement, para 90: "The aider and abettor must be aware of the essential elements of the crime committed by the principal offender, including the principal offender's *mens rea*. However, the aider and abettor need not share the *mens rea* of the principal offender."
1706 *Brđanin* Trial Judgement, para 273; *Aleksovski* Appeals Judgement, para 162.
1707 *Blaškić* Appeals Judgement, para 50, citing *Blaškić* Trial Judgement, para 287; *Furundžija* Trial Judgement, para 246; *Brđanin* Trial Judgement, para 272.
1708 *Čelebići* Appeals Judgement, para 195; *Strugar* Trial Judgement, para 357.

to establish the identity of those who shot Fehmi Xhema. It has not been established that those were the same people who removed Fehmi Xhema from the storage room for the last time. Moreover, the time of the death of Fehmi Xhema cannot be determined. It is therefore unclear whether the purpose of removing Fehmi Xhema from the storage room by the three soldiers, including Haradin Bala, was his immediate execution. In view of the absence of evidence on these issues, the Chamber is not persuaded that Haradin Bala participated in the shooting of Fehmi Xhema. Nor has it been established that he provided assistance to the murderers.

662. As discussed earlier, Haradin Bala ordered three detainees, including L04 and L10, to bury three bodies, including the body of Agim Ademi. There is no evidence, however, indicating that he directly participated in the killing of any one of the three. It could be inferred from the established circumstances of the incident that Haradin Bala was aware that Agim Ademi he had been shot. It is the evidence that a gunshot injury was visible. As a prison guard, he must also have known that Agim Ademi had been detained in the prison camp. There is nothing to suggest, however, that Haradin Bala had agreed to provide assistance at the time of the planning, preparation or execution of the crime,[2249] or in respect of the other two detainees. Even though the probability of such a prior agreement is clear, it could also be reasonably inferred from the evidence that Haradin Bala learned about the killings afterwards and was only ordered to remove the bodies from the prison camp. In the Chamber's finding, the evidence does not establish that Haradin Bala aided the commission of murder of Agim Ademi, or of the other two detainees.

663. As indicated earlier, the Prosecution suggested that the bodies L04 and L10 were forced to bury, together with the body of Agim Ademi, were those of Jefta Petković and Žvonko Marinković.[2250] The Chamber has found earlier that the evidence does not support the contention that the body of Jefta Petković, whose murder was established, was one of those L04 and L10 buried on the order of Haradin Bala. Accordingly, no link has been established between the murder of Jefta Petković and the Accused Haradin Bala.

b. Murder in the Berishe/Berisa Mountains (Count 10)

664. The Chamber has held that Haradin Bala and Murrizi, and possibly a third KLA soldier, were directly involved in shooting at the remaining small group of prisoners, who were among those they had forced to march into the Berishe/Berisa Mountains on 25 or 26 July 1998 and who remained after the first group was released.[2251] It has been established that nine of those prisoners

[2249] *See Blagojević* Trial Judgement, para 731.
[2250] *See supra*, para 390.
[2251] *See supra*, para 454.

to improve the conditions. It was a case of too little, too rarely. Occasionally, and irregularly, he would supervise the emptying of the bucket in each of the storage room and cowshed which served as a toilet for all detainees.[2228] In the beginning there was not even a bucket. However, this was not done frequently enough and the buckets overflowed. In the cowshed, at least, chained detainees and those tied to each other were left with no option but to soil themselves in their clothing. Haradin Bala did nothing to enable medical care for the many who were in need of it, even though he knew that a clinic was nearby.[2229] Haradin Bala personally participated thus, through his omissions, in the maintenance and enforcement of the conditions of detention to which the prisoners were subjected, a material element of the crime of cruel treatment. As those conditions were maintained over many weeks, during which Haradin Bala frequently entered the rooms where prisoners were kept and at times provided assistance to them, his failure to do so on numerous other occasions leaves the Chamber persuaded that he had an intent to maintain those conditions of detention. Accordingly, in the Chamber's finding, it has been established that Haradin Bala committed, together with other persons, the crime of cruel treatment.

653. The Chamber has found, in respect of some of the acts of mistreatment and killing charged in the Indictment, that the elements of the crimes of cruel treatment, torture and murder, as violations of the laws or customs of war under Article 3 of the Statute, have been established. In some of these cases there is no evidence of Haradin Bala's direct involvement in the commission of the crime. The evidence demonstrates, however, that Haradin Bala took action which was to some extent related to the commission of others of those crimes.

654. The first incident relates to the mistreatment of L06 which the Chamber has found to constitute cruel treatment and torture.[2230] In the testimony of L10, L06 was taken out of the room by Shala, who in the finding of the Chamber was the Accused Haradin Bala, and, when L06 was brought back, he said he had been beaten. L06 himself stated that Haradin Bala only untied his chains on the day preceding the night when he was beaten and that he was taken out of the room and back by other persons.[2231] The accounts given by L06 and L10 differ as far as the role played by Haradin Bala is concerned. Because of L06's direct involvement in the incident, the Chamber is not prepared to prefer L10's account as more reliable in this particular respect. The Chamber proceeds, therefore, on the basis that the only action of Haradin Bala that might relate to the beating of L06 was untying L06's chains a few hours before the mistreatment. However, the link between his action and the actual mistreatment is far from clear. Even though the name of Shala was

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2228 *See supra*, para 286.

2229 As established above, Haradin Bala himself visited the clinic of Dr Zeqir Gashi, located in Llapushnik/Lapusnik. *See supra*, para 648.

2230 *See supra*, paras 305-306.

mentioned by L06 in the context of the particular incident of beating, it has not been established whether the untying of L06's chains was in any way related to the subsequent beating. For these reasons, the Prosecution has not established that Haradin Bala participated in any way in the actual beating of L06.

655. L10 testified to being mistreated by Shala, who was identified as Haradin Bala. As found earlier in this decision, Haradin Bala pointed a gun at L10's head and threatened him.[2232] The incident has been found to constitute the offence of cruel treatment. The direct participation of Haradin Bala in the commission of this crime has been established. He can only have acted with the intent of inflicting mental suffering upon L10. Accordingly, the Chamber finds Haradin Bala responsible for having perpetrated the crime of cruel treatment in this instance.

656. A further incident involving Haradin Bala relates to the mistreatment of L04 which the Chamber has found constituted cruel treatment.[2233] L04 stated that Shala was told by Tamuli to untie L04. As established earlier, L04 was then blindfolded, taken out of the room and beaten by individuals L04 believed to be Tamuli and Qerqiz.[2234] Shala had an automatic weapon and was guarding the door. He, however, did not personally join in the beating of L04.[2235] The Chamber accepts the evidence of L04 on the circumstances of his mistreatment. It finds that Haradin Bala did not inflict physical suffering on L04. He did, however, provide practical assistance to the direct perpetrators of the offence of cruel treatment. He better ensured there was no prospect of L04 escaping from the beating, or of the beating being seen or disrupted by third persons. In the Chamber's finding, Haradin Bala's involvement had thus a "substantial effect on the commission"[2236] of the crime of cruel treatment. In the circumstances, Haradin Bala could not have been ignorant of the intentions of the direct perpetrators. He certainly knew that a crime was being committed. Nonetheless, he remained and so he facilitated its commission. He is therefore responsible for aiding the crime of cruel treatment in respect of L04.[2237]

657. As indicated earlier in this decision, Shala, identified in the evidence as Haradin Bala, participated directly in another incident regarding L04 and L10. Haradin Bala forced L04 and L10, as well as another individual, to bury the bodies of three persons including Agim Ademi. There are some differences between the detail of the accounts of that event given by L10 and L04. They are nonetheless consistent with respect to the essential features of what occurred, especially the conduct

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2231 *See supra*, para 304.
2232 *See supra*, para 299.
2233 *See supra*, paras 311; 313.
2234 *See supra*, para 311.
2235 L04, T 1175-1176.
2236 *See supra*, para 517.
2237 *See Čelebići* Trial Judgement, para 842.

of Haradin Bala, to whom both witnesses referred as Shala. Shala blindfolded them and took them in a car to the place where they were required to dig a grave. L04 and L10 and another individual received a pickaxe and shovels, with which they carried out the task given to them by Shala. They buried three bodies in the hole.[2238] Shala warned them that if they said anything about it, they would be shot.[2239] As discussed earlier, this incident caused psychological suffering of L04 and L10, which, in the Chamber's finding, in the circumstances amounted to cruel treatment. The physical perpetration of the crime by Haradin Bala has been established. Haradin Bala must have been aware of the substantial likelihood that psychological suffering would be inflicted as a result of forcing L04 and L10 to bury the bodies of fellow detainees, especially given the apparent injuries to and condition of the bodies. Haradin Bala is accordingly responsible for having directly perpetrated that crime.

658. Two incidents of mistreatment of L12 have been established. The first one occurred upon his arrival at the prison camp. In the Chamber's finding, Haradin Bala, referred to in L12's evidence as Shala, chained L12 to the wall and beat him with a stick until L12 lost consciousness. As has been established, even though the evidence does not reveal that Haradin Bala was unable to engage in strenuous activities, such as a prolonged beating of a person, it is of relevance that his ability to do so was adversely affected.[2240] The evidence concerning the role Haradin Bala played in this incident is, however, consistent and persuasive. The evidence of L12 as the victim of the incident is consistent with that of L04, who witnessed the incident, and confirmed the length and effect of the beating. Haradin Bala thus physically perpetrated the offence of cruel treatment in this case, despite his state of health. The circumstances of the incident and, in particular, the severity and duration of the beating, leave the Chamber satisfied that Haradin Bala acted with the intent to inflict physical suffering on L12. Haradin Bala is therefore, in the finding of the Chamber, responsible for having committed the offence of cruel treatment in connection with this incident. In the other case of mistreatment of L12 established earlier in this decision, L12 was beaten in a barn. Haradin Bala blindfolded L12 and brought him to a barn, where the beating took place.[2241] L12 testified that Shala was present during the incident.[2242] The Chamber accepts L12's evidence, however, that Haradin Bala's involvement in the incident was limited to bringing L12 to the perpetrators and being present while the beating was taking place. The Chamber finds that by bringing L12 to the barn and being present throughout the beating by others, Haradin Bala did contribute to the commission of the crime substantially enough to regard his participation as aiding

[2238] *See supra*, paras 299; 312 and 399-401.
[2239] L10, T 2946.
[2240] *See supra*, para 648.
[2241] *See supra*, para 316.

the offence committed by the direct perpetrators. In the circumstances, Haradin Bala must have become aware, at least at the time of the beating, that the assailants were committing a crime and of their state of mind. Accordingly, he possessed the *mens rea* required for aiding and abetting. As established earlier, this incident constitutes the elements of both cruel treatment and torture. However, as will be discussed shortly, the Chamber can enter a conviction only in respect of the charge of torture (Count 4).

659. Reference to Haradin Bala has been made in the evidence concerning the mistreatment of Emin Emini. L10 testified that Shala, together with two other men, took Emin Emini out of the storage room for the purpose of beating him. However, for reasons discussed earlier, despite this evidence, it is not possible to determine the identity of the individuals who took Emin Emini out of the storage room.[2243] Nor does the evidence suggest that Haradin Bala himself beat Emini.

660. As has been indicated, the evidence concerning the mistreatment and death of Fehmi Xhema is affected by a number of discrepancies. In particular, it is not established whether Haradin Bala was among those who took Fehmi Xhema out of the storage room and brought him back after the beating. As discussed earlier, the Chamber assessed that both L06 and L10, who gave differing accounts of mistreatment of Fehmi Xhema, were honest witnesses.[2244] In the absence of other evidence on the matter, there are no grounds for giving preference to either of these accounts. The Chamber therefore finds, in favour of the Accused Haradin Bala, that he did not participate in the mistreatment of Fehmi Xhema, either directly or by providing assistance.

661. The accounts given by L06 and L10 identify the involvement of Haradin Bala in the removal of, what they believed, was the dead body of Fehmi Xhema. Both L06 and L10 stated that Shala and two other soldiers came to the storage room to take away the body of Fehmi Xhema.[2245] The accounts differ, however, as to the time of that event. L06 testified that Fehmi Xhema, whom he believed to be dead at that time, remained in the room for three days before he was taken away.[2246] L10 stated that the body was removed on the day following day after the critical beating.[2247] The Chamber is persuaded, despite these differences, that one of the three soldiers who removed the near dead Fehmi Xhema from the storage room was Haradin Bala. As indicated earlier, Fehmi Xhema was subsequently shot.[2248] The evidence, however, does not make it possible

[2242] L12 stated that Shala should know what the individuals who beat L12 were talking about because he was there; L12, T 1808.
[2243] *See supra,* para 412.
[2244] *See supra,* paras 327-331.
[2245] L06, T 1013; L10, T 2942.
[2246] L06, T 1013
[2247] L10, T 2942.
[2248] *See supra,* para 336.

to establish the identity of those who shot Fehmi Xhema. It has not been established that those were the same people who removed Fehmi Xhema from the storage room for the last time. Moreover, the time of the death of Fehmi Xhema cannot be determined. It is therefore unclear whether the purpose of removing Fehmi Xhema from the storage room by the three soldiers, including Haradin Bala, was his immediate execution. In view of the absence of evidence on these issues, the Chamber is not persuaded that Haradin Bala participated in the shooting of Fehmi Xhema. Nor has it been established that he provided assistance to the murderers.

662. As discussed earlier, Haradin Bala ordered three detainees, including L04 and L10, to bury three bodies, including the body of Agim Ademi. There is no evidence, however, indicating that he directly participated in the killing of any one of the three. It could be inferred from the established circumstances of the incident that Haradin Bala was aware that Agim Ademi he had been shot. It is the evidence that a gunshot injury was visible. As a prison guard, he must also have known that Agim Ademi had been detained in the prison camp. There is nothing to suggest, however, that Haradin Bala had agreed to provide assistance at the time of the planning, preparation or execution of the crime,[2249] or in respect of the other two detainees. Even though the probability of such a prior agreement is clear, it could also be reasonably inferred from the evidence that Haradin Bala learned about the killings afterwards and was only ordered to remove the bodies from the prison camp. In the Chamber's finding, the evidence does not establish that Haradin Bala aided the commission of murder of Agim Ademi, or of the other two detainees.

663. As indicated earlier, the Prosecution suggested that the bodies L04 and L10 were forced to bury, together with the body of Agim Ademi, were those of Jefta Petković and Žvonko Marinković.[2250] The Chamber has found earlier that the evidence does not support the contention that the body of Jefta Petković, whose murder was established, was one of those L04 and L10 buried on the order of Haradin Bala. Accordingly, no link has been established between the murder of Jefta Petković and the Accused Haradin Bala.

b. Murder in the Berishe/Berisa Mountains (Count 10)

664. The Chamber has held that Haradin Bala and Murrizi, and possibly a third KLA soldier, were directly involved in shooting at the remaining small group of prisoners, who were among those they had forced to march into the Berishe/Berisa Mountains on 25 or 26 July 1998 and who remained after the first group was released.[2251] It has been established that nine of those prisoners

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[2251] *See supra*, para 454.

of Haradin Bala, to whom both witnesses referred as Shala. Shala blindfolded them and took them in a car to the place where they were required to dig a grave. L04 and L10 and another individual received a pickaxe and shovels, with which they carried out the task given to them by Shala. They buried three bodies in the hole.[2238] Shala warned them that if they said anything about it, they would be shot.[2239] As discussed earlier, this incident caused psychological suffering of L04 and L10, which, in the Chamber's finding, in the circumstances amounted to cruel treatment. The physical perpetration of the crime by Haradin Bala has been established. Haradin Bala must have been aware of the substantial likelihood that psychological suffering would be inflicted as a result of forcing L04 and L10 to bury the bodies of fellow detainees, especially given the apparent injuries to and condition of the bodies. Haradin Bala is accordingly responsible for having directly perpetrated that crime.

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[2239] L10, T 2946.
[2240] *See supra*, para 648.
[2241] *See supra*, para 316.

the offence committed by the direct perpetrators. In the circumstances, Haradin Bala must have become aware, at least at the time of the beating, that the assailants were committing a crime and of their state of mind. Accordingly, he possessed the *mens rea* required for aiding and abetting. As established earlier, this incident constitutes the elements of both cruel treatment and torture. However, as will be discussed shortly, the Chamber can enter a conviction only in respect of the charge of torture (Count 4).

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[2245] L06, T 1013; L10, T 2942.
[2246] L06, T 1013
[2247] L10, T 2942.
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to establish the identity of those who shot Fehmi Xhema. It has not been established that those were the same people who removed Fehmi Xhema from the storage room for the last time. Moreover, the time of the death of Fehmi Xhema cannot be determined. It is therefore unclear whether the purpose of removing Fehmi Xhema from the storage room by the three soldiers, including Haradin Bala, was his immediate execution. In view of the absence of evidence on these issues, the Chamber is not persuaded that Haradin Bala participated in the shooting of Fehmi Xhema. Nor has it been established that he provided assistance to the murderers.

662. As discussed earlier, Haradin Bala ordered three detainees, including L04 and L10, to bury three bodies, including the body of Agim Ademi. There is no evidence, however, indicating that he directly participated in the killing of any one of the three. It could be inferred from the established circumstances of the incident that Haradin Bala was aware that Agim Ademi he had been shot. It is the evidence that a gunshot injury was visible. As a prison guard, he must also have known that Agim Ademi had been detained in the prison camp. There is nothing to suggest, however, that Haradin Bala had agreed to provide assistance at the time of the planning, preparation or execution of the crime,[2249] or in respect of the other two detainees. Even though the probability of such a prior agreement is clear, it could also be reasonably inferred from the evidence that Haradin Bala learned about the killings afterwards and was only ordered to remove the bodies from the prison camp. In the Chamber's finding, the evidence does not establish that Haradin Bala aided the commission of murder of Agim Ademi, or of the other two detainees.

663. As indicated earlier, the Prosecution suggested that the bodies L04 and L10 were forced to bury, together with the body of Agim Ademi, were those of Jefta Petković and Žvonko Marinković.[2250] The Chamber has found earlier that the evidence does not support the contention that the body of Jefta Petković, whose murder was established, was one of those L04 and L10 buried on the order of Haradin Bala. Accordingly, no link has been established between the murder of Jefta Petković and the Accused Haradin Bala.

b. Murder in the Berishe/Berisa Mountains (Count 10)

664. The Chamber has held that Haradin Bala and Murrizi, and possibly a third KLA soldier, were directly involved in shooting at the remaining small group of prisoners, who were among those they had forced to march into the Berishe/Berisa Mountains on 25 or 26 July 1998 and who remained after the first group was released.[2251] It has been established that nine of those prisoners

[2249] *See Blagojević* Trial Judgement, para 731.
[2250] *See supra*, para 390.
[2251] *See supra*, para 454.

UNITED
NATIONS

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia since 1991

Case No. IT-95-11-T

Date: 12 June 2007

Original: English

IN TRIAL CHAMBER I

Before: **Judge Bakone Justice Moloto, Presiding**
Judge Janet Nosworthy
Judge Frank Höpfel

Registrar: **Mr. Hans Holthuis**

Judgement of: **12 June 2007**

PROSECUTOR

v.

MILAN MARTIĆ

JUDGEMENT

The Office of the Prosecutor:

Mr. Alex Whiting
Ms. Anna Richterova
Mr. Colin Black
Ms. Nisha Valabhji

Counsel for Milan Martić:

Mr. Predrag Milovančević
Mr. Nikola Perović

although he neither possesses expertise in this area nor personal knowledge of the information.[49] Accordingly, the Trial Chamber has attached no weight whatsoever to such views, conclusions and analyses of Ari Kerkkanen.

36. Witness MM-003 testified from 8 to 10 March 2006. In its Final Trial Brief, the Prosecution accepted that the evidence of Witness MM-003 should be examined "with care" since "he sought and received assistance from the OTP in order to remain in the country where he is now living".[50] The Defence submitted that this would be a factor negating the credibility of his testimony.[51] On 9 April 2007, the Prosecution sent a letter to the Defence disclosing details of its assistance provided to Witness MM-003 in his asylum case.[52]

37. Witness MM-079 testified on 31 March, 3 and 4 April 2006. In its Final Trial Brief, the Prosecution acknowledged that the evidence of Witness MM-079 should be "scrutinized with care" since "he said that he hoped to receive the assistance of the OTP to remain in the country where he is relocated."[53] Witness MM-079 testified that after his lawyer had suggested that he contact the Tribunal to seek assistance with his asylum, he was interviewed by the Prosecution, and that he was subsequently informed that the Prosecution had written a letter to the authorities of the state where he currently lives to ask that he be allowed to stay there until he finishes testifying at the Tribunal.[54] The Trial Chamber notes that the Defence did not raise objections as to the credibility of this witness.

38. The Trial Chamber notes that both Witness MM-003 and Witness MM-079 sought assistance from the Prosecution, which also provided such assistance to both witnesses. The Trial Chamber therefore considers that there is significant doubt as to the credibility of both witnesses and has consequently given weight only to the parts of their respective evidence which are corroborated by other evidence.

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[48] Ex. 459, pp 2-4.
[49] Prosecution's Reply to Defense Response to Prosecution's Motion for Admission of Statement of Witness MM-014 Pursuant to Rule 89 (F), filed confidentially on 19 Apr 2006, para. 6, where the Prosecution acknowledges that Ari Kerkkanen lacks expertise.
[50] Prosecution Final Trial Brief, para. 44.
[51] Witness MM-003, 10 Mar 2006, T. 2175-2188; Defence Closing Argument, 11 Jan 2007, T. 11330-11331.
[52] Letter from Alex Whiting to Predrag Milovančević, dated 9 April 2007. The Trial Chamber was copied on this letter.
[53] Prosecution Final Trial Brief, para. 85; Witness MM-079, 31 Mar 2006, T. 3025-3028.
[54] Witness MM-079, 31 Mar 2006, T. 3025-3026.

UNITED
NATIONS

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991	Case No.	IT-98-29/1-A
	Date:	12 November 2009
	Original:	English

IN THE APPEAL CHAMBER

Before: **Judge Fausto Pocar, Presiding**
Judge Mehmet Güney
Judge Liu Daqun
Judge Andrésia Vaz
Judge Theodor Meron

Registrar: **Mr John Hocking**

Judgement of: **12 November 2009**

PROSECUTOR

v.

DRAGOMIR MILOŠEVIĆ

PUBLIC

JUDGEMENT

The Office of the Prosecutor:

Mr Paul Rogers

Counsel for the Accused:

Mr Branislav Tapušković
Ms Branislava Isailović

acts of violence.[930] Merely reciting the Trial Chamber's findings on the gravity of the offence does not suffice to show that the Trial Chamber erred in the exercise of its discretion to determine an appropriate sentence.

324. With respect to the victims of the crime of terror, the Appeals Chamber considers that contrary to the Prosecution's claim, the Trial Chamber did not restrict the victims group to those who were directly injured by specific incidents. Read in context, the Trial Chamber's references to "[t]he civilians in Sarajevo" and to "[t]he resulting suffering of the civilian population" in paragraphs 992 and 993 of the Trial Judgement indicate that the Trial Chamber considered the entire population of Sarajevo a victim of the crime of terror. This is confirmed by the Trial Chamber's statement at paragraph 994 that "[b]y planning and ordering the crimes of terror, murder and inhumane acts, the Accused made the entire population of Sarajevo the direct target of countless acts of violence".

325. The Appeals Chamber notes that the Trial Chamber considered Milošević's active and central role in the commission of the crimes when discussing the sentence to be imposed.[931] By merely pointing out the Trial Chamber's findings on Milošević's role in the commission of the crimes, the Prosecution does not demonstrate that the Trial Chamber gave it insufficient weight and, as a result, ventured outside its sentencing discretion.

326. Regarding the comparison with the sentence imposed on Galić on appeal, the Appeals Chamber recalls that "sentences of like individuals in like cases should be comparable".[932] However, similar cases do not provide "a legally binding tariff of sentences".[933] While the Appeals Chamber does not discount the assistance that may be drawn from previous decisions, such assistance is often limited, as each case contains a multitude of variables.[934] Differences between

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[930] Trial Judgement, paras 991-994. See also, the Appeals Chamber's findings above with respect to impermissible double-counting (see *supra*, Section XII.B.2.(b)).
[931] Trial Judgement, paras 994, 999 and 1000.
[932] *Strugar* Appeal Judgement, para. 348, referring to *Kvočka et al.* Appeal Judgement, para. 681.
[933] *Strugar* Appeal Judgement, para. 348, referring to *Jelisić* Appeal Judgement, para. 96; *D. Nikolić* Judgement on Sentencing Appeal, para. 16.
[934] *Strugar* Appeal Judgement, para. 348: "a number of elements, relating, *inter alia*, to the number, type and gravity of the crimes committed, the personal circumstances of the convicted person and the presence of mitigating and aggravating circumstances, dictate different results in different cases such that it is frequently impossible to transpose the sentence in one case *mutatis mutandis* to another". See also, *e.g.*, *Blagojević and Jokić* Appeal Judgement, para. 333; *Stakić* Appeal Judgement, para. 381; *Kvočka et al.* Appeal Judgement, para. 681; *Čelebići* Appeal Judgement, para. 721; *Nahimana et al.* Appeal Judgement, para. 1046.

cases are often more significant than similarities and different mitigating and aggravating circumstances might dictate different results.[935]

327. In this case, the Trial Chamber expressly referred to the sentence of life imprisonment imposed on Galić by the Appeals Chamber but rightly decided not to construe the Appeals Chamber's decision as restricting the exercise of its own sentencing discretion in this case.[936] The primary concern is the Trial Chambers' obligation to tailor a penalty to fit the individual circumstances of an accused and the gravity of the crime with due regard for the entirety of the case, which may justify different sentencing in similar cases. Notwithstanding this principle, it remains that a disparity out of reasonable proportion between an impugned sentence and another sentence rendered in a like case may give rise to an inference that the Trial Chamber failed to exercise its discretion properly in applying the law on sentencing.[937]

328. As indicated by the Prosecution, the two cases are indeed similar: both accused were convicted for similar crimes committed in the same location in similar circumstances while occupying the same function. Milošević's crimes were characterised by a similar brutality and cruelty to those of Galić. His participation in the crimes was as central and nearly as prolonged as that of Galić. Like Galić, Milošević also abused his position of authority. Nevertheless, the two cases present certain differences, including Milošević's regular use of the modified air bomb, which was considered by the Trial Chamber in aggravation.[938] At the same time, Milošević's personal circumstances considered by the Trial Chamber in mitigation were also different from those of Galić. Notably, the Trial Chamber considered Milošević's voluntary surrender to the authorities of Serbia and Montenegro before being transferred to the Tribunal, the negotiation and signing of the Anti-sniping Agreement, orders issued by Milošević not to shoot civilians and to abide by the Geneva conventions, *etc.*[939] The Appeals Chamber recalls that the only mitigating factor for which Galić was credited by the Trial Chamber was his "exemplary behaviour [...] throughout the proceedings".[940]

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[935] See, *e.g., Limaj et al.* Appeal Judgement, para. 135, citing *D. Nikolić* Judgement on Sentencing Appeal, para. 19.
[936] Trial Judgement, para. 988.
[937] *Martić* Appeal Judgement, para. 330.
[938] Trial Judgement, para. 1001.
[939] Trial Judgement, para. 1003.
[940] *Galić* Trial Judgement, para. 766. See also *Galić* Appeal Judgement, para. 453.

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UNITED
NATIONS

	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991	Case No.	IT-98-29/1-AR73.1
		Date:	26 June 2007
		Original:	English

IN THE APPEALS CHAMBER

Before: **Judge Mehmet Güney, Presiding**
Judge Mohamed Shahabuddeen
Judge Liu Daqun
Judge Andrésia Vaz
Judge Theodor Meron

Registrar: **Mr. Hans Holthuis**

Decision of: **26 June 2007**

PROSECUTOR

v.

Dragomir MILOŠEVIĆ

PUBLIC FILING

DECISION ON INTERLOCUTORY APPEALS AGAINST TRIAL CHAMBER'S DECISION ON PROSECUTION'S MOTION FOR JUDICIAL NOTICE OF ADJUDICATED FACTS AND PROSECUTION'S CATALOGUE OF AGREED FACTS

The Office of the Prosecutor:

Mr. Alex Whiting
Mr. Stefan Waespi
Ms. Carolyn Edgerton
Mr. John Docherty

Counsel for the Accused:

Mr. Branislav Tapušković
Ms. Branislava Isailović

Disposition[63] as well as of the Dissenting Opinion of Judge Harhoff,[64] it seems, however, that in declining to take judicial notice of these 69 Proposed Facts the Trial Chamber mostly – if not exclusively - relied upon its finding that if the Proposed Facts which go to the crimes committed under the command of Galić and which have a strong link with the crimes charged in the Amended Indictment against Milošević, "particularly those facts which may in effect put the Accused on notice", were to be judicially noticed, the burden to produce evidence would be shifted to Milošević in such a manner that it would jeopardize his rights.[65]

16. The *Karemera* Appeals Decision established that it is prohibited to take judicial notice of "adjudicated facts relating to the acts, conduct, and mental state of the accused."[66] This means that, when an accused is charged with crimes committed by others, while it is possible to take judicial notice of adjudicated facts regarding the existence of such crimes, the *actus reus* and the *mens rea* supporting the responsibility of the accused for the crimes in question must be proven by other means than judicial notice.[67] Thus, the Appeals Chamber sees no reason why judicial notice could not be taken of adjudicated facts providing evidence as to the existence of crimes committed by others and which the accused is not even charged with, as in the instant case, as long as the burden remains on the Prosecution to establish, by means other than judicial notice, that the accused had knowledge of their existence. The Appeals Chamber recalls, in this respect, that judicial notice of adjudicated facts "does not shift the ultimate burden of persuasion, which remains with the Prosecution" and that the facts "established under Rule 94(B) are merely presumptions that may be rebutted by the defence with evidence at trial".[68]

17. Taking judicial notice of adjudicated facts related to crimes committed under the command of Galić, *e.g.* facts regarding the deliberate and indiscriminate sniping and shelling by forces under Galić's command on civilian persons and objects in Sarajevo, would provide evidence of the commission of such crimes. Milošević has full latitude to rebut the presumption that these crimes were committed by introducing reliable and credible evidence to the contrary. Furthermore, establishing the very existence of these crimes does not imply that Milošević had knowledge of

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[63] "The Trial Chamber understands [R]ule 94(B) as giving a Trial Chamber a discretionary power to admit adjudicated facts when it advances the expeditiousness of the proceedings and is in the interests of justice. Accordingly, the Trial Chamber will identify, in light of the foregoing analysis, those facts which it admits, leaving aside those which it rejects." Impugned Decision, p. 12.

[64] "However, I respectfully disagree with the majority's decision to decline from accepting judicial notice of the remaining 69 proposed adjudicated facts. All of these remaining facts relate to the factual situation or to particular incidents occurring in Sarajevo during General Galić's time in power, and they all imply somehow that the SRK – under Galić – deliberately and indiscriminately targeted civilians or civilian objects in Sarajevo." Dissenting Opinion of Judge Harhoff, para. 4.

[65] Impugned Decision, para. 32.

[66] *Karemera* Appeals Decision, para. 50.

[67] *Ibid.*, para. 52.

[68] *Ibid.*, para. 42.

UNITED
NATIONS

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia since 1991

Case No. IT-02-59-S

Date: 31 March 2004

Original: English

IN TRIAL CHAMBER I

Before: **Judge Alphons Orie, Presiding**
Judge Amin El Mahdi
Judge Joaquín Martín Canivell

Registrar: **Mr. Hans Hothuis**

Judgement of: **31 March 2004**

PROSECUTOR

v.

DARKO MRĐA

SENTENCING JUDGEMENT

The Office of the Prosecutor:

Mr. Alan Tieger
Mr. Timothy J. Resch

Counsel for Darko Mrđa:

Mr.Vojislav Dimitrijević
Mr. Otmar Wachenheim

imprisonment is to be served" and that "particular consideration shall be given to the proximity to the convicted person's relations."

109. Nevertheless, the fact remains that Darko Mrđa will serve his sentence in a state different from his country of origin and at some distance from his wife and children. This is however a common aspect of the prison sentences imposed by the Tribunal. The Trial Chamber takes into account this factor in determining the length of imprisonment, but it does not consider it to be a mitigating circumstance.

8. Conclusions

110. In light of the above, the Trial Chamber finds that the following are relevant mitigating circumstances to which appropriate weight must be attached:

- Cooperation with the Prosecution;
- Guilty Plea;
- Remorse; and
- Personal circumstances of Darko Mrđa.

111. The Trial Chamber rejects the submissions of the Defence concerning duress, compliance with superior orders and the length of time between the commission of the crimes and the trial. However, the Trial Chamber takes into consideration the fact that Darko Mrđa must serve his sentence in a foreign country in determining his sentence.

D. The General Practice Regarding Prison Sentences in the Courts of the Former Yugoslavia

112. Article 24 of the Statute and Rule 101 of the Rules require the Trial Chamber, when determining sentence, to take into account the general practice regarding prison sentences in the former Yugoslavia.[148]

1. Arguments of the Parties

113. The Prosecution submits that the Trial Chamber should consider the factors set out in Article 41(1) of the SFRY Criminal Code[149] (the "Code") in determining sentence and that these are equivalent to aggravating and mitigating factors, evaluated by the Tribunal.[150]

[148] Rule 101 (B) (iii) of the Rules.

UNITED NATIONS

	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991	Case No.	IT-95-13/1-A
		Date:	5 May 2009
		Original:	English

IN THE APPEALS CHAMBER

Before: **Judge Theodor Meron, Presiding**
Judge Mehmet Güney
Judge Fausto Pocar
Judge Liu Daqun
Judge Andrésia Vaz

Acting Registrar: **Mr. John Hocking**

Judgement of: **5 May 2009**

PROSECUTOR
V.
MILE MRKŠIĆ
VESELIN ŠLJIVANČANIN

PUBLIC

JUDGEMENT

The Office of the Prosecutor:
Ms. Helen Brady
Mr. Paul Rogers
Mr. Marwan Dalal
Ms. Kristina Carey
Ms. Najwa Nabti
Ms. Kyle Wood
Ms. Nicole Lewis

Counsel for Veselin Šljivančanin:
Mr. Novak Lukić and Mr. Stéphane Bourgon

Counsel for Mile Mrkšić:
Mr. Miroslav Vasić and Mr. Vladimir Domazet

20 November 1991.[276] In light of these findings the Appeals Chamber turns to consider whether Šljivančanin's failure to act upon learning of the order to withdraw the JNA troops from Ovčara substantially contributed to the murder of the prisoners of war by the TOs and paramilitaries.

81. Bearing in mind that the basic elements of the mode of liability of aiding and abetting apply regardless of whether this form of liability is charged as "omission",[277] the Appeals Chamber recalls that the *actus reus* of aiding and abetting consists of acts or omissions[278] which assist, encourage or lend moral support to the perpetration of a specific crime, and which have a substantial effect upon the perpetration of the crime.[279] There is no requirement of a cause-effect relationship between the conduct of the aider and abettor and the commission of the crime or that such conduct served as a condition precedent to the commission of the crime.[280] The *actus reus* of aiding and abetting a crime may occur before, during, or after the principal crime has been perpetrated, and the location at which the *actus reus* takes place may be removed from the location of the principal crime.[281]Accordingly, in order to determine whether Šljivančanin possessed the requisite *actus reus* for aiding and abetting murder, the Appeals Chamber must be satisfied beyond reasonable doubt that the Prosecution has demonstrated that Šljivančanin substantially contributed to their killing by his inaction[282] and that, when account is taken of the errors committed by the Trial Chamber, all reasonable doubt concerning Šljivančanin's guilt has been eliminated.[283]

(a) Šljivančanin's ability to act

82. The Appeals Chamber further recalls that aiding and abetting by omission implicitly requires that the accused had the ability to act but failed to do so.[284] In order to determine whether Šljivančanin had the ability to act but failed to do so, the Appeals Chamber must be satisfied beyond reasonable doubt that the Prosecution has provided sufficient evidence concerning which means were available to Šljivančanin to fulfil his continuing duty towards the prisoners of war.[285]

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[276] *See supra* para. 62.
[277] *Orić* Appeal Judgement, para. 43. *See supra* para. 49.
[278] *Nahimana et al.* Appeal Judgement, para. 482; *Ntagerura et al.* Appeal Judgement, para. 370; *Blaškić* Appeal Judgement, para. 47.
[279] *Nahimana et al.* Appeal Judgement, para. 482; *Blagojević and Jokić* Appeal Judgement, para. 127; *Ndindabahizi* Appeal Judgement, para. 117; *Simić* Appeal Judgement, para. 85; *Ntagerura et al.* Appeal Judgement, para. 370, fn. 740; *Blaškić* Appeal Judgement, paras 45, 48; *Vasiljević* Appeal Judgement, para. 102; *Čelebići* Appeal Judgement, para. 352; *Tadić* Appeal Judgement, para. 229.
[280] *Blaškić* Appeal Judgment, para. 48.
[281] *Blaškić* Appeal Judgment, para. 48.
[282] *Cf. Ntagerura et al.* Appeal Judgement, para. 321.
[283] *Seromba* Appeal Judgement, para. 11; *Rutaganda* Appeal Judgement, para. 24; *Bagilishema* Appeal Judgement, paras 13-14. *See* also *Strugar* Appeal Judgement, para. 14; *Orić* Appeal Judgement, para. 12; *Halilović* Appeal Judgement, para. 11; *Limaj et al.* Appeal Judgement, para. 13; *Blagojević and Jokić* Appeal Judgement, para. 9; *Brđanin* Appeal Judgement, para. 13.
[284] *Cf. Ntagerura et al.* Appeal Judgement, para. 335. *See* also *infra* para. 154.
[285] *Cf. Ntagerura et al.* Appeal Judgement, para. 335. (Where the Appeals Chamber also held that the Prosecution had not indicated which possibilities were open to Bagambiki to fulfil his duties under the Rwandan domestic law).

(e) The *mens rea* of aiding and abetting by omission

157. Šljivančanin submits that "aiding and abetting requires an intentional act on the part of the [a]ccused, which can only be matched by a culpable omission, a concept that goes beyond the basic elements of aiding and abetting as defined by the Appeals Chamber".[556] He argues that since the omission would have to be "specifically directed to assist, encourage or lend moral support"[557] to the perpetration of the crime, "only the wilful failure to discharge a duty, which implies the culpable intent of the accused, can lead to individual criminal responsibility, pursuant to Article 7(1) of the Statute".[558] In this regard, Šljivančanin submits that "mere knowledge" that the conduct facilitates the commission of the crime is insufficient to establish aiding and abetting by omission[559] and that the applicable *mens rea* standard must include, at a minimum, proof beyond reasonable doubt that he consciously decided not to act, which amounts to consent.[560] He argues that failure on the part of the Trial Chamber to establish that his omission was intentional and deliberate amounts to a finding of strict liability.[561]

158. The Prosecution responds that Šljivančanin attempts to elevate the mental element of aiding and abetting to a kind of special intent, which has already been specifically rejected by the Appeals Chamber.[562] It submits that the correct test is knowledge in the sense of "awareness of a probability" that the crime will be committed and that the acts or omissions will assist or facilitate in the commission of the crime,[563] and that, in any event, the facts as found by the Trial Chamber would fulfil his proposed criteria.[564]

159. The Appeals Chamber considers that Šljivančanin misapprehends the *mens rea* standard applicable to aiding and abetting. The fact that an "omission must be directed to assist, encourage or lend moral support to the perpetration of a crime" forms part of the *actus reus* not the *mens rea* of aiding and abetting.[565] In addition, the Appeals Chamber has confirmed that "specific direction" is

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[556] Šljivančanin Appeal Brief, para. 212.
[557] Šljivančanin Appeal Brief, para. 211, citing *Orić* Appeal Judgement, para. 43. *See* also *Nahimana et al.* Appeal Judgement, para. 482.
[558] Šljivančanin Appeal Brief, para. 214.
[559] Šljivančanin Appeal Brief, para. 245.
[560] *See* Šljivančanin Supplemental Brief in Reply, para. 53. Šljivančanin further contends that the Trial Chamber should have applied the following additional criteria: (i) that he had knowledge of his ability to act; (ii) that he was aware of the essential elements of the crime ultimately committed by the principal; and (iii) that he had knowledge that taking action would obstruct the commission of the crime (*see* Šljivančanin Appeal Brief, para. 247(e)).
[561] Šljivančanin Supplemental Brief in Reply, para. 52.
[562] Prosecution Supplemental Respondent's Brief, para. 13, citing *Blaškić* Appeal Judgement, para. 49. *See* also Prosecution Supplemental Respondent's Brief, paras 12, 14.
[563] Prosecution Supplemental Respondent's Brief, para. 31. *See* also AT. 169, citing *Ndindabahizi* Appeal Judgement, para. 122.
[564] Prosecution Supplemental Respondent's Brief, para. 33. *See* also AT. 172.
[565] *Orić* Appeal Judgement, para. 43.

not an essential ingredient of the *actus reus* of aiding and abetting.[566] It reiterates its finding that the required *mens rea* for aiding and abetting by omission is that: (1) the aider and abettor must know that his omission assists in the commission of the crime of the principal perpetrator; and (2) he must be aware of the essential elements of the crime which was ultimately committed by the principal.[567] While it is not necessary that the aider and abettor know the precise crime that was intended and was in fact committed, if he is aware that one of a number of crimes will probably be committed, and one of those crimes is committed, he has intended to facilitate the commission of that crime, and is guilty as an aider and abetter.[568] The Appeals Chamber further recalls that it has previously rejected an elevated *mens rea* requirement for aiding and abetting, namely, the proposition that the aider and abettor needs to have intended to provide assistance, or as a minimum, accepted that such assistance would be a possible and foreseeable consequence of his conduct.[569] Accordingly, Šljivančanin's arguments are dismissed.

4. Conclusion

160. In light of the foregoing, Šljivančanin's second ground of appeal is dismissed in its entirety.

C. Third Ground of Appeal: Šljivančanin's Legal Duty to Protect the Prisoners of War at Ovčara by Virtue of his Responsibility for the Evacuation of the Vukovar Hospital

161. The Trial Chamber convicted Šljivančanin for aiding and abetting the torture of over 200 prisoners of war held at Ovčara on 20 November 1991.[570] In reaching this conclusion, the Trial Chamber found that Šljivančanin was under a duty to protect the prisoners of war by reason of his responsibility for the evacuation of the Vukovar hospital, and his failure to prevent the commission of crimes against the prisoners of war amounted to a breach of that duty.[571]

162. Šljivančanin argues that the Trial Chamber erred in finding that Mrkšić put him in charge of the evacuation of the Vukovar hospital and thereby entrusted him with a legal duty to protect the prisoners of war at Ovčara.[572] He avers that the Trial Chamber committed the following errors: (1) the Trial Chamber erred in finding that he testified that Mrkšić ordered him to ensure the

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[566] *Blagojević and Jokić* Appeal Judgement, para. 189; *see* also *Blagojević and Jokić* Appeal Judgement para. 188.
[567] *See supra* para. 146.
[568] *Simić* Appeal Judgement, para. 86, citing *Blaškić* Appeal Judgement, para. 50. *See* also *Nahimana et al.* Appeal Judgement, para. 482; *Ndindabahizi* Appeal Judgement, para. 122; *Furundžija* Trial Judgement, para. 246.
[569] *Blaškić* Appeal Judgement, para. 49, citing *Vasiljević* Appeal Judgement, para. 102. *See* also *Blagojević and Jokić* Appeal Judgement, para. 222.
[570] Trial Judgement, paras 674, 689, 715.
[571] Trial Judgement, para. 669. *See* also Trial Judgement, paras 391, 668, 670.
[572] Šljivančanin Notice of Appeal, para. 17; Šljivančanin Appeal Brief, paras 257-259, citing Trial Judgement, para. 400. *See* also AT. 148-150, 200-201.

IX. PARTIALLY DISSENTING OPINION OF JUDGE VAZ

1. I support the Judgement of the Appeals Chamber in respect of the appeals filed by Mile Mrkšić and Veselin Šljivančanin. I regret not to be able to share the position of the majority as regards the second ground of appeal filed by the Prosecution. In my view, for the reasons explained below, the Appeals Chamber could not find beyond reasonable doubt that Šljivančanin aided and abetted the crime of murder and it, therefore, should have left the Trial Chamber's conclusion on acquittal undisturbed. Consequently, I cannot support the revision of the sentence based on the new conviction entered by the Appeals Chamber.[1]

A. *Mens rea*

2. I am not entirely convinced that Šljivančanin possessed the required *mens rea* for aiding and abetting murder by omission.[2] In this regard, I note that in order to enter a conviction under this mode of responsibility, the Trial Chamber must have been satisfied beyond reasonable doubt that Šljivančanin knew that (i) killings of the prisoners of war were likely to take place at Ovčara and that (ii) his failure to take action in this regard would assist the commission of the murders.[3] The Trial Chamber found itself unable to so conclude and thus acquitted Šljivančanin of the crime of murder.[4] To overturn this acquittal, the Appeals Chamber must find that the inference made by the Trial Chamber was unreasonable and that the *only* reasonable inference on the evidence was that Šljivančanin did possess the required knowledge.[5]

3. Chronologically, the Trial Chamber – in full consideration of the circumstantial evidence, including Šlivančanin's knowledge of previous incidents of mistreatment and killing[6] - reasonably concluded that Šljivančanin could not foresee that the killings would occur as long as the prisoners of war remained under the authority of the JNA. These conclusions are confirmed by the Appeal Judgement.[7] The Trial Chamber then found that it was *only after the full execution of the order* to withdraw the JNA troops that the killings became a likely occurrence.[8] However, it was unable to conclude with certainty that Šljivančanin learnt about this order at the time it was given by Mrkšić.[9]

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[1] Appeal Judgement, paras 418-419.
[2] Appeal Judgement, paras 61-63.
[3] *Cf. Orić* Appeal Judgement, para. 43; Appeal Judgement, para. 49.
[4] Trial Judgement, paras 672-674.
[5] *Cf. Stakić* Appeal Judgement, para. 219; *Čelebići* Appeal Judgement, para. 458; *Kvočka* Appeal Judgement, para. 18; *Krnojelac* Trial Judgement, para. 67.
[6] Trial Judgement, paras 375, 663-666, 672, 691. This knowledge, coupled with the JNA's failure to protect the prisoner of war, formed basis for Šljivančanin's conviction for torture (Trial Judgement, paras 663-667, 672, 674, 715).
[7] Appeal Judgement, paras 57-60.
[8] Trial Judgement, para. 672.
[9] Trial Judgement, paras 387-389, 661, 672, 691.

UNITED
NATIONS

	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991	Case No.	IT-95-13/1-T
		Date:	27 September 2007
		Original:	English

IN TRIAL CHAMBER II

Before: **Judge Kevin Parker, Presiding**
Judge Christine Van Den Wyngaert
Judge Krister Thelin

Registrar: **Mr Hans Holthuis**

Judgement of: **27 September 2007**

PROSECUTOR

v.

MILE MRKŠIĆ
MIROSLAV RADIĆ
VESELIN ŠLJIVANČANIN

PUBLIC

JUDGEMENT

The Office of the Prosecutor:

Mr Marks Moore
Mr Philip Weiner
Mr Bill Smith
Mr Vincent Lunny
Ms Meritxell Regue
Mr Alexis Demirdjian

Counsel for the Accused:

Mr Miroslav Vasić and Mr Vladimir Domazet for Mile Mrkšić
Mr Borivoje Borović and Ms Mira Tapušković for Miroslav Radić
Mr Novak Lukić and Mr Momčilo Bulatović for Veselin Šljivančanin

(e) Aiding and abetting

551. "Aiding and abetting" is a form of accomplice liability[1920] which has been defined as the act of rendering practical assistance, encouragement or moral support, which has a substantial effect on the perpetration of a certain crime.[1921] Strictly, "aiding" and "abetting" are not synonymous.[1922] "Aiding" involves the provision of assistance, while "abetting" need merely involve encouragement, or even sympathy, to the commission of a particular act.[1923]

552. With respect to the *actus reus*, a cause-effect relationship between the conduct of the aider or abettor and the commission of the crime, or proof that such conduct was a condition precedent to the commission of the crime need not be proven.[1924] However, it needs to be shown that the assistance provided by the accused had a *substantial* effect on the commission of the crime,[1925] which requires a fact-based inquiry.[1926] Such assistance may occur before, during or after the principal crime has been perpetrated.[1927]

553. Further, an omission may, in the particular circumstances of a case, constitute the *actus reus* of aiding and abetting.[1928] While each case turns on its own facts, mere presence at the scene of a crime will not usually constitute aiding or abetting; however, where the presence bestows legitimacy on, or provides encouragement to, the actual perpetrator, that may be sufficient. For example, the presence of a superior may operate as an encouragement or support, in the relevant sense.[1929] Responsibility for having aided and abetted a crime by omission may arise, regardless of whether the accused's presence at the crime scene provided encouragement to the perpetrators, when the accused was under a duty to prevent the commission of the crime but failed to act, provided his failure to act had a substantial effect on the commission of the crime and he had the requisite *mens rea*. Such a responsibility has been recognised in other trial judgements, although no convictions were entered on this basis.[1930] The jurisprudence has also addressed, although not

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1920 *Tadić* Appeals Judgement, para 229.
1921 *Krstić* Trial Judgement, para 601; *Aleksovski* Appeals Judgement, para 162, citing *Furundžija* Trial Judgement, para 249.
1922 *Kvočka* Trial Judgement, para 254, citing *Akayesu* Trial Judgement, para 484.
1923 *Kvočka* Trial Judgement, para 254, citing *Akayesu* Trial Judgement, para 484.
1924 *Blaškić* Appeals Judgement, para 48, *Limaj* Trial Judgement, para 517.
1925 *Blaškić* Appeals Judgement, para 48, *Furundžija* Trial Judgement, para 249, *Kunarać* Trial Judgement, para 391, *Limaj* Trial Judgement, para 517.
1926 *Blagojević* Appeals Judgement, para 134.
1927 *Brđanin* Trial Judgement, para 271, *Blaškić* Appeals Judgement, para 48, *Krnojelac* Trial Judgement, para 88, *Limaj* Trial Judgement, para 517.
1928 *Blaškić* Appeals Judgement, para 47. *See* also *Krnojelac* Trial Judgement, para 88; *Kunarac* Trial Judgement, para 391.
1929 *Limaj* Trial Judgment, para 517; *Strugar* Trial Judgement, para 349; *Brđanin* Trial Judgement, para 271; *Vasiljević* Trial Judgement, para 70.
1930 *Orić* Trial Judgement, para 283; *Strugar* Trial Judgement, para 349. *See* also *Ntagerura* Appeals Judgement, para 338, where the ICTR Appeals Chamber referred to omission as one of the forms of aiding and abetting, the others being encouragement and tacit approval.

620. In the finding of the Chamber the withdrawal from Ovčara of the only remaining JNA soldiers guarding the prisoners of war had an immediate and direct effect on the commission of the murders that followed. While the JNA soldiers, like other Serb TO and paramilitary forces, had been engaged in a prolonged bitter fight against the Croat forces and had suffered many casualties and hardships, the JNA was, in the main, a disciplined military force with a strong leadership which had an understanding of the legal responsibilities of the JNA towards the prisoners of war.[2083] This was in marked contrast to many members of the Serb TO and paramilitary forces who generally lacked military discipline and strong leadership and who harboured quite intense feelings of extreme animosity toward their enemy, the Croat forces, animosity inflamed by the conflict and recent political and social events, but which also drew on historical, cultural and even religious differences.[2084] The presence of the JNA guards at Ovčara that day had provided some restraint, albeit inconsistent and at times not an effective restraint, against the all too apparent wish of members of the TO and paramilitary forces to have revenge against the Croat prisoners of war.[2085] The withdrawal of the JNA guards removed this one restraint. What followed dramatically demonstrates that the JNA guards had been effective, and the gravity and intensity of the hatred and the desire for revenge was then able to be unleashed without restraint.

621. In the circumstances, by his order for the withdrawal of the remaining JNA soldiers guarding the prisoners of war, Mile Mrkšić in truth rendered substantial practical assistance to the TO and paramilitary forces at Ovčara who were determined to have revenge on the prisoners. By withdrawing the JNA guards, he at once enabled the TO and paramilitary forces to have direct and unrestrained physical access to the prisoners of war. This substantially assisted them to commit the murders that followed, in that it had an immediate effect on their ability to perpetrate the murders. Further, by the removal of the restraint it encouraged the release of their emotions. In the findings of the Chamber, the order of Mile Mrkšić need not share the *mens rea* of the actual perpetrators which is required to commit murder. Elsewhere in this Judgement, the Chamber has considered the state of knowledge of Mile Mrkšić on 20 November 1991, and in particular by the time he gave the order for the withdrawal of the remaining JNA soldiers guarding the prisoners of war.[2086] By virtue of its findings about his state of knowledge, the Chamber is satisfied that Mile Mrkšić was indeed aware that the TO and paramilitary forces at Ovčara presented a grave threat to the prisoners of war,

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2081 Prosecution Final Brief, paras 440-443.
2082 Prosecution Final Brief, paras 442-443.
2083 *See* for example *infra*, para 668.
2084 Significantly, the Chamber recalls that Colonel Pavković, during the meeting held on 19 Novem presence of Mile Mrkšić and the ECMM monitors, had said that if the prisoners of war leave th irregulars/local citizens would attack the convoy. This is indicative, in the Chamber's finding, th was well aware of the great threat that the prisoners of war were subjected to and of the animosit Serb volunteers had for the prisoners of war. (*See supra*, para 139)
2085 *See supra*, paras 255; 273.

a threat he anticipated would manifest itself in considerable and life threatening violence and indeed death. The probability, indeed the considerable likelihood, that prisoners of war would be gravely injured and murdered was, in the established circumstances, one which the Chamber finds to have been obvious to Mile Mrkšić and to anyone with his knowledge of the attitude of the TO and paramilitary forces to the Croat forces. He was aware that some prisoners had indeed been executed by TO and paramilitary forces the previous day and of the difficulties experienced by JNA soldiers on 20 November 1991 by virtue of the efforts of TO and paramilitary forces to gain access to the prisoners of war.[2087] In the Chamber's finding, when he ordered the withdrawal of the JNA guards, he well knew that this left the TO and paramilitary with unrestrained access to the prisoners and that by enabling this he was assisting in the commission of the offences of violence and murder that he was aware would indeed probably follow. These matters, in the view of the Chamber, establish the *mens rea* on the part of Mile Mrkšić necessary to constitute aiding and abetting the commission of the murders for the purposes of Article 7(1) of the Statute.

622. The Chamber therefore finds pursuant to Article 7(1) of the Statute that Mile Mrkšić aided and abetted the commission of the crime of murder as charged in Count 4 of the Indictment.

623. Mile Mrkšić is also charged with aiding and abetting the offences of torture and cruel treatment in Counts 7 and 8. The events relevant to these charges occurred at Ovčara on the afternoon of 20 November 1991 but before the order of Mile Mrkšić to withdraw the remaining JNA soldiers guarding the prisoners of war. Different considerations are relevant, therefore, to aiding and abetting in the context of these two offences. As has been indicated, it is the finding of the Chamber that Mile Mrkšić had ordered the prisoners of war to be taken to Ovčara and had ordered that the JNA provide security at Ovčara of the prisoners of war.[2088] These orders were given only shortly before the prisoners were taken to Ovčara.[2089] There was no time for Veselin Šljivančanin or other staff officers to plan effectively to deal with some over 200 prisoners of war, most of them wounded or otherwise hospital patients. The only facility at Ovčara to hold the prisoners of war was a large hangar normally used for farming activities. The military police of the 80 mtbr sent to Ovčara to guard the prisoners, were unprepared for this duty, they had no clear instructions and were without the leadership of both the commander of the 80 mtbr and the military police commander.[2090]

2086 *See supra*, paras 174-175; 302; 309; 313; 315.
2087 *See supra*, paras 174-175; 302; 309; 313; 315.
2088 *See supra*, para 305.
2089 *See supra*, para 306.
2090 *See supra*, para 306.

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International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Case No. IT-02-60/1-A

Date: 8 March 2006

Original: English

IN THE APPEALS CHAMBER

Before: **Judge Fausto Pocar, Presiding**
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Andrésia Vaz
Judge Theodor Meron

Registrar: **Mr. Hans Holthuis**

Judgement of: **8 March 2006**

PROSECUTOR

v.

MOMIR NIKOLIĆ

JUDGEMENT ON SENTENCING APPEAL

Counsel for the Prosecution:

Mr. Peter M. Kremer, QC
Mr. Peter McCloskey
Ms. Marie-Ursula Kind

Counsel for the Appellant:

Mr. Rock Tansey
Mr. R J. Livingston

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Prosecution; the Trial Chamber in that case nevertheless attributed "significant weight" to Miroslav Deronjić's co-operation with the Prosecution.[255] Moreover, the Appellant argues that the Sentencing Judgement failed to mention that it was not the Prosecution that found out that he had lied but that he himself went back and brought this false confession to the attention of the Prosecution.[256]

105. The Prosecution agrees that the Appellant's admission to having falsely confessed to other crimes does reduce any negative impact on the assessment of his co-operation. It further acknowledges that his subsequent co-operation was substantial.[257]

106. The Appeals Chamber is of the view that sentencing decisions are discretionary and turn on the particular circumstances of each case. Thus, the mere fact that the *Deronjić* Trial Chamber gave significant weight to the accused's co-operation notwithstanding certain false statements does not illustrate that the Trial Chamber in this case abused its discretion in reaching a different result.

107. The Appeals Chamber notes that it is undisputed that the Appellant had told lies to the Prosecution when confessing to crimes he had not committed. However, the Appeals Chamber considers that, in the specific circumstances of this case, any negative impact or confusion that such false confessions may have caused on the value of his co-operation had been cured. First, it was on the Appellant's initiative that he went back to the Prosecution, apologised, and corrected his statement.[258] Second, as acknowledged by the Prosecution, the Appellant showed his full willingness to co-operate with the Prosecution by openly admitting to having rendered false confessions. The Trial Chamber did not take account of these actions of the Appellant in assessing the value of his co-operation. For these reasons, the Appeals Chamber finds that the Trial Chamber committed a discernible error in this regard.

3. The lack of detail in certain areas of the Appellant's testimony

108. In relation to the Trial Chamber's finding regarding the lack of detail in his testimony in the *Blagojević* case, the Appellant submits that "it is unclear what the Trial Chamber had in mind because it gives no examples"[259] and claims that the reasoned opinion requirement was violated.[260]

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[255] *Ibid.*, referring to *Deronjić* Sentencing Judgement, paras 252, 260.
[256] AT. 54.
[257] Respondent's Brief, para. 132. The Prosecution notes that this is only valid with the exception of aspects noted in the Prosecution's Supplemental Submissions concerning credibility, Respondent's Brief, fn. 115.
[258] *See* argument of Appellant's counsel during the Appeal Hearing in this regard, AT. 54: "But what the [Sentencing Judgement] fails to state is that it was Mr. Nikolić himself, who shortly having made the statements told the Prosecution – it was not the Prosecution finding out and in that way he then changed. [...] He brought it to the attention of the Prosecution and not the other way around." The Prosecution agreed to counsel's statement of events, AT. 61: "And in respect of the submissions by [counsel of Defense] on Mr. Nikolić's behalf, there is nothing he has said which I take issue with."
[259] Appellant's Brief, para. 44.

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	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia since 1991	Case No.	IT-02-60/2-S
		Date:	10 December 2003
		Original:	English

IN TRIAL CHAMBER I, SECTION A

Before: **Judge Liu Daqun, Presiding**
Judge Volodymyr Vassylenko
Judge Carmen Maria Argibay

Registrar: **Mr. Hans Holthuis**

Judgement of: **10 December 2003**

PROSECUTOR

v.

DRAGAN OBRENOVIĆ

SENTENCING JUDGEMENT

The Office of the Prosecutor:

Mr. Peter McCloskey
Mr. Stefan Waespi
Ms. Antoinette Issa
Ms. Anne Davis

Counsel for the Accused:

Mr. David Wilson
Mr. Dušan Slijepčević

authority and form of participation.[175] The Defence argues that all the other persons charged for the crimes at Srebrenica were in positions above Dragan Obrenović. Although he accepts responsibility for his role in the offence as acting commander of portions of the Zvornik Brigade and does not dispute that his conduct makes him legally responsible for these acts, the actual level of authority and position of Dragan Obrenović should be taken into account in the overall hierarchy as well as his relatively limited participation in the plan.[176] The Defence draw a comparison with the case of Biljana Plavšić, who though occupying a superior position, was not involved in the first rank of leadership and had a lesser role in the execution of the crimes. The Defence maintains that Dragan Obrenović was only a 32 year old army major, temporarily in command of part of a brigade and was not in the first rank of leadership.[177] The Defence submits that despite higher numbers of victims, broader range of crimes and a higher position than the present case, Biljana Plavšić was sentenced to eleven years.[178]

b. Vulnerability of victims and depravity of the crimes

97. The Prosecution submits that depravity of the crimes and vulnerability of the victims are factors that the Trial Chamber should find to be aggravating factors.[179] The victims were helpless women, children and elderly, as well as captured military age men, who were in a vulnerable position and were subjected to extreme depravity.[180]

98. The Defence submits that while factors such as humiliation of victims, sadistic behaviour and depravity have been considered separately as aggravating in certain instances, the Trial Chamber in the *Plavšić* case correctly held that these are subsumed in the overall gravity of the offence.[181] Furthermore, in the present case these factors are less aggravating in number and scope than in the *Plavšić* case.[182]

(ii) Findings

99. The Trial Chamber notes that the position of leadership of an accused can be considered as aggravating factor.[183] The actual authority is of consequence, whereby not only high-ranking, but

[175] Obrenović Sentencing Brief, para. 35.
[176] Obrenović Sentencing Brief, paras 36-37.
[177] Obrenović Sentencing Brief, paras 37-38.
[178] Obrenović Sentencing Brief, para. 37.
[179] Prosecution Sentencing Brief, paras. 22-23 referring to the *Čelebići* Trial Judgement, paras 1262, 1264 and 1268 and *Aleksovski* Trial Judgement, para. 227.
[180] Prosecution Sentencing Brief, paras. 22-23.
[181] Obrenović Sentencing Brief, paras. 33-34 citing *Plavšić* Sentencing Judgement, para.58.
[182] Obrenović Sentencing Brief, para. 34.
[183] *Prosecutor v. Mladen Naletilić et al.*, Case No. IT-98-34-T, 31 March 2003, para.751; *Kordić* Trial Judgement, para.853.

also a middle-ranking command position can aggravate the sentence.[184] The Trial Chamber finds that Dragan Obrenović was in a position of authority as Acting Commander and Deputy Commander of the Zvornik Brigade. The Trial Chamber recalls that Dragan Obrenović's criminal liability arises in large measure from this responsibility as a commander pursuant to Article 7(3) of the Statute. The Trial Chamber finds it would be inappropriate to use the same conduct to both establish liability and to establish an aggravating circumstance in this case.

100. The Trial Chamber recalls, however, the purpose behind the doctrine of command responsibility: to ensure compliance with the laws and customs of war and international humanitarian law generally.[185] When a commander fails to ensure compliance with the principles of international humanitarian law such that he fails to prevent or punish his subordinates for the commission of crimes that he knew or had reason to know about, he will be held liable pursuant to Article 7(3). When a commander orders his subordinates to commit a crime within the jurisdiction of the Tribunal, he will be held liable pursuant to Article 7(1) of the Statute. When commanders, through their own actions or inactions, fail in the duty, which stems from their position, training, and leadership skills, to set an example for their troops that would promote the principles underlying the laws and customs of war and thereby – either tacitly or implicitly – promote or encourage the commission of crimes, this may be seen as an aggravating circumstance. The Trial Chamber finds that such is not the case with regards to Dragan Obrenović.

101. The Trial Chamber finds that the depravity of the crimes is subsumed in the overall gravity of the offence, and has already been addressed above. Therefore, the Trial Chamber does not consider this separately as an aggravating factor. The Trial Chamber finds that a comparison with crimes committed by others is not particularly helpful in this case.

102. The Trial Chamber takes particular note of the vulnerability of the victims. They were all in a position of helplessness and were subject to cruel treatment at the hands of their captors. In this situation, the Trial Chamber finds this to be an aggravating factor in the commission of the crimes.

103. The Trial Chamber finds that the following aggravating circumstances have been proven beyond reasonable doubt: the vulnerability of the victims.

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[184] *Kordić* Trial Judgement, para.855.
[185] *See*, *Prosecutor v. Hadžihasanović et. al.*, Case No. IT-01-47-PT, Decision on Joint Challenge to Jurisdiction, para. 66.

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International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Case No.: IT-03-68-A

Date: 3 July 2008

Original: English

IN THE APPEALS CHAMBER

Before: **Judge Wolfgang Schomburg, Presiding**
Judge Mohamed Shahabuddeen
Judge Liu Daqun
Judge Andrésia Vaz
Judge Theodor Meron

Registrar: **Hans Holthuis**

Judgement of: **3 July 2008**

PROSECUTOR

v.

NASER ORIĆ

PUBLIC

JUDGEMENT

The Office of the Prosecutor:

Ms. Michelle Jarvis
Ms. Christine Dahl
Mr. Paul Rogers
Ms. Laurel Baig
Ms. Nicole Lewis
Ms. Najwa Nabti

Counsel for Naser Orić:

Ms. Vasvija Vidović
Mr. John Jones

IX. SEPARATE AND PARTIALLY DISSENTING OPINION OF JUDGE SCHOMBURG

A. Introduction

1. I support the Judgement of the Appeals Chamber, in particular its Disposition. However, I feel compelled to write separately since the Appeals Chamber fails to discuss the validity of the *ratio decidendi* of its decision in *Prosecutor v. Enver Hadžihasanović et al.*,[1] which is challenged by the Prosecution in this appeal. In particular, I dissent from the majority's decision not to address this issue[2] – although it was squarely before the Appeals Chamber – because it conveys the wrong impression that the Appeals Chamber tacitly endorses its decision in *Hadžihasanović*.

2. I note that the question of whether a superior is indeed under an obligation to punish crimes committed by his subordinates before he assumed command is not relevant in the instant case as it does not have an impact on the validity of the Trial Judgement.[3] However, in accordance with its usual systematic approach, the Appeals Chamber was required first to set out the applicable law before subsuming the underlying facts. Indeed, there are exceptional circumstances warranting that this legal issue of great significance to the jurisprudence of the International Tribunal is properly addressed.[4] Furthermore, the *Hadžihasanović* Appeal Decision on Jurisdiction's arbitrary limitation of the concept of superior responsibility to crimes committed by subordinates after the superior assumed control does not reflect customary international law. Consequently, there are cogent reasons for the Appeals Chamber to depart[5] as soon as possible from a jurisprudence that is legally not justifiable and goes directly against the mandate of the International Tribunal and the spirit of its Statute, *i.e.* to implement effectively accountability for crimes forming part of international customary law.

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[1] *Prosecutor v. Enver Hadžihasanović et al.*, Case No. IT-01-47-AR72, Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility, 16 July 2003 ("*Hadžihasanović* Appeal Decision on Jurisdiction").
[2] *See* Judgement, para. 167.
[3] *See* Judgement, paras. 7 and 167 and provided that one cannot regard, going even one step further, the knowledge of a crime committed by a person holding subordinate rank in a former hierarchy (but not necessarily under the present superior) as the decisive factor triggering the duty to report, under the Statute of this International Tribunal. *See* further *infra* note 60.
[4] *See* Judgement, para. 7.
[5] *See Aleksovski* Appeal Judgement, paras. 107-109.

"subordinates [who] have committed a breach" must be understood in the context of the purpose of Additional Protocol I and international humanitarian law in general. As was discussed above, international humanitarian law strives for the greatest possible protection of those who do not or are no longer taking part in hostilities. Indeed, the Preamble to Additional Protocol I confirms that its object is to "reaffirm and develop the provisions protecting the victims of armed conflicts and to supplement measures intended to reinforce their application." A contextual reading of Articles 86 and 87 of Additional Protocol I thus inevitably leads to the conclusion that there is indeed a duty of superiors to initiate the prosecution of offences allegedly committed by their subordinates before the superior's assumption of command. This obligation is also aimed at discouraging the commission of further crimes.[49]

20. In this context, I regard neither the Draft Code of Crimes against the Peace and Security of Mankind appended to the above-mentioned Report of the International Law Commission nor the Statute of the ICC as helpful. None of them can be perceived as reflecting customary international law, since the aforementioned Draft Code was never implemented[50] and the respective article of the ICC Statute was the subject of difficult negotiations, which resulted in "delicate compromises".[51] Moreover, the ICC Statute is specific to the jurisdiction of the ICC and "was not intended to codify existing customary rules."[52] I would also refer to Article 10 of the ICC Statute which states that "[n]othing in this Part [Jurisdiction, Admissibility and Applicable Law] shall be interpreted as limiting or prejudicing in any way existing or developing rules of international law for purposes other than this Statute."[53] Finally, I cannot but stress that the Appeals Chamber is seized of a case dating back to 1992, while the Statute of the ICC was negotiated in 1998.

21. Furthermore, the reliance of the Appeals Chamber in *Hadžihasanović* on the words "in the circumstances of the time" and "was committing" contained in Article 86(2) of Additional Protocol I and similar language in the ICC Statute is misguided as it is in contradiction with the

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[49] *See Hadžihasanović* Appeal Decision on Jurisdiction, Partial Dissenting Opinion of Judge Shahabuddeen, para. 25, Separate and Partially Dissenting Opinion of Judge David Hunt, para. 21. *See also* ANTONIO CASSESE, INTERNATIONAL CRIMINAL LAW, p. 246-247 (Oxford, 2nd ed. 2008), and BORIS BURGHARDT, DIE VORGESETZTENVERANTWORTLICHKEIT IM VÖLKERRECHTLICHEN STRAFSYSTEM, p. 222 et seq. (Berlin, 2008), both supporting the view of the Dissenting Opinions.

[50] *See* for further discussion Partially Dissenting Opinion and Declaration of Judge Liu, appended to this Judgement, paras. 22-24.

[51] *See* U.N. Doc. A/Conf.183/C.1/WGGP/L.4/Add.1, 29 June 1998, p. 3. *See also Hadžihasanović* Appeal Decision on Jurisdiction, Separate and Partially Dissenting Opinion of Judge David Hunt, paras. 26 and 31.

[52] CASSESE, *supra* note 49, p. 172.

[53] While Article 28 is contained in a different part of the ICC Statute (General Principles of International Criminal Law) it is nevertheless "directly related to [Part II] of the Statute" and should therefore be distinguished. Mohamed

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	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia since 1991	Case No. Date: Original:	IT-03-68-T 30 June 2006 English

IN TRIAL CHAMBER II

Before: **Judge Carmel Agius, Presiding**
Judge Hans Henrik Brydensholt
Judge Albin Eser

Registrar: **Mr. Hans Holthuis**

Judgement of: **30 June 2006**

PROSECUTOR

v.

NASER ORIĆ

JUDGEMENT

The Office of the Prosecutor:

Mr. Jan Wubben
Ms. Patricia Viseur Sellers
Mr. Gramsci Di Fazio
Ms. JoAnne Richardson
Mr. José Doria

Counsel for the Accused:

Ms. Vasvija Vidović
Mr. John Jones

contribution, according to its supporting character, must further, or at least facilitate, the commission of the crime.[806]

285. Whereas the Prosecution suggests the same position,[807] the Defence requires the effect of the contribution not only to be substantial but also to be 'direct'.[808] While this position seems supported by the terms used in the trial judgements in the *Tadić* case[809] and later in the *Strugar* case,[810] the Trial Chamber in the *Furundžija* case found such a 'direct' requirement misleading if it was to express more than the necessary 'proximity' (in terms of a link) between the assistance and the principal act.[811] Since the aiding and abetting contribution may be remote both in time and place from when and where the principal crime will be committed,[812] there is no reason why it should be treated differently from instigation which, as previously acknowledged, can be indirect.[813] Accordingly, aiding and abetting should not be limited to direct contributions, as long as the effect of facilitating the crime is the same, irrespective of whether produced directly or by way of indirect means or intermediaries, provided, of course, that the final result is covered by the participant's corresponding intent.[814]

(c) *Mens Rea*

286. With regard to the varying descriptions of *mens rea* of the aider and abettor,[815] some clarification is needed. While it is undisputed that aiding and abetting requires intent,[816] the structure and contents of intent is described in different ways. Whereas a long line of judgements appear to identify intent with the knowledge/awareness of the aider and abettor that he is

[806] *See* para. 282 *supra*.
[807] Prosecution Pre-Trial Brief, para. 95.
[808] Defence Pre-Trial Brief, Annex I, Element 1.3.2.1.
[809] *Tadić* Trial Judgement, para. 692.
[810] *Strugar* Trial Judgement, paras 349, 355.
[811] *Furundžija* Trial Judgement, paras 232, 234.
[812] *See* para. fn. 789 *supra*. This position is, at least with regard to the geographical distance, also expressed by the Trial Chamber in the *Strugar* case: *Strugar* Trial Judgement, para. 349. If the Trial Chamber in this case nevertheless seems to draw its requirement of a 'direct and substantial effect' from the Appeals Chamber's language in the *Tadić* case which stated that the "aider and abettor carries out acts *specifically directed* to assist ?...ğ the perpetration of a certain specific crime", the Appeals Chamber in the *Tadić* case is obviously merely indicating the necessary 'direction' to the principal crime: *see Strugar* Trial Judgement, para. 349, fn. 1042, referring to *Vasiljević* Appeal Judgement, para. 102 and *Blaškić* Appeal Judgement, para. 45; *see also Tadić* Appeal Judgement, para. 229. However, the Appeals Chamber in the *Vasiljević* case does not speak of "direct and substantial effect" and the Appeals Chamber in the *Blaškić* case even explicitly approves the standard set out in the *Furundžija* Trial Judgement, paras 232, 234: *see Vasiljević* Appeal Judgement, para. 102; *Blaškić* Appeal Judgement, paras 45, 46.
[813] *See* paras 269, 273 *supra*.
[814] *See* paras 286-288 *infra*.
[815] *See* step (iii), para. 269 *supra*.
[816] *Tadić* Trial Judgement, para. 689.

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	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991	Case No.	IT-04-81-T
		Date:	6 September 2011
		Original:	English

IN TRIAL CHAMBER I

Before: **Judge Bakone Justice Moloto, Presiding**
Judge Pedro David
Judge Michèle Picard

Registrar: **Mr. John Hocking**

PROSECUTOR

v.

MOMČILO PERIŠIĆ

JUDGEMENT

PUBLIC WITH CONFIDENTIAL ANNEX C

The Office of the Prosecutor:

Mark Harmon
Daniel Saxon

Counsel for the Accused:

Novak Lukić
Gregor Guy-Smith

dissolution of the SFRY had started by 25 June 1991,[47] and the conflict broke out in BiH in 1992.[48] In June 1992, the VRS was still in the nascent stages of its formation and the evidence suggests that paramilitary groups were responsible for much of the violence taking place at that time.[49] Perišić made no reference to the VRS in this statement thus, the exodus he referred to cannot necessarily be attributable to the actions of the VRS. This statement therefore does not establish as the only reasonable conclusion that Perišić became aware of the VRS's propensity to commit crimes at that time.

49. On a more general note, both of these statements involve knowledge that the Majority purports Perišić acquired prior to the Indictment period. Even accepting the Majority's interpretation of these statements – which I do not – it is important to recognise that situations during a war can change dramatically over time. What Perišić knew or thought he knew about the activities and propensities of the VRS during the initial break-up of the SFRY cannot be equated with his understanding of circumstances during the later stages of the war.

(b) Evidence Following Perišić's Appointment as Chief of the VJ General Staff

50. I respectfully dissent from the Majority's conclusion that Perišić was aware from the early stages of his appointment as Chief of the VJ General Staff of the VRS's discriminatory intent and criminal conduct in BiH.[50]

(i) Letter from the VRS

51. The congratulatory letter sent from the VRS Krajina Corps Command to Perišić on 26 August 1993 regarding his appointment as Chief of the VJ General Staff – reflecting a desire to unify the VRS and VJ to create a unified Serbian state – did not provide Perišić with knowledge of any sort of discriminatory intent or criminal conduct of the VRS.[51] The letter stated, in relevant part:

> We wish you to settle at your new duty as soon as possible, to choose your associates, transform the army where needed, removing the weaknesses of the old system and the former JNA, creating

46 Ex. P803, Transcript of Interview with Perišić, 8 December 2003, p. 6.
47 Ex. P350, Report by Robert Donia on the Origins of RS, 30 July 2002, p. 16.
48 Ex. P375, Expert Report of Patrick Treanor Entitled: Belgrade Leadership and Serbs in Croatia and Bosnia, 1 September 2008, p. 16; Ex. P350, Report by Robert Donia on the Origins of RS, 30 July 2002, pp 30-32.
49 Ex. P208, UNSC Resolution 819, 16 April 1993, p. 1; Ex. P212, UNSC Resolution 824, 6 May 1993, p. 1; Ex. P2439, Report of the Special Rapporteur of the Commission on Human Rights, Tadeusz Mazowiecki, on the Situation of Human Rights in the Territory of the Former Yugoslavia, 28 August 1992, p. 4; Ex. P2454, UNSC Resolution 787, 16 November 1992, p. 3.
50 *See supra* para. 1486.
51 *See* Ex. P1801, Letter from 1st Krajina Corps to Perišić, 26 August 1993.

XII. DISSENTING OPINION OF JUDGE MOLOTO ON COUNTS 1 TO 4 AND 9 TO 12

1. I respectfully dissent from the Majority's finding as to Momčilo Perišić's individual criminal responsibility pursuant to Article 7(1) of the Statute in relation to Counts 1 to 4 and Counts 9 to 12 of the Indictment.

A. Introductory Remarks

2. The Majority's conclusion that the objective element of aiding and abetting has been met in this case is premised on two findings: (1) that the VRS heavily depended on the VJ for logistical and personnel support; and (2) that the crimes were inextricably linked with the strategy of the Bosnian Serb leadership.

1. VRS Dependence on VJ Logistical and Personnel Support

3. In my view, providing assistance to the VRS to wage war cannot and should not be equated with aiding and abetting the crimes committed during such war. The provision of assistance by Perišić to the VRS is too remote from the crimes committed during the war to qualify as aiding and abetting such crimes. To conclude otherwise, as the Majority has done, is to criminalise the waging of war, which is not a crime according to the Statute of the Tribunal. In addition, it raises the question: where is the cut-off line? For instance, would a manufacturer of weapons who supplies an army with weapons which are then used to commit crimes during a war also be criminally responsible? In this respect, I note that it is immaterial whether the arms are provided for cash or free of charge. It is noteworthy that, notwithstanding numerous opportunities to do so, no superior has been charged before the Tribunal with aiding and abetting the crimes of his soldiers merely for the reason that he supplied them with arms, sent them to war and they committed crimes. Unlike this example, Perišić was not supplying his soldiers, but soldiers of another army, thus placing him in a more remote position in relation to the crimes. Aiding and abetting has always been charged where the conduct of the accused is proximate to the crime committed by the principal perpetrator. Therefore, if a superior who supplies his soldiers is not charged, Perišić, who supplied a different army, should not be charged.

4. While there is no doubt in my mind that the VRS was, to a large degree, dependent upon the VJ to function as an army, I respectfully submit that it is inappropriate to infer *ipso facto* on the notion of dependence that Perišić's assistance had a substantial effect on the commission of crimes. It is noteworthy that the trial record established that the dependence of the VRS on the VJ was not absolute.

pursuant to Articles 5 and 3 of the Statute respectively.[254] Common Article 3(1) (a) of the Geneva Conventions provides the basis for the inclusion of murder under Article 3 of the Statute.[255]

H. Individual Criminal Responsibility

1. Responsibility Under Article 7(1) of the Statute – Aiding and Abetting

124. The Prosecution charges Momčilo Perišić with aiding and abetting the planning, preparation or execution of the crimes alleged in Counts 1 to 4 and 9 to 13 of the Indictment pursuant to Article 7(1).[256]

125. Article 7(1) of the Statute provides:

> A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 5 of the present Statute, shall be individually responsible for the crime.

(a) Aiding and Abetting

(i) *Actus Reus*

126. "Aiding and abetting" consists of acts or omissions directed at providing practical assistance, encouragement or moral support to the perpetration of the crime, which have a substantial effect on the perpetration of the crime.[257] The Appeals Chamber expressly stated that "specific direction" is not a requisite element of the *actus reus* of aiding and abetting.[258] There is no requirement of a cause-effect relationship between the conduct of the aider and abettor and the commission of the crime or that such conduct served as a condition precedent to the commission of

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254 Indictment, pp 14, 17, 21.

255 *Čelebići* Appeal Judgement, paras 136, 419-420; *Tadić* October 1995 Appeal Jurisdiction Decision, paras 87, 89; *Orić* Trial Judgement, para. 344; *Delić* Trial Judgement, para. 43; *Krnojelac* Trial Judgement, para. 52. Common Article 3: "[T]he following acts are and shall remain prohibited at any time and in any place whatsoever [...]: (a) violence to life and person, *in particular murder of all kinds*, mutilation, *cruel treatment* and torture; [...]" (emphasis added).

256 Indictment, pp 14, 21.

257 *Mrkšić and Šljivančanin* Appeal Judgement, para. 81; *Karera* Appeal Judgement, para. 321; *Blagojević and Jokić* Appeal Judgement, para. 127; *Blaškić* Appeal Judgement, para. 45; *Simić* Appeal Judgement, para. 85. *See also Orić* Appeal Judgement, para. 43. For a thorough analysis of the *actus reus* of aiding and abetting, *see Furundžija* Trial Judgement, paras 192-235.

258 *Mrkšić and Šljivančanin* Appeal Judgement, para. 159. The Appeals Chamber in *Blagojević and Jokić* held that "specific direction" has not always been included as element of the *actus reus* of aiding and abetting and that this may be explained that "such a finding will often be implicit in the finding that the accused has provided practical assistance to the principal perpetrator which had a substantial effect on the commission of the crime" considered that "to the extent that specific direction forms an implicit part of the *actus reus* of aiding and abetting, where the accused knowingly participated in the commission of an offence and his or her participation substantially affected the commission of that offence, the fact that his or her participation amounted to no more than his or her 'routine duties' will not exculpate the accused", *Blagojević and Jokić* Appeal Judgement, paras 182, 185-189.

the crime.[259] The *actus reus* of aiding and abetting a crime may occur before, during, or after the principal crime has been committed[260] and at a location which is removed from that where the principal crime is committed.[261]

127. The aider and abettor is always an accessory to the crime perpetrated by another person, the principal.[262] For an accused to be liable for aiding and abetting, the underlying crime must ultimately be committed by the principal perpetrator. It is however not necessary that the latter be identified or tried, even in cases of crimes requiring specific intent.[263] It is also not necessary that the principal perpetrator be aware of the aider and abettor's contribution to the crime.[264]

128. The determination of whether conduct substantially assists the commission of a crime requires a fact-based inquiry.[265] The Appeals Chamber has determined that the *actus reus* of aiding and abetting may be satisfied by a commander permitting the use of resources under his or her control, including personnel, to facilitate the perpetration of a crime.[266] Furthermore, the fact that the aider and abettor's conduct amounted to no more than his "routine duties" does not exculpate him, if such conduct substantially contributed to the commission of the crime.[267]

(ii) *Mens Rea*

129. The requisite mental element of aiding and abetting is knowledge that the acts performed assist the commission of the specific crime of the principal perpetrator.[268] The aider and abettor must be aware of the "essential elements" of the crime committed by the principal perpetrator, including the state of mind of the principal perpetrator.[269] It is not required, however, that the aider and abettor *share* the *mens rea* required for such crime.[270]

130. As consistently confirmed by the Appeals Chamber:

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259 *Mrkšić and Šljivančanin* Appeal Judgement, para. 81; *Blagojević and Jokić* Appeal Judgement, paras 127, 134; *Simić* Appeal Judgement, para. 85; *Blaškić* Appeal Judgement, para. 48. *See also Nahimana et al.* Appeal Judgement, para. 482.

260 *Mrkšić and Šljivančanin* Appeal Judgement, para. 81; *Blagojević and Jokić* Appeal Judgement, para. 127; *Simić* Appeal Judgement, para. 85; *Blaškić* Appeal Judgement, para. 48.

261 *Mrkšić and Šljivančanin* Appeal Judgement, para. 81; *Blaškić* Appeal Judgement, para. 48.

262 *Tadić* Appeal Judgement, para. 229.

263 *Milutinović et al.* Trial Judgement, para. 92.

264 *Tadić* Appeal Judgement, para. 229; *Milutinović et al.* Trial Judgement, para. 94.

265 *Blagojević and Jokić* Appeal Judgement, para. 134.

266 *Blagojević and Jokić* Appeal Judgement, para. 127. *Krstić* Appeal Judgement, paras 137, 138, 144.

267 *Blagojević and Jokić* Appeal Judgement, para. 189.

268 *Seromba* Appeal Judgement, para. 56; *Blagojević and Jokić* Appeal Judgement, para. 127; *Ntagerura et al.* Appeal Judgement, para. 370; *Simić* Appeal Judgement, para. 86; *Blaškić* Appeal Judgement, paras 45-46; *Vasiljević* Appeal Judgement, para. 102.

269 *Blagojević and Jokić* Appeal Judgement, para. 221. *See also Orić* Appeal Judgement, para. 43. It is not required that the accused knew the precise crime that was intended and committed by the principal, *see Blaškić* Appeal Judgement, para. 50.

270 *Blagojević and Jokić* Appeal Judgement, para. 221 (emphasis added).

the operation was not successful,[4551] the Majority finds that Perišić's actions show that he intended to and in fact did provide assistance to Mladić and the VRS war-effort in the Sarajevo campaign, at a time when he already knew of the VRS criminal intent in the implementation of its war strategy.

7. Conclusion

1621. The Majority finds that Perišić repeatedly exercised his authority to assist the VRS in waging a war that encompassed systematic criminal actions against Bosnian Muslim civilians as a military strategy and objective. Perišić's actions substantially facilitated the commission of these crimes because the VRS heavily depended on the VJ's support to function as an army and conduct its operations, including besieging Sarajevo and taking over Srebrenica. The Majority is also satisfied that all of Perišić's actions described above were voluntary.

1622. As found earlier, Perišić urged the FRY SDC to continue its policy of assisting the VRS. He notably oversaw the provision of wide-ranging logistical and technical assistance to the VRS. Without the regular supply of considerable quantities of ammunition and other weaponry, as well as fuel, technical expertise, repair services and personnel training, the VRS would have been hampered in conducting its operations in Sarajevo and Srebrenica.

1623. In addition, the Majority found that the military personnel that Perišić provided for and sustained through the 30th PC included the officers holding positions of command and authority in the VRS Main Staff, as well as well-trained commanding officers of the lower units. The payment of salaries to the VRS's top officers, including Mladić, Dragomir Milošević, Galić, Popović, Gvero, Tolimir, and other principal perpetrators of the crimes charged in Srebrenica and Sarajevo was instrumental in helping the VRS plan and carry out its operations in Sarajevo and Srebrenica. By creating the PCs – a mechanism through which he ensured that these military personnel continued receiving their salaries and enjoying all their benefits in the VJ – Perišić allowed them to carry out their operations in the VRS with limited concern for their basic material needs and those of their families. Perišić sustained the very life line of the VRS and created the conditions for it to implement a war strategy that encompassed the commission of crimes against civilians.

1624. The Majority recognises that the evidence does not establish that the specific weapons used in committing the charged crimes stemmed from the logistical assistance process overseen by Perišić. However, the Majority recalls that the acts of the aider and abettor need not have been "specifically directed" to assist the crimes.[4552] The element of substantial assistance for aiding and

4551 *See supra* paras 1329-1330.

4552 *See supra* paras 126. *See also Mrkšić and Šljivančanin* Appeal Judgement, para. 159; *Blagojević and Jokić* Appeal Judgement, paras 192, 195.

abetting does not require that an accused provided the specific weapon used by the perpetrator, as the element may be established by the numerous other forms of practical assistance described above, which substantially facilitated the perpetrators' crimes. Moreover, any suggestion that assisting the VRS and advising the SDC was part of Perišić's "routine duties" could not be construed as exculpatory because the evidence establishes that this conduct substantially contributed to the commission of the crimes.[4553] By the same token, the fact that other FRY officials, such as members of the SDC or the MOD, also played a role in assisting the VRS does not negate Perišić's actions.

1625. The Majority has considered the Defence's *ex post facto* argument on the application of aiding and abetting under the facts of the present case,[4554] but finds that only a fraction of the assistance provided by Perišić fits that description. The Majority is satisfied that the overwhelming majority of Perišić's actions in support of the VRS facilitated the commission of future crimes.

1626. The Majority also recalls that there is neither a requirement of a cause-effect relationship between Perišić's conduct as an aider and abettor and the commission of the crimes,[4555] nor a requirement that his actions served as a condition precedent to the commission of the crimes,[4556] nor a requirement that his actions have been the cause *sine qua non* of the crimes.[4557]

1627. In sum, the Majority finds beyond a reasonable doubt that Perišić's logistical assistance and personnel assistance, individually and cumulatively, had a substantial effect on the crimes perpetrated by the VRS in Sarajevo and Srebrenica, as charged in the Indictment.

C. Findings on the Mental Elements of Aiding and Abetting

1628. The following analysis and findings are made by the Majority of the Trial Chamber, Judge Moloto dissenting.

1. Preliminary Remarks

1629. The Majority recalls that to establish the required mental element for aiding and abetting, it must be proved beyond a reasonable doubt that Perišić knew that his actions provided practical

4553 *See Blagojević and Jokić* Appeal Judgement, paras 182, 185-189.
4554 Defence Final Brief, paras 49, 796-798, 1083-1084, citing *Blagojević* Trial Judgement, para. 731.
4555 *Mrkšić and Šljivančanin* Appeal Judgement, para. 81; *Simić* Appeal Judgement, para. 85; *Blaškić* Appeal Judgement, para. 48.
4556 *Mrkšić and Šljivančanin* Appeal Judgement, para. 81; *Blagojević and Jokić* Appeal Judgement, paras 127, 134; *Simić* Appeal Judgement, para. 85; *Blaškić* Appeal Judgement, para. 48.
4557 *Milutinović et al.* Trial Judgement, para. 92.

X. SENTENCING

A. Law on Sentencing

1791. A sentence is to be determined with reference to Article 24 of the Statute, and to Rules 87(C) and 101 of the Rules of Procedure and Evidence ("Rules"). In accordance with Article 24(2), the Trial Chamber takes into account "such factors as the gravity of the offence and the individual circumstances of the convicted person".[4840] Rule 101 additionally requires the Trial Chamber to take into account aggravating and mitigating circumstances,[4841] the general practice regarding prison sentences in the courts of the former Yugoslavia,[4842] and the extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served.[4843]

1792. Rule 87(C) of the Rules grants discretion to the Trial Chamber either to impose a sentence in respect of each finding of guilt and indicate whether such sentences shall be served consecutively or concurrently, or to impose a single sentence reflecting the totality of the criminal conduct of the accused.[4844]

1793. A sentence of imprisonment may be entered for a term up to and including the remainder of the convicted person's life.[4845] The Trial Chamber is obligated to individualise penalties to fit the circumstances of the accused and the gravity of the crime, and is granted broad discretion to determine an appropriate sentence that will fulfil this purpose.[4846]

1. Purposes of Sentencing

1794. Retribution and deterrence are the primary purposes of sentencing for crimes within the jurisdiction of the Tribunal.[4847]

4840 Article 24(2) of the Statute.
4841 Rule 101 (B)(ii) of the Rules.
4842 Article 24(1) of the Statute; Rule 101(B)(iii) of the Rules; *Hadžihasanović and Kubura* Appeal Judgement, para. 301; *Limaj et al.* Appeal Judgement, para. 126.
4843 Rule 101(B)(iv) of the Rules.
4844 Rule 87(C) of the Rules.
4845 Article 24(1) of the Statue; Rule 101(A) of the Rules.
4846 *Strugar* Appeal Judgement, paras 336, 348; *Hadžihasanović and Kubura* Appeal Judgement, para. 302; *Limaj et al.* Appeal Judgement, paras 127, 135; *Blagojević and Jokić* Appeal Judgement, para. 137; *Zelenović* Sentencing Appeal Judgement, para. 11; *Galić* Appeal Judgement, para. 393; *D. Nikolić* Sentencing Appeal Judgement, para. 19; *Čelebići* Appeal Judgement, para. 717.
4847 *Aleksovski* Appeal Judgement, para. 185; *Čelebići* Appeal Judgement, para. 806; *Stakić* Appeal Judgement, para. 402; *Krajišnik* Appeal Judgement, paras 775, 803.

liability.[4872] Yet, the abuse of a position of authority may still be taken in consideration as an aggravating circumstance for Article 7(3) liability.[4873]

1802. Mitigating circumstances need only be proven on a balance of probabilities, and need not be related to the offence.[4874] It is generally within the discretion of the Trial Chamber to determine whether or not a factor will be accepted as a mitigating circumstance, and what weight the factor should be granted. Examples of factors that may be accepted as mitigating circumstances include post-conflict conduct of the defendant which promoted peace and reconciliation in the former Yugoslavia,[4875] substantial and qualitative cooperation with the Prosecution,[4876] voluntary surrender,[4877] good character[4878] and compliance with conditions of provisional release.[4879] The absence of a mitigating factor can never serve as an aggravating factor.[4880]

3. General Sentencing Practice in the Former Yugoslavia

1803. Under Article 24(1) of the Statute, the Trial Chamber shall have "recourse to the general practice regarding prison sentences in the courts of the former Yugoslavia".[4881] It is well established, however, that the Trial Chamber is not required to conform to that practice.[4882] The Tribunal has discretion to diverge from the sentencing practices of the former Yugoslavia, particularly where they would be inadequate in light of international law.[4883]

1804. While Article 24(1) of the Statute and Rule 101(B)(iii) of the Rules refer to case law from the courts of the former Yugoslavia, the jurisprudence of the Tribunal has established that statutory provisions in force in the former Yugoslavia at the time of the commission of the crimes should also

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4872 *Hadžihasanović and Kubura* Appeal Judgement, para. 320; *Čelebići* Appeal Judgement, para. 732; *Deronjić* Sentencing Appeal Judgement, para. 106.

4873 *Čelebići* Appeal Judgement, para. 735; *Babić* Sentencing Appeal Judgement, para. 80; *Hadžihasanović and Kubura* Appeal Judgement, para. 320; *Blagojević and Jokić* Appeal Judgement, para. 324.

4874 *Babić* Sentencing Appeal Judgement, para. 43; *Čelebići* Appeal Judgement, para. 590; *Blagojević and Jokić* Appeal Judgement, para. 328.

4875 *Blagojević and Jokić* Appeal Judgement, paras 328, 330; *Babić* Sentencing Appeal Judgement, paras 43,,55-61; *M. Jokić* Sentencing Appeal Judgement, para. 54.

4876 Rule 101(B)(ii) of the Rules; *D. Nikolić* Sentencing Appeal Judgement, para. 66; *Babić* Sentencing Appeal Judgement, para. 43; *Bralo* Sentencing Appeal Judgement, paras 51-52.

4877 *Blagojević and Jokić* Appeal Judgement, para. 344; *Babić* Sentencing Appeal Judgement, paras 43, 74.

4878 *Blagojević and Jokić* Appeal Judgement, para. 342; *Babić* Sentencing Appeal Judgement, para. 43.

4879 *Babić* Sentencing Appeal Judgement, para. 43.

4880 Blaškić Appeal Judgement, para. 687.

4881 Article 21(4) of the Statute.

4882 *Tadić* Sentencing Appeal Judgement, para. 21; *Čelebići* Appeal Judgement, paras 813, 816, 820; *Jelisić* Appeal Judgement, para. 117; *Kupreškić et al.* Appeal Judgement, para. 418; *Kunarac et al.* Appeal Judgement, paras 347-349; *Krstić* Appeal Judgement, para. 260; *Blaškić* Appeal Judgement, paras 681-682; *Kordić and Čerkez* Appeal Judgement, para. 1085; *D. Nikolić* Sentencing Appeal Judgement, paras 17, 69; *M. Jokić* Sentencing Appeal Judgement, para. 38; *Galić* Appeal Judgement, para. 398; *Hadžihasanović and Kubura* Appeal Judgement, paras 335, 346; *Krajišnik* Appeal Judgement, paras 749, 811; *Boškoski and Tarčulovski* Appeal Judgement, para. 212.

4883 *Kunarac et al.* Appeal Judgement, para. 377.

be consulted.[4884] At the time of their alleged commission, offences of the kind at issue in the present case were regulated by the Criminal Code of the FRY, which had been in force since 1 July 1977.[4885]

1805. Article 142(1) of the FRY Criminal Code, entitled "War Crimes against the Civilian Population", provided as follows:

> Whoever, in violation of international law in time of war, armed conflict or occupation, orders an attack on the civilian population, settlement, individual civilians or persons *hors de combat*, which results in death or serious injury to body or health; indiscriminate attack affecting civilian population; the killing, torture or inhumane treatment of the civilian population [...] causing great suffering or serious injury to body or health; unlawful deportation, transfers; use of measures of intimidation and terror [...] or whoever commits any of the aforementioned offences, shall be punished by no less than five years in prison, or by the death penalty.[4886]

1806. Article 38(1) and (2) of the FRY Criminal Code provided that no sentence of imprisonment could exceed 15 years, but that a 20-year term could be imposed for criminal offences otherwise punishable by the death penalty.[4887]

4. Credit for Time Served in Custody

1807. In accordance with Rule 101(C) of the Rules, credit shall be given to the convicted person for the period during which they were detained pending surrender to the Tribunal or pending trial. Momčilo Perišić has been detained since his voluntary surrender and transfer to the seat of the Tribunal on 7 March 2005, although he was provisionally released on a number of occasions.

B. Determination of the Sentence

1. Submissions of the Parties

1808. The Prosecution recommends that Perišić be sentenced to life imprisonment.[4888] In support for its position, it notably emphasises the gravity of the crimes perpetrated in Sarajevo, Zagreb and Srebrenica.[4889] It submits that the number of civilian victims across the three crime bases is in the

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4884 *D. Nikolić* Sentencing Appeal Judgement, para. 85.
4885 The Criminal Code of the SFRY was adopted by the SFRY Federal Assembly on 28 September 1976. After the dissolution of the SFRY in 1992 the Code remained in force, with some modifications, and was renamed the Criminal Code of the FRY. The Criminal Code of the FRY was renamed the Basic Criminal Code of Serbia in 2003.
4886 Criminal Code of the FRY, Article 142(1).
4887 Criminal Code of the FRY, Articles 38(1)-(2).
4888 Prosecution Final Brief, para. 856.
4889 Prosecution Final Brief, para. 838.

UNITED NATIONS

	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia since 1991	Case No.	IT-00-39&40/1-S
		Date:	27 February 2003
		Original:	English

IN THE TRIAL CHAMBER

Before: **Judge Richard May, Presiding**
Judge Patrick Robinson
Judge O-Gon Kwon

Registrar: **Mr. Hans Holthuis**

Judgement of: **27 February 2003**

PROSECUTOR

v.

BILJANA PLAVŠIĆ

SENTENCING JUDGEMENT

The Office of the Prosecutor:

Ms. Carla Del Ponte
Mr. Mark Harmon
Mr. Alan Tieger

Counsel for the Accused:

Mr. Robert J. Pavich
Mr. Eugene O'Sullivan

3. Conclusion

52. The Trial Chamber accepts that this is a crime of utmost gravity, involving as it does a campaign of ethnic separation which resulted in the death of thousands and the expulsion of thousands more in circumstances of great brutality. The gravity is illustrated by:

- the massive scope and extent of the persecutions;
- the numbers killed, deported and forcibly expelled;
- the grossly inhumane treatment of detainees; and
- the scope of the wanton destruction of property and religious buildings.

B. Aggravating circumstances

53. The Prosecution identifies three aggravating factors:

(i) the leadership position of the accused;

(ii) the vulnerability of the victims; and

(iii) the depravity of the crimes to which the victims were subjected.[100]

54. In relation to the first factor, the Prosecution notes that the International Tribunal has consistently viewed the leadership position of an accused as an aggravating factor. The Prosecution cites the trial judgement in *Krstić* in contending that the consequences are necessarily more serious if individuals who occupy top military or political positions use those positions to commit crimes.[101] The Prosecution also draws the attention of the Trial Chamber to cases where leadership positions lower than that occupied by Mrs. Plavšić have been found to be aggravating circumstances.[102] The Prosecution moreover observes that in the *Kambanda* case at the International Criminal Tribunal for Rwanda ("ICTR") the Chamber emphasised the aggravating impact of Kambanda's leadership position when assessing the weight of aggravating factors. Jean

[100] Prosecution Sentencing Brief, para. 17.
[101] *Ibid.*, para. 18, citing *Prosecutor v Krstić*, Case No. IT-98-33-T, Judgement, 2 August 2001 ("*Krstić* Trial Judgement"), para. 709.
[102] *Ibid.*, para. 18, referring to, *inter alia*, *Prosecutor v. Kordić et al*, Case No. IT-95-14/2, Trial Judgement, 26 February 2001 ("*Kordić* Trial Judgement"), para. 853.

Kambanda was the Prime Minister of Rwanda at the time of the commission of the crimes in question.[103]

55. Further, when dealing with the participation of the accused in the offences the Prosecution points out that Mrs. Plavšić supported and maintained the bodies through which the ethnic separation by force was maintained; she encouraged participation in that objective. "While her role was not as influential or powerful as some others, [...] she was a member of the small national leadership cadre which spearheaded the effort [...]."[104] The Prosecution notes that Mrs. Plavšić accepts responsibility for her role as a member of the collective and expanded Presidencies of the Serbian Republic of BH and Republika Srpska, but points out that, as set out in the Factual Basis, there are distinctions to be made between herself and other leaders.[105]

56. The Defence accepts that the scope of the crimes outlined in Count 3 of the Indictment and the manner in which they were committed may be taken into account as an aggravating factor.[106] The Defence also accepts that such aggravating factors may include the scale and planning of the offence, the number of victims, the length of time over which the crimes were committed, the violence associated with the crimes and the repeated and systematic nature of the crimes.[107] However, the Defence submits that a high rank in the political field should not, in itself, result in a harsher sentence for an accused, but accepts that an individual who wrongly exercises or abuses power deserves a harsher sentence than a person acting on his or her own. Further, it notes that while the direct participation of a high level superior in a crime under Article 7 (1) of the Statute is an aggravating circumstance, the extent of such aggravation depends on the level of authority and the form of participation of the accused.[108]

57. The Trial Chamber accepts that the superior position of the accused is an aggravating factor in the case. The accused was not in the very first rank of the leadership: others occupied that position. She did not conceive the plan which led to this crime and had a lesser role in its execution than others. Nonetheless, Mrs. Plavšić was in the Presidency, the highest civilian body, during the campaign and encouraged and supported it by her participation in the Presidency and her pronouncements.

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[103] *Ibid.*, para. 19, referring to *Prosecutor v. Kambanda*, Case No. ICTR-97-23-S, Judgement and Sentence, 4 September 1998 ("*Kambanda* Trial Judgement"), paras 61-62.
[104] Prosecution Sentencing Brief, para. 16.
[105] Defence Sentencing Brief, para. 16; Factual Basis paras 13-14, 16.
[106] Defence Sentencing Brief, para. 36.
[107] *Ibid.*, para. 36, citing *Prosecutor v. Blaškić*, Case No. IT-95-14-T, Judgement, 3 March 2000 ("*Blaškić* Trial Judgement"), paras 783-84.
[108] *Ibid.*, para. 37, citing *Krstić* Trial Judgement, paras 708-09.

UNITED
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	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991	Case No.	IT-05-88-T
		Date:	10 June 2010
		Original:	English

IN TRIAL CHAMBER II

Before: **Judge Carmel Agius, Presiding**
Judge O-Gon Kwon
Judge Kimberly Prost
Judge Ole Bjørn Støle – Reserve Judge

Registrar: **Mr. John Hocking**

Judgement of: **10 June 2010**

PROSECUTOR
v.
VUJADIN POPOVIĆ
LJUBIŠA BEARA
DRAGO NIKOLIĆ
LJUBOMIR BOROVČANIN
RADIVOJE MILETIĆ
MILAN GVERO
VINKO PANDUREVIĆ

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JUDGEMENT
Volume I

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Mr. Dragan Krgović and Mr. David Josse for Milan Gvero
Mr. Peter Haynes and Mr. Simon Davis for Vinko Pandurević

frames, the Trial Chamber cannot be satisfied beyond reasonable doubt as to the timing of the shooting which Pepić heard. As a result, the Trial Chamber cannot infer from this evidence, individually or cumulatively with that of the survivors, that the shooting Pepić heard was the reaction to the "burnt-hands" incident, or the ongoing, full-scale execution.[4799]

1532. The Trial Chamber has also considered the hearsay evidence of PW-100 and PW-168. PW-100's statement, albeit not detailed, does provide support for the involvement of the SBP in the full-scale execution in that he refers to all the prisoners destined to be exchanged in Tuzla as having been killed at a "warehouse" by a "regular special police force".[4800] He makes no mention of a separate event triggered by the killing and injury of some police members present at the site and thus the statement supports the participation of the SBP in the full-blown execution. Yet, as noted previously, this statement is vague in content and the source of the hearsay is not identified beyond the person being a member of the Jahorina Recruits. PW-168, on the other hand, recounted a hearsay statement which is more detailed and in which the source is identified. He related that Stupar described that one of the prisoners grabbed a rifle and used it to kill a member of his unit. There was then an incident "whereby the police men and the soldiers who had been there opened fire on the prisoners and killed them".[4801] However, this statement is ambiguous in its content. It could be interpreted to mean the prisoners in the immediate vicinity were killed, *i.e*, the "burnt-hands" incident or all the prisoners at the Kravica Warehouse were killed, *i.e*, full-scale execution. While the Trial Chamber, as noted previously, is satisfied as to the reliability of the evidence, given the lack of detail as to the content and source of PW-100's information and the ambiguity of the statement made to PW-168, combined with the fact that both involve untested hearsay, the Trial Chamber finds the evidence is not sufficient to establish participation on the part of the SBP 2nd Šekovići Detachment in the full massacre at the Kravica Warehouse.

1533. From the totality of the evidence before it, the Trial Chamber finds that a full-scale execution took place at the Kravica Warehouse that evening, after the "burnt-hands" incident occurred.[4802] While there is evidence that there were pauses between the shooting, the length of the pauses is unclear.[4803] It could have ranged from a mere half hour to three hours. In addition, the Trial Chamber is unable on the evidence to establish the time when the full-scale execution began.

1534. As to who executed the Bosnian Muslim prisoners, the evidence is even more unclear. Taken cumulatively, the Trial Chamber finds that one reasonable inference in the circumstances is

[4798] Milenko Pepić, T. 13598 (9 July 2007).
[4799] *See also supra*, paras. 431, 1456.
[4800] PW-100, T. 14835 (5 Sept 2007), T. 14888 (6 Sept 2007).
[4801] PW-168, T. 15877–15878 (closed session) (26 Sep 2007), T. 16527–16528 (closed session) (18 Oct 2007).
[4802] *See supra*, paras. 428–445.

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International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991	Case No.	IT-04-74-AR73.6
	Date:	23 November 2007
	Original:	English

IN THE APPEALS CHAMBER

Before: **Judge Fausto Pocar, Presiding**
Judge Mehmet Güney
Judge Andrésia Vaz
Judge Theodor Meron
Judge Wolfgang Schomburg

Registrar: **Hans Holthuis**

Decision of: **23 November 2007**

PROSECUTOR
v.
Jadranko PRLIĆ
Bruno STOJIĆ
Slobodan PRALJAK
Milivoj PETKOVIĆ
Valentin ĆORIĆ
Berislav PUŠIĆ

Public

DECISION ON APPEALS AGAINST DECISION ADMITTING TRANSCRIPT OF JADRANKO PRLIĆ'S QUESTIONING INTO EVIDENCE

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Ms Vesna Alaburić and Mr Nicholas Stewart for Milivoj Petković
Ms Dijana Tomašegović-Tomić and Mr Dražen Plavec for Valentin Ćorić
Mr Fahrudin Ibrišimović and Mr Roger Sahota for Berislav Pušić

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1. The Appeals Chamber of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991 ("Appeals Chamber" and "Tribunal", respectively) is seized of two appeals, respectively filed confidentially by Jadranko Prlić and publicly by Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić against the "Decision on Request for Admission of the Statement of Jadranko Prlić" ("Impugned Decision") issued by Trial Chamber II ("Trial Chamber").

I. PROCEDURAL HISTORY

2. On 13 and 14 December 2001, Jadranko Prlić was questioned as a suspect[1] – in the presence of his then counsel Ćamil Salahović – by representatives of the Office of the Prosecutor ("Prosecution") in the Netherlands, after he contacted them with a request to be interviewed.[2] The questioning was audio-recorded pursuant to Rule 43. According to the Prosecution, the questioning was also video-recorded.[3] Prlić received the warnings required by Rule 42.[4]

3. On 28 March 2007, the Prosecution requested admission into the trial record of the December 2001 Transcript,[5] both for its substantive content and in order to confront other witnesses in the case.[6] On 5 April 2007, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić ("Joint Defence") filed a Joint Response requesting the Trial Chamber to reject the Prosecution Motion ("Joint Defence Response").[7] Prlić also filed an objection to the admission of the December 2001 Transcript on 12 and 13 April 2007 ("Prlić Response").[8]

4. On 22 August 2007, the Trial Chamber admitted into evidence the December 2001 Transcript pursuant to Rule 89(C), essentially considering that its probative value was not substantially outweighed by the need to ensure a fair trial.[9]

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[1] Rule 2 of the Tribunal's Rules of Procedure and Evidence ("Rules" or, individually, "Rule"); see also Prosecution Motion for Admission into Evidence of the Statement of the Accused Jadranko Prlić, 28 March 2007, paras 9 ff. and Exhibit P09078 ("December 2001 Transcript"), p. 2. The Appeals Chamber considers that, although the parties refer to Prlić's "Statement", it is more appropriate to describe the document in question as a transcript of Prlić's recorded questioning by the Prosecution in December 2001.
[2] December 2001 Transcript, pp. 1-6.
[3] Prosecution Motion for Admission into Evidence of the Statement of the Accused Jadranko Prlić, 28 March 2007 ("Prosecution Motion"), para. 14.
[4] December 2001 Transcript, pp. 1-2.
[5] Prosecution Motion, paras 1-6.
[6] Prosecution Motion, paras 1, 18.
[7] Response of the Accused Stojić, Praljak, Petković, Ćorić and Pušić to Prosecution Motion for Admission into Evidence of the Statement of the Accused Jadranko Prlić, 5 April 2007.
[8] Jadranko Prlić's Response to Prosecution's Motion for Admission into Evidence of the Statement of the Accused Jadranko Prlić and Leave To exceed the Word Count, 12 April 2007 and Corrigendum, 13 April 2007.
[9] Impugned Decision, para. 32

5. On 31 August 2007, the Joint Defence filed a request for reconsideration or, in the alternative, for certification of the Impugned Decision,[10] while Prlić filed his request for certification on 5 September 2007.[11] The Prosecution did not file any response.[12]

6. On 8 October 2007, the Trial Chamber issued its "*Décision portant sur la demande de réexamen et de certification d'appel de la décision portant admission de la déclaration de Jadranko Prlić*", in which it rejected the request for reconsideration advanced by the Joint Defence[13] and granted both requests for certification pursuant to Rule 73(B).[14]

7. On 15 October 2007, Prlić as well as the Joint Defence filed their appeals against the Impugned Decision ("Prlić Appeal"[15] and "Joint Defence Appeal",[16] respectively). On 25 October, the Prosecution filed its response ("Prosecution Response").[17] On 31 October, Prlić filed a confidential reply to the Prosecution Response ("Prlić Reply").[18]

II. STANDARD OF REVIEW

8. Trial Chambers exercise broad discretion as regards admission of evidence.[19] In this context, the Appeals Chamber notes that it is seized only with the issue of the admission of evidence: the substantial assessment of the evidence is for the Trial Chamber, subject to an appeal – if any – against the Trial Chamber's judgement and will be properly done when the trial record is complete. Considering that this type of decision must therefore be given a margin of deference, the Appeals Chamber will reverse such decisions only when an abuse of such discretion is established. The Appeals Chamber will overturn a Trial Chamber's exercise of its discretion where it is found to be (i) based on an incorrect interpretation of governing law; (ii) based on a patently incorrect conclusion of fact; or (iii) so unfair or unreasonable as to constitute an abuse of the Trial Chamber's

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[10] Request of the Accused Stojić, Praljak, Petković, Ćorić and Pušić for Reconsideration, Alternatively for Certification for Appeal of Decision of Trial Chamber to Admit Statement of Jadranko Prlić, 29 August 2007.
[11] *Demande de Jadranko Prlić visant à faire certifier l'appel envisagé contre la Décision portant sur la demande d'admission de la déclaration de Jadranko Prlić*, 5 September 2007.
[12] On the procedural history, see in general *Décision portant sur la demande de réexamen et de certification d'appel de la décision portant admission de la déclaration de Jadranko Prlić*, 8 October 2007, paras 2-5.
[13] Certification Decision, paras 11-17.
[14] Certification Decision, para. 18 and *Corrigendum à la Décision portant sur la demande de réexamen et de certification d'appel de la décision portant admission de la déclaration de Jadranko Prlić*, 22 October 2007.
[15] Jadranko Prlić's Interlocutory Appeal Against the Decision on Request for Admission of the Statement of Jadranko Prlić, 15 October 2007, filed confidentially.
[16] Notice of Appeal by 5 Accused Stojić, Praljak, Petković, Ćorić and Pušić Against Trial Chamber Decision 22 August 2007 Admitting Statement of Jadranko Prlić, 15 October 2007.
[17] Prosecution Consolidated Response Regarding Admission of Prlić's Suspect Statement, 25 October 2007.
[18] Jadranko Prlić's Reply to the Prosecution's Consolidated Response Regarding Admission of Prlić's Suspect Statement, 30 October 2007, filed confidentially.
[19] *Delalić et al.* Appeal Judgement, para. 533. See also: *Halilović* Appeal Judgement, para. 38; *Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-AR73.5, 21, Decision on Appeal Regarding Statement of a Deceased Witness, 21 July 2000; *Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-AR73.6, Decision on Appeal Regarding the Admission into Evidence of Seven Affidavits and One Formal Statement, 18 September 2000.

discretion. The Appeals Chamber will also consider whether the Trial Chamber has given weight to extraneous or irrelevant considerations or has failed to give weight or sufficient weight to relevant considerations in reaching its decision.[20]

9. The question before the Appeals Chamber is thus not whether it agrees with a decision but whether the Trial Chamber has correctly exercised its discretion in reaching this decision.[21] For the Appeals Chamber to intervene in a discretionary decision of a Trial Chamber, it must be demonstrated that the Trial Chamber has committed a "discernible error" resulting in prejudice.

III. DISCUSSION

A. Introduction

10. Prlić submits that, by admitting the December 2001 Transcript, the Trial Chamber failed to recognize the existence of a conflict of interest between him and his then Counsel Ćamil Salahović and erred by finding that, at the time Prlić spoke to the Prosecution, his rights as guaranteed by the Tribunal's Statute ("Statute") and the Rules were respected.[22] The Joint Defence focuses its grounds of appeal on the alleged breach of the right of the other five accused "to examine, or have examined, the witnesses against" them, pursuant to Article 21(4)(e) of the Statute. The Appeals Chamber will discuss these two appeals in turn.

B. Conflict of interest

1. Introduction

11. Prlić's arguments on appeal are all essentially devoted to arguing a conflict of interest between him and his Counsel in December 2001. On the assumption that Counsel did not effectively represent him during the Prosecution's questioning in December 2001 due to this conflict of interest, Prlić then argues that, despite appearances, his fundamental procedural rights set forth in Rules 42 and 43 were effectively violated. Due to the lack of effective legal assistance, Prlić argues that he "cannot be held to have understood" the potential consequences of subjecting himself to questioning by the Prosecution, rather than remaining silent.[23] Prlić alleges that the Trial Chamber erred in its interpretation of the law on conflict of interest;[24] reached a wrong conclusion

[20] *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-AR108bis.2, Decision on the Request of the United States of America for Review, 12 May 2006, para. 6.
[21] *Prosecutor v. Slobodan Milošević*, Case Nos. IT-99-37-AR73, IT-01-50-AR73, and IT-01-51-AR73, Reasons for Decision on Prosecution Interlocutory Appeal from Refusal to Order Joinder, 18 April 2002, para. 4.
[22] Prlić Appeal, p. 1.
[23] Prlić Appeal, paras 47-51, 54 and Prlić Reply, para. 19.
[24] Prlić Appeal, paras 15, 28, 39-40.

Rule 89(C) would not "evade the admission criteria of Rule 92*bis*"; (d) the co-accused bear the burden of proving that the December 2001 Transcript contained false allegations against them.[62]

2. Relevant background

34. The Trial Chamber, having established that the Rules do not contain an explicit provision dealing with admission of an accused's statement in relation to other co-accused in a joint trial, proceeded to analyse the legal question under the "general provisions" of Rules 89(C) and 89(D):[63]

> A Chamber may admit any relevant evidence which it deems to have probative value.
>
> A Chamber may exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial.

The conclusion that the December 2001 Transcript's probative value is not substantially outweighed by the need to ensure a fair trial was also premised on the finding that Prlić's questioning had taken place according to the procedure enshrined in Rules 42 and 43 and that the December 2001 Transcript could therefore be admitted in Prlić's trial, including for use against his co-accused, if it was relevant and had probative value.[64]

35. The Trial Chamber further noted that the probative value of the December 2001 Transcript would be greatly increased if Prlić were to decide to exercise his right to testify at trial, since the parties and the Chamber would then be able to cross-examine and question him.[65] It however emphasized that material going to the proof of the acts or conduct of an accused and which was not be subject to cross-examination could not be relied upon in convicting that accused unless corroborated by other evidence.[66]

36. The contentious issue on appeal is whether the December 2001 Transcript should be admitted (and, if so, under which conditions) in proceedings, such as the present ones, where the questioned person is one of several co-accused in a joint trial.[67] The reasoning of the Trial Chamber and the arguments of the Joint Defence against that reasoning therefore relate to the appropriate balance of the competing interests at stake in such a scenario.

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[62] Joint Defence Appeal, para. 2.
[63] Impugned Decision, paras 19-22, 24-31 (on Rule 89(C)) and 32 (on Rule 89(D)).
[64] Impugned Decision, para. 12, referring to the case-law of the Tribunal on this issue.
[65] Impugned Decision, paras 33-34.
[66] Impugned Decision, para. 18.
[67] The Appeals Chamber notes that this case did not result, as in other cases before this Tribunal, from a request of joinder of previously separate proceedings – the operative indictment dated 2 March 2004 (and filed two days later) already listed all six co-accused.

UNITED
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International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Case No. IT-98-32/1-R77.2-A

Date: 16 November 2012

Original: English

IN THE APPEALS CHAMBER

Before: **Judge Khalida Rachid Khan, Presiding**
Judge Mehmet Güney
Judge Fausto Pocar
Judge Arlette Ramaroson
Judge Andrésia Vaz

Registrar: **Mr. John Hocking**

Judgement of: **16 November 2012**

PROSECUTOR

v.

JELENA RAŠIĆ

PUBLIC

JUDGEMENT

The Office of the Prosecutor:

Mr. Paul Rogers
Mr. Kyle Wood
Mr. Aditya Menon

Counsel for Jelena Rašić:

Ms. Mira Tapušković

63. The Prosecution responds that Rašić fails to demonstrate that the Trial Chamber erred in finding that she abused a position of trust as a case manager.[172] It argues that Rašić's submissions are largely semantic because she was acting as an "officer of justice" by virtue of her role as a case manager which placed her in a significant position of trust despite her youth and inexperience.[173] Moreover, it submits that she fails to explain how the Trial Chamber was unreasonable in describing a case manager as an "officer of justice" or how this description had a negative impact on her sentence.[174]

64. The Prosecution further responds that Rašić's knowledge of the falsity of the Tabaković Statement is irrelevant to whether she bribed him and incited him to bribe others.[175] It submits that Rašić fails to show that the Trial Chamber erroneously considered the fact that her criminal conduct was "persistent and repetitive" as an aggravating factor just because the *Tabaković* trial chamber did not explicitly mention this as an aggravating factor.[176] Finally, the Prosecution also submits that she fails to explain how her sentence should be shorter merely because others might be more culpable than she.[177]

2. Discussion

65. The Appeals Chamber finds that Rašić has failed to show that the Trial Chamber erroneously relied on her position as an "officer of justice" as an aggravating circumstance. The Appeals Chamber notes that neither party explicitly argued that Rašić was an "officer of justice". However, the Appeals Chamber observes that the Trial Chamber used this term to describe Rašić's position of trust as a member of the defence team.[178] This position of trust was mentioned by the Prosecution when it submitted that "Ms. Ra[š]i[ć] occupied a position of trust, as [...] Case Manager, whose activities were at a level above those of Mr. Tabaković, whilst he was a level himself above Mr. X and [Mr.] Y."[179] Thus, Rašić's argument effectively turns on semantics and she has failed to show that the Trial Chamber abused its discretion when it relied on an aggravating circumstance that was not mentioned by the parties.

66. Similarly, the Appeals Chamber finds that Rašić has failed to show that the Trial Chamber's finding that she was an "officer of justice" is not supported by the evidence. Again, the Appeals

[172] Prosecution Response Brief, para. 17. The Prosecution does not explicitly respond to Rašić's submission that the aggravating circumstance of "officer of justice" was outside the scope of arguments put forth by the parties.
[173] Prosecution Response Brief, para. 17.
[174] Prosecution Response Brief, para. 17.
[175] Prosecution Response Brief, para. 18.
[176] Prosecution Response Brief, para. 14.
[177] Prosecution Response Brief, para. 19.
[178] Sentencing Judgement, para. 18.
[179] T. 57 (31 January 2012).

UNITED
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International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Case No. IT-95-9-A

Date: 28 November 2006

Original: English

IN THE APPEALS CHAMBER

Before: **Judge Mehmet Güney, Presiding**
Judge Mohamed Shahabuddeen
Judge Liu Daqun
Judge Andrésia Vaz
Judge Wolfgang Schomburg

Registrar: **Mr. Hans Holthuis**

Judgement of: **28 November 2006**

PROSECUTOR

v.

BLAGOJE SIMIĆ

JUDGEMENT

The Office of the Prosecutor:

Mr. Peter Kremer
Ms. Barbara Goy
Mr. Steffen Wirth

Counsel for the Appellant:

Mr. Igor Pantelić
Mr. Peter Murphy

acknowledges that he presented a defence against an allegation of aiding and abetting.[257] In addition, the question of whether the Appellant's responsibility could be characterized as that of an aider and abettor was extensively litigated on appeal.[258] For these reasons, the Appeals Chamber finds it appropriate to ascertain whether the Trial Chamber's findings support the Appellant's responsibility for persecutions under Count 1 of the Fifth Amended Indictment as that of an aider and abettor pursuant to Article 7(1) of the Statute.

B. Applicable Law

85. The Appeals Chamber recalls that the *actus reus* of aiding and abetting consists of acts directed to assist, encourage or lend moral support to the perpetration of a certain specific crime, and which have a substantial effect upon the perpetration of the crime.[259] It is not required that a cause-effect relationship between the conduct of the aider and abettor and the commission of the crime be shown, or that such conduct served as a condition precedent to the commission of the crime.[260] The *actus reus* of aiding and abetting a crime may occur before, during, or after the principal crime has been perpetrated, and the location at which the *actus reus* takes place may be removed from the location of the principal crime.[261]

86. The requisite *mens rea* for aiding and abetting is knowledge that the acts performed by the aider and abettor assist in the commission of the specific crime of the principal perpetrator.[262] The aider and abettor must be aware of the essential elements of the crime which was ultimately committed by the principal.[263] In relation to the crime of persecutions, an offence with a specific intent, he must thus be aware not only of the crime whose perpetration he is facilitating but also of the discriminatory intent of the perpetrators of that crime. He need not share the intent but he must be aware of the discriminatory context in which the crime is to be committed and know that his support or encouragement has a substantial effect on its perpetration.[264] However, it is not necessary that the aider and abettor knows either the precise crime that was intended or the one that was, in the event, committed. If he is aware that one of a number of crimes will probably be committed, and

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[257] Appeal Brief, para. 20. *See* also, *ibid.*, para. 26.
[258] *See* Order Re-scheduling Appeal Hearing, p. 3 paras 4-5; AT. 77-78, 119-126, 138.
[259] *Blaškić* Appeal Judgement, para. 48; *Vasiljević* Appeal Judgement, para. 102; *Čelebići* Appeal Judgement, para. 352; *Tadić* Appeal Judgement, para. 229. In the *Blaškić* case the Appeals Chamber left "open the possibility that in the circumstances of a given case, an omission may constitute the *actus reus* of aiding and abetting": *Blaškić* Appeal Judgement, para. 47.
[260] *Blaškić* Appeal Judgment, para. 48.
[261] *Blaškić* Appeal Judgment, para. 48.
[262] *Vasiljević* Appeal Judgement, para. 102; *Blaškić* Appeal Judgment, para. 45.
[263] *Aleksovski* Appeal Judgement, para. 162.
[264] *Krnojelac* Appeal Judgement, para. 52; *Aleksovski* Appeal Judgement, para. 162.

one of those crimes is in fact committed, he has intended to facilitate the commission of that crime, and is guilty as an aider and abettor.[265]

C. The Appellant's responsibility as an aider and abettor for persecutions (Count 1)

87. Under Count 1, the Trial Chamber convicted the Appellant of persecutions – as a participant in a joint criminal enterprise – based on the following underlying acts:[266] (1) unlawful arrests and detention;[267] (2) cruel and inhumane treatment, including beatings, torture and confinement under inhumane conditions;[268] (3) forced labour;[269] and (4) deportation and forcible transfer.[270]

88. On the basis of the same acts of deportation underlying the persecutions conviction, the Trial Chamber also found the Appellant responsible for deportation as a crime against humanity pursuant to Article 5(d) of the Statute under Count 2.[271] However, finding that a conviction for deportation as a crime against humanity is impermissibly cumulative with a conviction for persecutions through deportation, the Trial Chamber did not enter a conviction for deportation as a crime against humanity under Count 2.[272]

1. Preliminary issues

89. At the outset, the Appeals Chamber will address the Appellant's third, fifth, sixth and seventh grounds of appeal, as they all raise issues of general significance to the Trial Chamber's findings.

(a) The Trial Chamber's findings relating to joint criminal enterprise (Third ground of appeal)

90. The Appellant submits that the Trial Chamber erred in fact in inferring from the evidence that there was a common plan to persecute the non-Serb population of the Municipality of Bosanski Šamac and that he was involved therein.[273] He argues that Judge Lindholm's Dissenting Opinion presents another reasonable inference which is consistent with his innocence.[274] He submits that "[a]t most, the Trial Chamber should have convicted [him] only on the basis of aiding and

[265] *Blaškić* Appeal Judgment, para. 50.
[266] Trial Judgement, para. 1115.
[267] Trial Judgement, para. 997.
[268] Trial Judgement, para. 1010. The Trial Chamber was not satisfied that the Appellant was aware of the cruel and inhumane treatment of non-Serb prisoners in the detention facilities in Crkvina, Brčko and Bijeljina: Trial Judgement, para. 1011.
[269] Trial Judgement, paras 1021-1022.
[270] Trial Judgement, paras 968, 972, 1036-1038.
[271] Trial Judgement, para. 1051.
[272] Trial Judgement, paras 1058, 1116.
[273] Amended Notice of Appeal, para. 5; Appeal Brief, para. 27.

UNITED
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International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia since 1991

Case No.: IT-97-24-A

Date: 22 March 2006

Original: English

IN THE APPEALS CHAMBER

Before: **Judge Fausto Pocar, Presiding**
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Andrésia Vaz
Judge Theodor Meron

Registrar: **Mr. Hans Holthuis**

Judgement of: **22 March 2006**

PROSECUTOR

v.

MILOMIR STAKIĆ

JUDGEMENT

The Office of the Prosecutor:
Mr. Mark J. McKeon
Ms. Helen Brady
Mr. Xavier Tracol
Ms. Barbara Goy
Ms. Katharina Margetts

Counsel for the Appellant:
Mr. Branko Lukić
Mr. John Ostojić

> which contains an additional materially distinct element, then a conviction should be entered only under that provision.[746]

356. Whether the same conduct violates two distinct statutory provisions is a question of law.[747] Therefore, the *Čelebići* test focuses on the legal elements of each crime that may be the subject of a cumulative conviction rather than on the underlying conduct of the accused.[748] The *Kordić* Appeal Judgement explained that:

> When applying the *Čelebići* test, what must be considered are the legal elements of each offence, not the acts or omissions giving rise to the offence. What each offence requires, as a matter of law, is the pertinent inquiry. The Appeals Chamber will permit multiple convictions for the same act or omission where it clearly violates multiple distinct provisions of the Statute, where each statutory provision contains a materially distinct element not contained in the other(s), and which element requires proof of a fact which the elements of the other statutory provision(s) do not. The cumulative convictions test serves twin aims: ensuring that the accused is convicted only for distinct offences, and at the same time, ensuring that the convictions entered fully reflect his criminality.[749]

For the purposes of applying the *Čelebići* test, the legal elements of the crime include the *chapeau* requirements of the particular crime.[750]

357. The test is clear, and the Appeals Chamber considers it unnecessary to deal with the peripheral submissions of the parties concerning tests in domestic jurisdictions or the underlying social values and interests reflected in particular crimes.[751]

358. The law on cumulative convictions as established in the *Čelebići* Appeal Judgement was correctly stated by the Trial Chamber in the Trial Judgement.[752] However, the Trial Chamber went on to further qualify the test, stating that "in the exercise of its discretion, [the Chamber would] convict only in relation to the crime that most closely and most comprehensively reflects the totality of the accused's criminal conduct".[753] In the view of the Appeals Chamber, such an exercise of discretion constitutes an error of law. When the evidence supports convictions under multiple counts for the same underlying acts, the test as set forth in *Čelebići* and *Kordić* does not permit the Trial Chamber discretion to enter one or more of the appropriate convictions, unless the two crimes do not possess materially distinct elements.

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[746] *Čelebići* Appeal Judgement, paras 412-413.
[747] *Kordić* Appeal Judgement, para. 1032.
[748] Both parties have indicated their agreement with this principle in their submissions. However, the Appeals Chamber notes that the Appellant also makes the inconsistent submission that it is the conduct of the accused that matters in the application of the test. The Appeals Chamber disagrees with this submission. *See* Prosecution Appeal Brief, para. 5.23, Prosecution Reply Brief, para. 4.2; Stakić Response Brief, paras 200, 205, Stakić Reply Brief, para. 162.
[749] *Kordić* Appeal Judgement, para. 1033 (footnotes omitted).
[750] *Kunarac* Appeal Judgement, para. 177.
[751] Prosecution Response Brief, paras 8.6-8.7. *See* Prosecution Appeal Brief, paras 5.26, 5.35-5.36, 5.45-5.52; Stakić Appeal Brief, para. 542, fn. 555, Stakić Response Brief, paras 189-199; Stakić Reply Brief, paras 159-160, 162-163.
[752] Trial Judgement, para. 869.
[753] Trial Judgement, para. 870.

UNITED
NATIONS

	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991	Case No.	IT-01-42-A
		Date:	17 July 2008
		Original:	English

IN THE APPEALS CHAMBER

Before: **Judge Andrésia Vaz, Presiding**
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Theodor Meron
Judge O-Gon Kwon

Registrar: **Mr. Hans Holthuis**

Judgement of: **17 July 2008**

PROSECUTOR

v.

PAVLE STRUGAR

PUBLIC

JUDGEMENT

The Office of the Prosecutor:

Ms. Helen Brady
Ms. Michelle Jarvis
Mr. Xavier Tracol
Ms. Laurel Baig

Counsel for the Accused:

Mr. Goran Rodić
Mr. Vladimir Petrović

263. Accordingly, this sub-ground of appeal is dismissed.

B. Alleged Error in Characterization of the *Mens Rea* of the Criminal Offence

264. The Trial Chamber held that the required form of *mens rea* for attacks on civilians (Count 3) and destruction or wilful damage to cultural property (Count 6) is "direct intent", that is, respectively, "intent of making the civilian population or individual civilians, or civilian objects, the object of the attack"[653] and "direct intent to damage or destroy the property in question".[654] The Trial Chamber further found that, in the circumstances of the case, it did not need to consider whether "indirect intent" may have been sufficient for the crimes in question. Strugar submits that the Trial Chamber erred in finding that the *mens rea* element of direct intent was met in relation to these two counts.[655]

265. The Appeals Chamber notes that the Defence Notice of Appeal alleges that the Trial Chamber erred in its findings in relation to both the *actus reus* and the *mens rea* for the crime of attack on civilians or civilian objects.[656] As for the crime of destruction and wilful damage to cultural property, the Defence Notice of Appeal refers generally to errors in establishing the elements of the offence.[657] However, the Defence Appeal Brief only elaborates on alleged errors with respect to the *mens rea* of both crimes.[658] In these circumstances, the Appeals Chamber understands Strugar to have abandoned the allegations concerning the *actus reus* elements of this crime.[659]

1. Arguments of the Parties

266. Strugar submits that the Trial Chamber correctly found that the *mens rea* element for the crimes charged under Counts 3 and 6 requires direct intent.[660] However, he contests the Trial

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[653] *Ibid.*, para. 283.
[654] *Ibid.*, para. 311.
[655] Defence Notice of Appeal, paras 83, 86.
[656] *Ibid.*, para. 83. With respect to the *actus reus* requirement, the Trial Chamber concluded that "the crime of attacks on civilians or civilian objects, as a crime falling within the scope of Article 3 of the Statute, is, [...] an attack directed against a civilian population or individual civilians, or civilian objects, causing death and/or serious injury within the civilian population, or damage to the civilian objects." (Trial Judgement, para. 283).
[657] Defence Notice of Appeal, para. 86. With respect to elements of the *actus reus* requirement, the Trial Chamber concluded that (i) there must be actual damage or destruction occurring as a result of an act directed against the property which constitutes the cultural or spiritual heritage of peoples; (ii) the protection accorded to cultural property is lost where such property is used for military purposes at the time of the acts of hostility against it, but may not be lost simply because of military activities or military installations in the immediate vicinity of the cultural property (Trial Judgement, paras 308, 310, 312).
[658] Defence Appeal Brief, paras 119-123.
[659] The Appeals Chamber recalls that an appellant's brief should contain all the arguments and authorities in support of the grounds outlined in the notice of appeal (Rule 111 of the Rules; Practice Direction on Formal Requirements for Appeals from Judgements, para. 4). *Cf., a contrario, Halilović* Appeal Judgement, para. 25.
[660] Defence Appeal Brief, para. 123; AT. 212 with reference to *ibid.*, para. 71.

elements in the circumstances of this case.[805] Addressing the Prosecution's contention relating to the Trial Chamber's exercise of discretion and its use of the phrase "interests of justice", Strugar argues that the test on cumulative convictions was correctly applied and that "no discretion was asserted".[806] Moreover, Strugar submits that the phrase "interests of justice" is implicitly contained in the *Čelebići* test on cumulative convictions and that the principles underlying this concept motivate the application of the test. According to Strugar, this is the "exclusive context in which the Trial Chamber uses the phrase 'the interests of justice'".[807]

C. Discussion

321. The jurisprudence of the Tribunal on the issue of cumulative convictions is well-established. The *Čelebići* test, which is to be applied in determining whether cumulative convictions are permissible, states that:

> Having considered the different approaches expressed on this issue both within this Tribunal and other jurisdictions, this Appeals Chamber holds that reasons of fairness to the accused and the consideration that only distinct crimes may justify multiple convictions, lead to the conclusion that multiple criminal convictions entered under different statutory provisions but based on the same conduct are permissible only if each statutory provision involved has a materially distinct element not contained in the other. An element is materially distinct from another if it requires proof of a fact not required by the other.
>
> Where this test is not met, the Chamber must decide in relation to which offence it will enter a conviction. This should be done on the basis of the principle that the conviction under the more specific provision should be upheld. Thus, if a set of facts is regulated by two provisions, one of which contains an additional materially distinct element, then a conviction should be entered only under that provision.[808]

322. Whether the same conduct violates two or more distinct statutory provisions is a question of law.[809] Thus, "the *Čelebići* test focuses on the legal elements of each crime that may be the subject of a cumulative conviction rather than on the underlying conduct of the accused".[810]

1. The Trial Chamber's Use of Discretion in Applying the Cumulative Convictions Test

323. The Appeals Chamber notes that the test applicable to cumulative convictions was correctly set out by the Trial Chamber.[811] However, after finding that the offences at stake each

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[804] *Ibid.*, para. 86. Again, Strugar specifies that, given the conclusion reached by the Trial Chamber in paragraph 455 of the Trial Judgement, he is not appealing this finding.
[805] *Ibid.*, para. 87.
[806] *Ibid.*, para. 89.
[807] *Ibid.*, para. 90.
[808] *Čelebići* Appeal Judgement, paras 412-413.
[809] *Kunarac et al.* Appeal Judgement, para. 174. See also *Stakić* Appeal Judgement, para. 356; *Kordić and Čerkez* Appeal Judgement, para. 1032.
[810] *Stakić* Appeal Judgement, para. 356.
[811] Trial Judgement, para. 447.

UNITED
NATIONS

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia since 1991

Case No. IT-01-42-T

Date: 31 January 2005

Original: English

IN TRIAL CHAMBER II

Before: **Judge Kevin Parker, Presiding**
Judge Krister Thelin
Judge Christine Van Den Wyngaert

Registrar: **Mr. Hans Holthuis**

Judgement of: **31 January 2005**

PROSECUTOR

v.

PAVLE STRUGAR

JUDGEMENT

The Office of the Prosecutor:

Ms. Susan Somers
Mr. Philip Weiner

Counsel for the Accused:

Mr. Goran Rodić
Mr. Vladimir Petrović

December 1991" compiled by the "Institute for Protection and Conservation of the Historical Monuments" of Dubrovnik (hereinafter "Institute Report").[979] The Institute Report purports to deal with damage between 1 October and 31 December 1991, which of course includes damage caused on 6 December 1991, and subject of the Indictment, but it is necessary to be able to separate damage of 6 December from all other damage. While the Institute Report itself purports to specify damage occurring on 6 December 1991 by the date of damage given for each object surveyed, this specification has been shown not to be always accurate.[980]

322. Although two witnesses, architects Lucjiana Peko and Slobodan Vuković, who personally carried out inspections of the damage sustained by the buildings and structures in the Old Town, vouched generally for the accuracy and reliability of the extracts from the Institute Report,[981] the Chamber notes that the entries in the Institute Report were recorded on the basis of hearsay evidence. In most of the cases, information was collected from unknown persons who are described merely as neighbours or tenants.[982] Whether those neighbours or tenants spoke from personal knowledge or hearsay knowledge is not known.

323. Moreover, the Chamber notes that these two witnesses had not had previous experience in inspecting war damage. Neither they, nor the members of their inspection teams, had expertise in ballistic or criminal investigation.[983] The cross-examination of Slobodan Vuković on the contents of his part of the Institute Report revealed many inaccuracies and material typographical errors.[984] Finally, the Chamber recalls that the Institute Report was originally conceived as, and still bears the title "preliminary report", *i.e.* the expectation of its authors was that a final report on damage would follow.[985] However, no final report has been presented in the case. Colin Kaiser, one of the UNESCO consultants tasked to assist in assessing the damage sustained from the October and

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[978] *See* Annex I, *e.g.* Nos: J11, J14, J15, J17, J22, J23, J25, J34, J39, J46 and J49.

[979] The Institute Report was marked for identification as Exhibit MFI/P51 but was never admitted into evidence in its entirety. However, the extracts from it were admitted as Exhibits P174, P212 and P52. *See Prosecutor v Pavle Strugar*, Case No. IT-01-42-T, Decision on the Admissibility of Certain Documents, 26 May 2004, pp 8-11.

[980] It has been effectively pointed out during the cross-examination of Colin Kaiser that the damage described as damage of 6 December 1991 also included other damage which may have been incurred earlier (T 2556-2574). Colin Kaiser states that although the intention was to catalogue damage from 6 December 1991, it appears that other damage has been recorded. He could not guarantee that all the damage from the earlier period is contained in the report (T 2580-2584); Lucijana Peko, although insisting that during inspections she was able to "distinguish between old damage and recent damage" (T 1910-1911), concedes that she was not asked to distinguish between damage sustained in October/November and December and that, although, she was asked to "register all the damage that was sustained on the 6th of December", the Institute Report includes the damage from all three months, T 1912.

[981] Lucijana Peko confirms the list of buildings (Exhibit P52) which she personally examined, T 1862; 1944; Slobodan Vuković confirms the accuracy of the extracts from the Report on buildings which he personally examined (Exhibit P174), T 5922.

[982] *E.g.* Slobodan Vuković, T 6087-6093, 6101; Lucijana Peko, T 1922 ; 1923-1924.

[983] Slobodan Vuković, T 6045-6047; Lucijana Peko, T 1922-1923. The matter was also raised in the Defence Final Brief, para 519 and the Prosecution Final Brief, paras 201-202.

[984] *See e.g.* Slobodan Vuković, T 6052-6056.

[985] Slobodan Vuković, T 5900-5901, 6080-6081; Lucijana Peko, T 1871, 1891-1895, 1973-1974; Colin Kaiser, T 2555.

November attacks, could not vouch for the accuracy of the Institute Report, stating "You know I didn't carry out this survey. You know I wasn't looking at the teams. You know I am not responsible for this work."[986]

324. The Chamber, in determining what weight to attach to the submitted extracts of the Institute Report, concludes that the Report can be relied upon only to the extent it is confirmed by other evidence presented in this case, *i.e.* witness statements, other reports and video evidence.[987] The Chamber has proceeded on this basis.

325. As to the alleged damage to the office of the Institute itself (C1) the only evidence offered is the testimony of Colin Kaiser. His statement is, however, in this respect too vague to serve as a basis for a finding of damage to this particular building.[988]

326. In relation to Count 4 specifically, the Chamber finds that the Old Town sustained damage on a large scale as a result of the 6 December 1991 JNA attack. In this regard, the Chamber has considered the following factors: that 52 individually identifiable buildings and structures were destroyed or damaged; that the damaged or destroyed buildings and structures were located throughout the Old Town and included the ramparts surrounding it; that a large number of damaged houses bordered the main central axis of the Old Town, the Stradun, which itself was damaged, or were in the immediate vicinity thereof; and finally, that overall the damage varied from totally destroyed, *i.e.* burned out, buildings to more minor damage to parts of buildings and structures.

327. In relation to Count 6 specifically, the Chamber observes that the Old Town of Dubrovnik in its entirety[989] was entered onto the World Heritage List in 1979 upon the nomination of the SFRY.[990] The properties inscribed on the World Heritage List include those which, "because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science."[991] The Chamber is of the view that all the property within the Old Town, *i.e.* each structure or building, is within the scope of Article 3(d) of the Statute. The Chamber therefore concludes that the attack launched by the JNA forces against

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[986] Colin Kaiser, T 2695-2696.

[987] *E.g.* when video evidence was indicative of the recent damage, *i.e.*, amount of debris, the Chamber could conclude that the damage was recent. Here the Chamber also recalls the testimony of Slobodan Vuković who said that it was an "instantaneous" practice to clear the streets of debris, Slobodan Vuković, T 5830-5831.

[988] Colin Kaiser, T 2431-2432.

[989] The Old Town comprised: "The urban historical complex of Dubrovnik includes all the buildings erected from the XIIth to the XVIth century, within the precincts of the fortified walls. It covers an area of 15,2 ha [...] The boundaries of the historical urban complex are precisely defined by the fortified walls, the former moats and, on the southern side, by the steep coast-line.", P63/2, p 1.

[990] Colin Kaiser, T 2378-2379, Exhibits P63/2, P63/7; Exhibit P14, p 11.

[991] Convention concerning the protection of the world cultural and natural heritage, adopted by the General Conference at its seventeenth session, Paris, 16 November 1972, Exhibit P63/11, Article 1.

3. Conclusion

348. By virtue of the above, the Chamber finds that it has not been established that the Accused is responsible under Article 7(1) of the Statute for ordering the attack by the JNA on the Old Town of Dubrovnik on 6 December 1991.

B. Aiding and abetting

1. Law

349. Aiding and abetting has been defined in the case-law of the Tribunal as the act of rendering practical assistance, encouragement or moral support, which has a substantial effect on the perpetration of a crime,[1038] before, during or after the commission of the crime,[1039] and irrespective of whether these acts took place at a location other than that of the principal crime.[1040] It is not necessary to establish a cause-effect relationship between the conduct of the aider and abettor and the commission of the crime, or that such conduct served as a *conditio sine qua non* to the commission of the crime.[1041] However, the acts of the aider and abettor must have "a direct and substantial effect on the commission of the illegal act."[1042] The *Blaškić* Appeals Judgement left open the possibility that in the circumstances of a given case an omission may constitute the *actus reus* of aiding and abetting.[1043] Trial Chambers have held that this is the case, for example, if a person with superior authority is present at the crime scene,[1044] provided that his presence had a significant encouraging effect on the principal offender,[1045] or if there was an explicit duty to act.[1046]

350. Regarding the requisite *mens rea*, it must be established that the aider and abettor was aware that his acts were assisting in the commission of the crime by the principal.[1047] This awareness

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1038 *Blaškić* Appeals Judgement, para 46; *Vasiljević* Appeals Judgement, para 102; *Prosecutor v Duško Tadić*, Case IT-94-1-A, Judgement, 15 July 1999 (hereinafter "*Tadić* Appeals Judgement"), para 229; *Čelebići* Appeals Judgement, para 352.

1039 *Blaškić* Appeals Judgement, para 48. *See* also *Aleksovski* Trial Judgement, para 62, *Kunarac* Trial Judgement, para 391; *Kvočka* Trial Judgement, para 256; *Naletilic* Trial Judgement, para 63.

1040 *Blaškić* Appeals Judgement, para 48. *See* also *Simić* Trial Judgement, para 162; *Kvočka* Trial Judgement, para 256.

1041 *Blaškić* Appeals Judgement, para 48.

1042 *Tadić* Appeals Judgement, para 229: "The aider and abettor carries out acts *specifically directed* to assist, encourage or lend moral support to the perpetration of a certain specific crim ... and this support has a substantial effect upon the perpetration of the crime." [emphasis added]; *Vasilijević* Appeal Judgement, para 102; *Blaškić* Appeal Judgement, para 45.

1043 *Blaškić* Appeals Judgement, para 47. *See* also *Krnojelac* Trial Judgement, para 88, *Kunarac* Trial Judgement, para 393.

1044 *Blaškić* Trial Judgement, para 284; *Aleksovski* Trial Judgement, para 65; *Furundžija* Trial Judgement, para 274

1045 *Vasiljević* Trial Judgement, para 70.

1046 *Simić* Trial Judgement, para 162.

1047 *Tadić* Appeals Judgement, para 229; *Aleksovski* Appeals Judgement, para 162, referring to the *Furundžija* Judgement, para 249. *Blaškić* Appeals Judgement, para 49.

need not have been explicitly expressed, but it may be inferred from all relevant circumstances.[1048] While the aider and abettor need not share the *mens rea* of the principal, he must be aware of the essential elements of the crime ultimately committed by the principal.[1049] It is not necessary that the aider and abettor know the precise crime that was intended or actually committed, as long as he was aware that one or a number of crimes would probably be committed, and one of these crimes was in fact committed.[1050]

2. Findings

351. The Indictment alleges that on 6 December 1991, the Accused aided and abetted the unlawful shelling of the Old Town of Dubrovnik conducted by forces under his command, including forces under the command of Captain Kovačević, which were directly subordinated to the 9 VPS commanded by Admiral Jokić.[1051]

352. The Prosecution submits that the Accused's acts or omissions on 6 December 1991 "not only give rise to Article 7(3) responsibility under the Statute but were so egregious as to constitute aiding and abetting under Article 7(1)." It refers in particular to the Accused's failure to intervene on the morning of 6 December 1991 and his subsequent efforts to enable his subordinates to avoid punishment for their offences.[1052]

353. The Defence submits that there is no evidence showing that the Accused lent any support to the commission of the alleged crimes as his acts and omissions were for the most part geographically and temporally removed from the crimes and had no decisive effect on them. Furthermore, the Defence submits that no evidence was adduced that shows that the Accused knew that the crimes were to be committed and that he was aware that his acts were assisting the principal offenders.[1053] There were further submissions but these depended on factual bases which the Chamber has not accepted.

354. As discussed earlier, the Chamber has found that on 5 December 1991 the Accused ordered forces under his command to take Srd.[1054] The Chamber also found that the deliberate and unlawful shelling of the Old Town that occurred on 6 December was not implied in the Accused's

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1048 *Čelebići* Trial Judgement, para 328; *Tadić* Trial Judgement, 676.
1049 *Aleksovski* Appeals Judgement, para 162.
1050 *Blaškić* Appeals Judgement, para 50. *See also Naletilić* Trial Judgement, para 63; *Kvočka* Trial Judgement, para 255.
1051 Indictment, para 15.
1052 Prosecution Final Brief, para 278.
1053 Defence Final Brief, para 596.
1054 *See supra*, para 167.

UNITED
NATIONS

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Case No.: IT-94-1-A and IT-94-1-A*bis*

Date: 26 January 2000

Original: English

IN THE APPEALS CHAMBER

Before: **Judge Mohamed Shahabuddeen, Presiding**
Vice-President Florence Ndepele Mwachande Mumba
Judge Antonio Cassese
Judge Wang Tieya
Judge Rafael Nieto-Navia

Registrar: **Mrs. Dorothee de Sampayo Garrido-Nijgh**

Judgement of: **26 January 2000**

PROSECUTOR

v.

DU[KO TADI]

JUDGEMENT IN SENTENCING APPEALS

The Office of the Prosecutor:

Mr. Upawansa Yapa

Counsel for the Appellant:

Mr. William Clegg
Mr. John Livingston

II. APPEAL AGAINST SENTENCING JUDGMENT OF 14 JULY 1997

A. First Ground of Appeal: That the Sentence Imposed by the Trial Chamber is Unfair

1. Submissions of the Parties

(a) The Appellant

18. In the first ground of the appeal against the Sentencing Judgment of 14 July 1997, the Appellant alleges that the 20-year sentence imposed by Trial Chamber II is unfair.[34]

(i) The Appellant avers that the sentence was longer than the facts of the case required. Specifically, the Appellant contends that the Trial Chamber erred in failing to have regard to any "hierarchy of relative criminal culpability". The Appellant notes that, as a general sentencing principle, heavier penalties should be imposed on those who commit the gravest crimes and whose responsibility for those crimes is highest, and submits that it was incumbent upon the Trial Chamber in determining sentence to have in mind the development of an appropriate tariff reflecting the varying culpability of different accused. The Appellant submits that his rank, activities and position in the hierarchy ought to have placed him at the very bottom of such a list of culpability, and that this fact was not reflected in the Trial Chamber's decision to impose a sentence of 20 years' imprisonment.[35]

(ii) As a second aspect of this ground of appeal, the Appellant avers that the Trial Chamber, in imposing sentence, failed to take sufficient account of the sentencing practice of the courts of the former Yugoslavia, as required by Article 24(1) of the Statute. While acknowledging that the Statute does not make this sentencing practice binding on the Trial Chambers, the Appellant notes in this respect that, in the absence of the death penalty, the most severe punishment that could be imposed under the law of the former Yugoslav was a prison term of 20 years.[36]

(iii) The Appellant further argues that the Trial Chamber gave insufficient weight to his personal circumstances. He submits that at the time of the offences he was the subject of a

[34] Appellant's Brief Against Sentencing Judgement of 14 July 1997, pp. 1-4; T. 303 (21 April 1999).
[35] *Ibid.*, pp. 3-4, paras. 5((a)-(d)); T. 303 (21 April 1999).
[36] *Ibid.*, pp. 4-6; T. 304, 311 (21 April 1999).

campaign of deliberate propaganda encouraging participation in ethnic cleansing. The Appellant also notes that he is currently imprisoned and will serve his sentence in a foreign country away from his spouse and family, and isolated from persons of his own nationality. The Appellant further contends that upon his release he will suffer from the notoriety of being the first war criminal convicted by the International Tribunal and that this, combined with other factors, will render return to his native region impossible.[37]

(b) The Respondent

19. The Prosecutor ("Respondent") submits that the Appellant in relation to the first ground of appeal has failed to meet the burden which is to be placed upon him, namely, to show that the Trial Chamber incorrectly stated the law relating to its sentencing options or abused its discretion in arriving at its sentence.[38] The Respondent maintains that the sentence imposed was both in accordance with the law and appropriate in respect of the crimes committed and the circumstances of the offender. The Respondent further submits that the Trial Chamber, in determining its sentence, considered all the relevant factors as required by the Statute and the Rules. It is, accordingly, the Respondent's position that the 20-year sentence imposed by Trial Chamber II on the Appellant should not be disturbed on appeal.[39]

(i) The Respondent submits that the Trial Chamber, in determining its sentence, considered the notion of relative criminal culpability and applied it to the Appellant's position as compared to others at the time of the commission of the offences. The Respondent notes that the Trial Chamber in its Sentencing Judgment of 14 July 1997 expressly referred to the "relative unimportance" of the Appellant as a mitigating factor.[40] Moreover, the Respondent notes that under the Statute, the Trial Chamber had the option of imposing on the Appellant a sentence of life imprisonment, as well as that of imposing consecutive sentences upon him. Instead, the Trial Chamber chose, as the most severe punishment imposed on the Appellant, to sentence him to imprisonment for 20 years and ordered that his sentences run concurrently. The Respondent submits that this indicates that

[37] *Ibid.*, pp. 9-10; T. 305 (21 April 1999).
[38] "Response to Appellant's Brief on Appeal Against Sentencing Judgement Filed on 12 January 1998", 16 November 1998 ("Response to Appellant's Brief Against Sentencing Judgement of 14 July 1997"), pp. 4-6; T. 314 (21 April 1999).
[39] *Ibid.*, pp. 11-13, paras. 5.4, 5.8; T. 312 (21 April 1999).
[40] *Ibid.*, p. 7.

and the Appeals Chamber will not, therefore, quash the sentence and substitute its own sentence instead.

21. The Appeals Chamber finds no merit in the Appellant's contention that the Trial Chamber failed to sufficiently consider the sentencing practice and in particular the maximum sentences in the former Yugoslavia. The jurisprudence of this Tribunal has consistently held that, while the law and practice of the former Yugoslavia shall be taken into account by the Trial Chambers for the purposes of sentencing, the wording of Sub-rule 101(A) of the Rules, which grants the power to imprison for the remainder of a convicted person's life, itself shows that a Trial Chamber's discretion in imposing sentence is not bound by any maximum term of imprisonment applied in a national system. The Appeals Chamber is not satisfied that the Trial Chamber, in imposing a sentence of 20 years, erred in the exercise of its discretion. Accordingly, the reliance by the Appellant on the law of the former Yugoslavia which prescribed a maximum sentence of 20 years as an alternative to the death penalty is misplaced, and more especially having regard to the fact that, at the time when the offences were committed, a death penalty could have been imposed under that law for similar offences.

22. With respect to the Appellant's final challenge to his sentence, namely, that the Trial Chamber failed to adequately consider his personal circumstances, the Appeals Chamber is unable to find support for this contention. The Trial Chamber's decision addressed the issue of public indoctrination, and there is no discernible error in the exercise of discretion with regard to the remainder of the Trial Chamber's analysis that would permit the Appeals Chamber to substitute its own decision for that of the Trial Chamber.

3. Conclusion

23. For the reasons set out above, the first ground of appeal fails and is accordingly dismissed.

UNITED
NATIONS

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Case No.: IT-94-1-A

Date: 15 July 1999

Original: English

IN THE APPEALS CHAMBER

Before: **Judge Mohamed Shahabuddeen, Presiding**
Judge Antonio Cassese
Judge Wang Tieya
Judge Rafael Nieto-Navia
Judge Florence Ndepele Mwachande Mumba

Registrar: **Mrs. Dorothee de Sampayo Garrido-Nijgh**

Judgement of: **15 July 1999**

PROSECUTOR

v.

DU[KO TADI]

JUDGEMENT

The Office of the Prosecutor:

Mr. Upawansa Yapa
Ms. Brenda J. Hollis
Mr. William Fenrick
Mr. Michael Keegan
Ms. Ann Sutherland

Counsel for the Appellant:

Mr. William Clegg
Mr. John Livingston

circumstances of the case, (i) it was *foreseeable* that such a crime might be perpetrated by one or other members of the group and (ii) the accused *willingly took that risk*.

229. In light of the preceding propositions it is now appropriate to distinguish between acting in pursuance of a common purpose or design to commit a crime, and aiding and abetting.

(i) The aider and abettor is always an accessory to a crime perpetrated by another person, the principal.

(ii) In the case of aiding and abetting no proof is required of the existence of a common concerted plan, let alone of the pre-existence of such a plan. No plan or agreement is required: indeed, the principal may not even know about the accomplice's contribution.

(iii) The aider and abettor carries out acts specifically directed to assist, encourage or lend moral support to the perpetration of a certain specific crime (murder, extermination, rape, torture, wanton destruction of civilian property, etc.), and this support has a substantial effect upon the perpetration of the crime. By contrast, in the case of acting in pursuance of a common purpose or design, it is sufficient for the participant to perform acts that in some way are directed to the furthering of the common plan or purpose.

(iv) In the case of aiding and abetting, the requisite mental element is knowledge that the acts performed by the aider and abettor assist the commission of a specific crime by the principal. By contrast, in the case of common purpose or design more is required (i.e., either intent to perpetrate the crime or intent to pursue the common criminal design plus foresight that those crimes outside the criminal common purpose were likely to be committed), as stated above.

UNITED
NATIONS

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia since 1991

Case No. IT-94-1-T

Date: 7 May 1997

Original: English

IN THE TRIAL CHAMBER

Before: **Judge Gabrielle Kirk McDonald, Presiding**
Judge Ninian Stephen
Judge Lal Chand Vohrah

Registrar: **Mrs. Dorothee de Sampayo Garrido-Nijgh**

Opinion and Judgment of: **7 May 1997**

PROSECUTOR

v.

DU[KO TADI] a/k/a/ "DULE"

OPINION AND JUDGMENT

The Office of the Prosecutor:

Mr. Grant Niemann **Ms. Brenda Hollis** **Mr. Alan Tieger**
Mr. William Fenrick **Mr. Michael Keegan**

Counsel for the Accused:

Mr. Michaïl Wladimiroff **Mr. Steven Kay** **Mr. Milan Vujin**
Mr. Alphons Orie **Ms. Sylvia de Bertodano** **Mr. Nikola Kosti}**

had been no poison gas or gas chambers in the *Zyklon B* cases, mass exterminations would not have been carried out in the same manner. The same analysis applies to the cases where the men were prosecuted for providing lists of names to German authorities. Even in these cases, where the act in complicity was significantly removed from the ultimate illegal result, it was clear that the actions of the accused had a substantial and direct effect on the commission of the illegal act, and that they generally had knowledge of the likely effect of their actions.

689. The Trial Chamber finds that aiding and abetting includes all acts of assistance by words or acts that lend encouragement or support, as long as the requisite intent is present. Under this theory, presence alone is not sufficient if it is an ignorant or unwilling presence. However, if the presence can be shown or inferred, by circumstantial or other evidence, to be knowing and to have a direct and substantial effect on the commission of the illegal act, then it is sufficient on which to base a finding of participation and assign the criminal culpability that accompanies it.

690. Moreover, when an accused is present and participates in the beating of one person and remains with the group when it moves on to beat another person, his presence would have an encouraging effect, even if he does not physically take part in this second beating, and he should be viewed as participating in this second beating as well. This is assuming that the accused has not actively withdrawn from the group or spoken out against the conduct of the group.

691. However, actual physical presence when the crime is committed is not necessary; just as with the defendants who only drove victims to the woods to be killed, an accused can be considered to have participated in the commission of a crime based on the precedent of the Nürnberg war crimes trials if he is found to be "concerned with the killing". However, the acts of the accused must be direct and substantial.

692. In sum, the accused will be found criminally culpable for any conduct where it is determined that he knowingly participated in the commission of an offence that violates international humanitarian law and his participation directly and substantially affected the commission of that offence through supporting the actual commission before, during, or after the incident. He will also be responsible for all that naturally results from the commission of the act in question.

UNITED
NATIONS

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Case No.: IT-98-32-A

Date: 25 February 2004

Original: English

IN THE APPEALS CHAMBER

Before: **Judge Theodor Meron, Presiding**
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Wolfgang Schomburg
Judge Inés Mónica Weinberg de Roca

Registrar: **Mr. Hans Holthuis**

Date: **25 February 2004**

PROSECUTOR

v.

MITAR VASILJEVIĆ

JUDGEMENT

The Office of the Prosecutor:

Ms. Helen Brady
Ms. Michelle Jarvis
Mr. Steffen Wirth

Counsel for the Accused:

Mr. Vladimir Domazet
Mr. Geert-Jan Knoops

I. INTRODUCTION

1. The municipality of Višegrad is located in south-eastern Bosnia and Herzegovina. Its main town, Višegrad, is situated on the eastern bank of the Drina River. In 1991, about 63% of the population was Muslim and 33% was Serb. Elections were held in the municipality in November 1990; the result, which closely matched the ethnic composition of the municipality, led to mounting tensions. In early April 1991, after requests from the Serb politicians to divide the police along ethnic lines, both groups raised barricades around Višegrad, and over the following months random acts of shooting and shelling occurred. The Yugoslav National Army (JNA) arrived on 14 April 1992, and this at first had a calming effect. However, on 19 May 1992, the JNA withdrew from Višegrad and various Serb para-military units took control. One such group, with a reputation for being particularly violent, was led by Milan Lukić (Milan Lukić group). Although Mitar Vasiljević (Appellant) was not part of the Milan Lukić group, the Trial Chamber found that he was associated with the group and acted as an informant to it. Sometime in May 1992, the Appellant was present when Milan Lukić and his men searched the village of Musići. The Trial Chamber found that on 7 June 1992, the Appellant, together with Milan Lukić and two unidentified men, forcibly transported seven Muslim men to the eastern bank of the Drina River, where they were shot. Five of the seven men died as a result of the shooting and two survived by falling into the river, pretending to be dead. This incident is referred to as the Drina River incident.

2. On 29 November 2002, the Trial Chamber found the Appellant guilty, in relation to the Drina River incident, as a co-perpetrator of persecution as a crime against humanity pursuant to Article 5(h) of the Statute, for the murders of the five Muslim men and the inhumane acts inflicted on the two surviving Muslim men (Count 3) and murder as a violation of the laws or customs of war pursuant to Article 3 of the Statute, for the murder of the five Muslim men (Count 5). The Trial Chamber, however, acquitted the Appellant on the remaining counts, either because it found the evidence to be insufficient or because the convictions would have been cumulative. For the convictions on Counts 3 and 5, the Trial Chamber imposed a prison sentence of twenty years.

3. The Appellant is now appealing both the convictions and sentence. His arguments, raising eight grounds of appeal, are spread out in two separate documents - the Defence Appeal Brief and the Defence Additional Appeal Brief. The Appeals Chamber finds these arguments to be repetitive and unstructured and has, therefore, regrouped them. An overview of the arguments of the Appellant as set out in his submissions is found in the procedural background of these appellate proceedings, set forth in Annex A.

55; and VG-59; and v) lack of clear evidence that the Appellant knew prior to 7 June 1992 about killings committed by Milan Lukić.

54. The Appeals Chamber will consider whether this error led to a miscarriage of justice in the context of the alleged error relating to the Appellant's *mens rea* to kill the seven men (*see* discussion paragraphs 128-132 below).

C. Alleged error in finding that the Appellant pointed a gun at the seven Muslim men while at the Vilina Vlas Hotel

55. The Appellant argues that the Trial Chamber erred in finding that he was armed at the hotel and that he pointed his gun at the seven Muslim men.[90] He submits that the evidence relied on by the Trial Chamber (witnesses VG-14 and VG-32) does not support such a finding.[91]

56. The Prosecution submits that witness VG-14 testified that the Appellant had a gun, did not testify that the Appellant actually pointed it at the victims inside the hotel, and that witness VG-32 testified that it was one of the unidentified perpetrators, not the Appellant, who was pointing a rifle at the victims in the hotel.[92] The Prosecution further submits that it was open to a reasonable trier of fact to conclude that the Appellant was present at the hotel with a rifle contributing to preventing the victims from fleeing the hotel.

57. The issue of whether the Appellant was armed has been dealt with above and the Appeals Chamber concluded that it was reasonable of the Trial Chamber to find that the Appellant was armed at the Vilina Vlas Hotel.[93] Therefore, the issue to be considered at this stage is limited to whether it was reasonable of the Trial Chamber to find that the Appellant pointed his gun at the seven Muslim men at the hotel in paragraph 209 of the Judgement. This conclusion is not supported by the Trial Chamber's own finding in paragraph 100 of the Judgement where it found that "[o]ne of the unidentified armed men guarded them [the seven Muslim men], pointing his automatic rifle at them, preventing any of them from leaving the lobby of the hotel." Further, the evidence presented at trial does not support, as admitted by the Prosecution, a finding that the Appellant pointed his gun at the seven Muslim men. The Appeals Chamber considers that no reasonable trier of fact could have found that the Appellant pointed a gun at the seven Muslim men at this stage. However, this finding was only one of several relating to the actions of the Appellant from which the Trial Chamber inferred that the Appellant shared the intent to

[90] Defence Appeal Brief, paras 191-194 (under fourth ground of appeal). Further the Appellant argues in the Defence Additional Appeal Brief, para. 58, that the Trial Chamber made an error of fact by accepting criminal responsibility of murder on the basis of inferences stemming from the testimony of witnesses VG-14 and VG-32.
[91] Defence Appeal Brief, para. 193.
[92] Prosecution Response Brief, para. 5.12, referring to the testimony of witness VG-32, T. 268.
[93] *See* paras 33-45 above.

kill. It is therefore in the context of the alleged error relating to the *mens rea* of the Appellant to kill the seven Muslim men that the Appeals Chamber will determine whether the error made by the Trial Chamber, when it found that the Appellant pointed a gun at the men in the hotel, led to a miscarriage of justice.[94]

D. Alleged error in dismissing the Appellant's argument that he attempted to dissuade Milan Lukić from killing

58. The Appellant challenges the fact that the Trial Chamber dismissed his assertion that he attempted to dissuade Milan Lukić from killing the Muslim men, arguing that this was not confirmed by witnesses VG-14 and VG-32, who were, in any event of the view that no one could have influenced Milan Lukić.[95] On this point, the Prosecution responds that the Trial Chamber, in paragraph 107 of the Judgement, expressly rejected the Appellant's submission that he could not have dissuaded Milan Lukić from pursuing his criminal purpose. The Prosecution considers that this is an irrelevant question since the Trial Chamber found the Appellant shared the criminal purpose.[96]

59. The Trial Chamber's findings on this point are as follows:

> [t]he Trial Chamber rejects as wholly untrue the evidence of the Accused that he tried to persuade Milan Lukić to spare the life of Meho Džafić or any other man in that group. The Trial Chamber accepts the evidence of VG-32 that the Accused said nothing in response to the pleas of Meho Džafić as the men were marched towards the bank of the Drina River.[97]

> [t]he Trial Chamber also rejects the evidence of the Accused that, in any event, he was powerless to stop Milan Lukić from killing the Muslim men. VG-32 and VG-14 gave evidence of their impression that throughout the entire incident there was no one around Milan Lukić who could have affected him or his decisions and orders in a meaningful way. However, the Accused's claim of duress is inconsistent with the evidence that, one week prior to the shooting at the Drina River and during the Musići incident, he had successfully pleaded with Milan Lukić not to mistreat and harass the people in that house. He asserted that he was the only person who could help on that occasion, and that he had prevented the people living in that house from being mistreated and harassed by Milan Lukić. The Trial Chamber has already rejected that claim, but the inconsistent claims by the Accused as to his relationship with Milan Lukić has persuaded the Trial Chamber that the Accused is prepared to give false versions of that relationship according to the benefit he seeks to obtain at the time each version is given. There was no other acceptable evidence that the Accused was under duress vis-à-vis Milan Lukić. The Trial Chamber is satisfied that the Accused willingly accompanied Milan Lukić and his group with the seven Muslim men to the Drina River[98].

60. The Appeals Chamber finds that the Appellant has not demonstrated how the Trial Chamber's rejection of his assertion that he had attempted to dissuade Milan Lukić from carrying out the killings was unreasonable. The Appellant has also failed to demonstrate how the fact that none of the persons

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[94] *See*, paras 115-132 below.
[95] Defence Appeal Brief, paras 83-85 (under first ground of appeal); Defence Additional Appeal Brief, paras 43-45 (under seventh ground of appeal); Judgement, paras 82-86.
[96] Prosecution Response, para. 2.16.
[97] Judgement, para. 106 (footnotes omitted).
[98] *Ibid*, para. 107 (emphasis added, footnotes omitted).

crime other than the one which was part of the common design arises "only if, under the circumstances of the case, (i) it was *foreseeable* that such a crime might be perpetrated by one or other members of the group and (ii) the accused *willingly took that risk*"[179] – that is, being aware that such crime was a possible consequence of the execution of that enterprise, and with that awareness, the accused decided to participate in that enterprise.

2. Differences between participating in a joint criminal enterprise as a co-perpetrator or as an aider and abettor

102. Participation in a joint criminal enterprise is a form of "commission" under Article 7(1) of the Statute. The participant therein is liable as a co-perpetrator of the crime(s). Aiding and abetting the commission of a crime is usually considered to incur a lesser degree of individual criminal responsibility than committing a crime. In the context of a crime committed by several co-perpetrators in a joint criminal enterprise, the aider and abettor is always an accessory to these co-perpetrators, although the co-perpetrators may not even know of the aider and abettor's contribution. Differences exist in relation to the *actus reus* as well as to the *mens rea* requirements between both forms of individual criminal responsibility:

(i) The aider and abettor carries out acts specifically directed to assist, encourage or lend moral support to the perpetration of a certain specific crime (murder, extermination, rape, torture, wanton destruction of civilian property, etc.), and this support has a substantial effect upon the perpetration of the crime. By contrast, it is sufficient for a participant in a joint criminal enterprise to perform acts that in some way are directed to the furtherance of the common design.

(ii) In the case of aiding and abetting, the requisite mental element is knowledge that the acts performed by the aider and abettor assist the commission of the specific crime of the principal. By contrast, in the case of participation in a joint criminal enterprise, i.e. as a co-perpetrator, the requisite *mens rea* is intent to pursue a common purpose.

B. Alleged errors of law

1. Alleged errors of law related to the concept of joint criminal enterprise

103. Before turning to the alleged errors of law of the Trial Chamber concerning the concept of joint criminal enterprise and persecution, the Appeals Chamber will first determine under which category of joint criminal enterprise the Drina River incident falls.

[178] *Ibid*, paras 202, 220 and 228.
[179] *Ibid*, para. 228. *See* also paras 204 and 220.

stopped in Sase that the seven Muslim men were to be killed; vi) the behaviour of the soldiers changed drastically from the moment Milan Lukić ordered them to leave the car;[219] vii) that throughout the entire incident the impression of the two survivors was that no one around Milan Lukić could have influenced him or his decisions;[220] and viii) that the Appellant willingly accompanied Milan Lukić and his group with the seven Muslim men to the Drina River.[221]

131. The Appeals Chamber recalls that the question before it is whether no reasonable tribunal could find that the only reasonable inference available on the evidence cited above was that the Appellant shared the intent to commit murder. The Appeals Chamber considers that when a Chamber is confronted with the task of determining whether it can infer from the acts of an accused that he or she shared the intent to commit a crime, special attention must be paid to whether these acts are ambiguous, allowing for several reasonable inferences. The Appeals Chamber is satisfied that no reasonable tribunal could have found that the only reasonable inference available on the evidence, as cited above, is that the Appellant had the intent to kill the seven Muslim men. The Trial Chamber found that the Appellant assisted Milan Lukić and his men by preventing the seven Muslim men from fleeing.[222] It did not find, however, that the Appellant shot at the Muslim men himself, nor that he exercised control over the firing. Compared to the involvement of Milan Lukić and potentially one or both of the other men, the participation of the Appellant in the overall course of the killings did not reach the same level. The above-mentioned acts of the Appellant were ambiguous as to whether or not the Appellant intended that the seven Muslim men be killed. This conclusion is further supported by the relatively short period of time between the change of attitude of Milan Lukić and the shooting, the strong personality of Milan Lukić compared to the Appellant, as well as the factors mentioned in paragraph 130. The Appeals Chamber, therefore, concludes that the Trial Chamber erred by finding that the only reasonable inference from the evidence was that the Appellant shared the intent to kill the seven Muslim men.

132. The error made by the Trial Chamber led to a miscarriage of justice since, without the proof the Appellant's intent, the Appellant would not be responsible as a co-perpetrator in the joint criminal enterprise. The Appeals Chamber will now consider whether the Appellant is, nevertheless, responsible as an aider and abettor.

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[219] T. 274-275, testimony of witness VG-32.
[220] Judgement, para. 107. Testimony of witnesses VG-14 and VG-32.
[221] *Ibid*, para. 107.
[222] *Cf.* for a comparable situation in a national jurisdiction *Prosecutor v. Novislav Djajić*, 3St 20/96, Supreme Court of Bavaria, 23 May 1997. In this case, the accused was found guilty of, *inter alia*, aiding and abetting 14 murders by standing with a gun in the middle of a semi-circle that Serbs had formed around a group of Muslims who were then shot.

3. Aiding and abetting

133. The Appeals Chamber has found above that the Trial Chamber erred by finding that the only reasonable inference from the evidence was that the Appellant shared the intent to kill the seven Muslim men. The Appellant argues under his fourth ground of appeal that his actions do not in fact amount to aiding and abetting, as he did not facilitate the commission of the crime. He submits that Milan Lukić and the two unidentified men did not need any help from the Appellant at the Vilina Vlas Hotel or at the Drina River,[223] since they had managed to detain the seven Muslim men on the hill of Bikavac by themselves, despite the fact that the seven Muslim men could have resisted.[224] The Appellant infers from this that it would not be logical to conclude that Milan Lukić and his men needed the assistance of the Appellant at the Vilina Vlas Hotel or at the Drina River as the risk that the seven Muslim men might resist was less important at this stage.[225]

134. The Appeals Chamber has already found that the Appellant knew that the seven Muslim men were to be killed; that he walked armed with the group from the place where they had parked the cars to the Drina River; that he pointed his gun at the seven Muslim men; and that he stood behind the Muslim men with his gun together with the other three offenders shortly before the shooting started. The Appeals Chamber believes that the only reasonable inference available on the totality of evidence is that the Appellant knew that his acts would assist the commission of the murders. The Appeals Chamber finds that in preventing the men from escaping on the way to the river bank and during the shooting, the Appellant's actions had a "substantial effect upon the perpetration of the crime."[226]

135. The Appeals Chamber finds that the acts of the Appellant were specifically directed to assist the perpetration of the murders and the inhumane acts and his support had a substantial effect upon the perpetration of the crimes. The Appeals Chamber therefore finds the Appellant guilty for aiding and abetting murder pursuant to Article 3 of the Statute (Count 5). Further, the Appeals Chamber finds the Appellant guilty as an aider and abettor for murder as a crime against humanity pursuant to Article 5(a) of the Statute (Count 4) and inhumane acts as a crime against humanity pursuant to Article 5(i) of the Statute (Count 6). However, the Appellant is not convicted of the murder as a crime against humanity pursuant to Article 5(a) of the Statute (Count 4) and inhumane acts as a crime against humanity pursuant to Article 5(i) of the Statute (Count 6) in accordance with the Tribunal's jurisprudence on cumulative convictions.[227]

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[223] Defence Appeal Brief, para. 216, which refers to the Appellant's arguments in paras 205-212.
[224] *Ibid*, para. 206.
[225] *Ibid*, paras 206-212.
[226] *Tadić* Appeals Judgement, para. 229.
[227] *See* paras 145-147 below.

finds that the Appellant has not shown a discernable error in the exercise of the Trial Chamber's discretion. This sub-ground of appeal is dismissed.

B. The Appeals Chamber's considerations

181. The Trial Chamber imposed a prison sentence of twenty years on the Appellant. The Appeals Chamber has not found in favour of any of the Appellant's alleged errors in relation to the sentence. However, the Appeals Chamber is of the view that the sentence needs to be adjusted due to the Appeals Chamber's finding that the Appellant was responsible as an aider and abettor with respect to murder as a violation of the laws or customs of war under Article 3 of the Statute (Count 5) and persecution by way of murder and inhumane acts as a crime against humanity pursuant to Article 5(h) of the Statute (Count 3), instead of being responsible as a co-perpetrator as was found by the Trial Chamber. The Appeals Chamber considers that it has the mandate to revise the sentence by itself without remitting it to the Trial Chamber.[290]

182. The Appeals Chamber is of the view that aiding and abetting is a form of responsibility which generally warrants a lower sentence than is appropriate to responsibility as a co-perpetrator.[291] The Appeals Chamber recalls that the sentence to be imposed must reflect the inherent gravity of the criminal conduct of an accused. The Appeals Chamber is of the view that the Appellant committed very serious crimes. Therefore, taking into account the particular circumstances of this case as well as the form and degree of the participation of the Appellant in the crimes, the Appeals Chamber finds that a sentence of 15 years is appropriate.

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matters which may be taken into account in mitigation unless such co-operation is "substantial." Nevertheless, the co-operation which was given by the Accused was indeed modest, and it has been given very little weight," Judgement, para. 299.

[290] *See Krnojelac* Appeals Judgement, paras 263-264; *Jelisić* Appeal Judgement, para. 99; *Aleksovski* Appeal Judgement, para. 99. The Appeals Chamber of the ICTR has in several cases determined that quashing a conviction would not necessarily affect the imposed sentence and may be determined by the Appeal Chamber without remitting it back to the Trial Chamber. *See Musema* Appeals Judgement, paras 372-373.

[291] *Cf. R. v. Price* (2000), 144 C.C.C. (3d) 343 at 358 (Ont. C.A.)(Can.); §3B1.2 of the 2003 United States Sentencing Guidelines, applicable to aiding and abetting through §2X2.1 of the Guidelines: "Based on the defendant's role in the offense, decrease the offense level as follows: (a) If the defendant was a minimal participant in any criminal activity, decrease by 4 levels. (b) If the defendant was a minor participant in any criminal activity, decrease by 2 levels. In cases falling between (a) and (b), decrease by 3 levels"; Regina v. Dwayne Gordon, CA (Crim Div), [2002] EWCA Crim 1637, 11 June 2002 (England); Article 27 (2) of the 1997 Chinese Penal Code ("An accomplice shall, in comparison with a principal offender, be given a lesser punishment or a mitigated punishment or be exempted from punishment"; Articles 32 (2) and 55 of the 1988 Penal Code of South Korea (Article 32 [2]: "The punishment of accessories shall be mitigated to less than that of the principals"; Article 55 [1] no. 2: "When penal servitude for life or imprisonment for life is to be mitigated, it shall be reduced to limited penal servitude, or limited imprisonment, for not less than seven years; no. 3: When limited penal servitude or limited imprisonment is to be mitigated, it shall be reduced by one-half of the term of the punishment"); Sections 27 (2), 49 of the German Penal Code (Section 27 [2]: "The punishment for the accessory corresponds to the punishment threatened for the perpetrator. It shall be mitigated pursuant to Section 49 subsection [1]"; Section 49 [1]: "If mitigation is prescribed or permitted under this provision, then the following shall apply to such mitigation: 1. Imprisonment for not less than three years shall take the place of imprisonment for life; 2. In cases of imprisonment for a fixed term, at most three-fourths of the maximum term provided may be imposed [...]"); Section 34 (1) no. 6 of the Austrian Penal Code: "it is true that accomplices are normally less blameworthy than principals and therefore deserve less severe sentences".

VII. DISPOSITION

For the foregoing reasons, **THE APPEALS CHAMBER**

PURSUANT to Article 25 of the Statute and Rules 117 and 188 of the Rules of Procedure and Evidence;

NOTING the respective written submissions of the parties and the arguments they presented at the hearing of 18 November 2003;

SITTING in open session;

ALLOWS, Judge Shahabuddeen dissenting, Mitar Vasiljević's appeal in so far as it relates to his convictions as a co-perpetrator of persecution, a crime against humanity (murder and inhumane acts) under Count 3 of the Indictment, and of murder, a violation of the laws or customs of war, under Count 5 of the Indictment;

SETS ASIDE, Judge Shahabuddeen dissenting, these convictions, and **FINDS**, Judge Shahabuddeen dissenting, Mitar Vasiljević guilty of Counts 3 and 5 of the Indictment as an aider and abettor to persecution, a crime against humanity (murder and inhumane acts), and as an aider and abettor to murder, a violation of the laws or customs of war, pursuant to Article 7(1) of the Statute;

DISMISSES Mitar Vasiljević's appeal against convictions in all other respects;

DISMISSES Mitar Vasiljević's appeal against sentence and **IMPOSES**, Judge Shahabuddeen dissenting, a new sentence, taking into account his responsibility established on the basis of the new convictions entered on appeal;

SENTENCES Mitar Vasiljević to fifteen years' imprisonment to run as of this day, subject to credit being given under Rule 101(C) of the Rules for the period Mitar Vasiljević has already spent in detention, that is from 25 January 2000 to the present day;

B.

4. ICC Jurisprudence

Cour
Pénale
Internationale

International
Criminal
Court

Original: English

No.: ICC-01/04-01/07
Date: 30 September 2008

PRE-TRIAL CHAMBER I

Before: Judge Akua Kuenyehia, Presiding Judge
Judge Anita Ušacka
Judge Sylvia Steiner

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
THE PROSECUTOR
v. Germain Katanga and Mathieu Ngudjolo Chui

Public Redacted Version

Decision on the confirmation of charges

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25(3)(a) of the Statute has criminalised precisely the kind of responsibility that embodies such an apparent contradiction.

506. This doctrine has also been applied in international criminal law in the jurisprudence of the international tribunals.[672] In *The Prosecutor v. Milomir Stakić* Judgement, Trial Chamber II of the ICTY relied on the liability theory of co-perpetration of a crime through another person as a way to avoid the inconsistencies of applying the so-called "Joint Criminal Enterprise" theory of criminal liability to senior leaders and commanders.[673]

507. As noted by the Defence for Germain Katanga,[674] the Trial Chamber's Judgement was overturned on appeal. However, the reasoning of the ICTY Appeals Chamber's Judgement is of utmost importance to an understanding of why the impugned decision does not obviate its validity as a mode of liability under the Rome Statute.

508. The Appeals Chamber rejected this mode of liability by stating that it did not form part of customary international law.[675] However, under article 21(1)(a) of the Statute, the first source of applicable law is the Statute. Principles and rules of

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[672] ICTR, *Prosecutor v. Gacumbitsi*, Case No. ICTR-2001-64-A, Appeals Judgement, "separate opinion of Judge Schomburg", 7 July 2006, paras 14-22; ICTY, *The Prosecutor v. Milomor Stakic*, Case No. IT-97-24-T, Judgement, 31 July 2003, paras 439 *et seq.*; paras 741 *et seq.* According to AMBOS, K., *Internationales Strafrecht*, München Beck 2006, §7/29, its principles are to be recognized in the Nuremberg's jurisprudence, *United States of America v. Alstotter et al.* ("The Justice Case"), 3 T.W.C. 1 (1948), 6 L.R.T.W.C. 1 (1948), 14 Ann. Dig. 278 (1948).

[673] ICTY, *The Prosecutor v. Milomir Stakić*, Case No. IT-97-24-T, Trial Judgement, 31 July 2003, para. 439: "The Trial Chamber prefers to define 'committing' as meaning that the accused participated, physically or otherwise directly or indirectly, in the material elements of the crime charged through positive acts or, based on a duty to act, omissions, whether individually or jointly with others. The accused himself need not have participated in all aspects of the alleged criminal"; para. 741. "the Accused is not alleged to be the direct perpetrator of the crimes. Rather, as the leading political figure in Prijedor municipality, he is charged as the perpetrator behind the direct perpetrator/actor and is considered the co-perpetrator of those crimes together with other persons with whom he co-operated in many leading bodies of the Municipality."

[674] ICC-01/04-01/07-698, para. 26.

[675] ICTY, *The Prosecutor v. Milomir Stakić*, Case No.IT-97-24-A, Appeals Judgement, para. 62: "This mode of liability, as defined and applied by the Trial Chamber, does not have support in customary international law or in the settled jurisprudence of this Tribunal, which is binding on the Trial Chambers. By way of contrast, joint criminal enterprise is a mode of liability which is "firmly established in customary international law" and is routinely applied in the Tribunal's jurisprudence (...) In view of these reasons, it appears that the Trial Chamber erred in employing a mode of liability which is not valid law within the jurisdiction of this Tribunal." About the Rome Statute's rejection of the notion of Joint Criminal Enterprise see WERLE, G., *Völkerstrafrecht*, Tübingen, Mohr Siebeck, 2003, n. 425.

international law constitute a secondary source applicable only when the statutory material fails to prescribe a legal solution. Therefore, and since the Rome Statute expressly provides for this specific mode of liability, the question as to whether customary law admits or discards the 'joint commission through another person' is not relevant for this Court. This is a good example of the need not to transfer the *ad hoc* tribunals' case law mechanically to the system of the Court.[676]

509. Finally, most recently, the Pre-Trial Chamber III of the Court also endorsed this notion of individual criminal responsibility in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*. Having established the suspect's position as the leader of the organisation and described the functioning of the militia, the Pre-Trial Chamber III stated:

> In light of the foregoing, the Chamber considers that there are reasonable grounds to believe that, as a result of his authority over his military organisation, Mr. [...] had the means to exercise control over the crimes committed by MLC troops deployed in the CAR.[677]

510. In sum, the acceptance of the notion of 'control over an organised apparatus of power' in modern legal doctrine,[678] its recognition in national jurisdictions,[679] its

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[676] WERLE, G., "Individual Criminal Responsibility in Article 25 ICC Statute", 5 J. Int'l Criminal Justice 953 (2007), pp. 961-962: "the ICC Statute must be seen on its own as an independent set of rules. Hence, a mechanical transfer of the *ad hoc* tribunals' case law is definitely not the correct approach; WERLE, G., *Volkerstrafrecht*, 2nd ed., Tübingen, Mohr Siebeck, 2007, paras 425 *et seq.*

[677] ICC-01/05-01/08-14-tENG, para. 78.

[678] SANCINETTI, M., *Teoría del delito y disvalor de acción · una investigación sobre las consecuencias prácticas de un concepto personal de ilícito circunscripto al disvalor de acción*, Buenos Aires, Hammurabi, 1991, pp. 712 *et seq.*; SANCINETTI. M., *Derechos humanos en la Argentina post dictatorial*, Buenos Aires, Lea, 1988, pp. 27 *et seq.*; SANCINETTI, M. & FERRANTE, M., *El derecho penal en la protección de los derechos humanos*, Buenos Aires, Hammurabi, 1999, p. 313; BACIGALUPO, E., *Principios de Derecho Penal, Parte General*, Buenos Aires, Hammurabi, 1987, p. 334; AMBOS, K., *La parte general del derecho penal internacional*, Montevideo, Temis, 2005, pp. 216-240; AMBOS, K., *Internationales Strafrecht*, München, Beck, 2006, §§ 7/29 *et seq.*; STRATENWERTH, G. & KUHLEN, L., *Strafrecht, Allgemeiner Teil I*, 5th ed., Köln, Heymanns, 2004, § 12/65 *et seq.*; KÜHL, K., *Strafrecht, Allgemeiner Teil*, 4th ed., München, Vahlen, 2002, § 20/73 *et seq.*; WESSELS, J. & BEULKE, W., *Strafrecht, Allgemeiner Teil*, 36th ed., Heidelberg, Müller, 2006, n. 541; ROXIN, C., "Straftaten im Rahmen organisatorischer Machtapparate", *Goltdammer's Archiv fur Strafrecht* (1963), pp. 193-207; ROXIN, C., *Taterschaft und Tatherrschaft*, 8th ed., Berlin, De Gruyter, 2006, pp. 248 et seq.; ROXIN, C., "Organistionsherrschaft und Tatentschlossenheit", 7 Zeitschrift für Internationale Strafrechtsdogmatik (2006), p. 294; ROXIN, C., "Anmerkungen zum Vortrag von Prof. Herzberg", in AMELUNG, K. (Ed.), *Individuelle Verantwortung und Beteiligungsverhältnisse bei Straftaten in bürokratischen Organisationen des Staates, der Wirtschaft und der Gesellschaft*, Sinzheim, Pro Universitate, 2000, pp. 55 *et seq.*; HERZBERG, R.D., *Täterschaft und Teilnahme*, München, Beck, 1977, pp. 42 *et seq.*; HIRSCH, H., *Rechtsstaatliches Strafrecht und staatlich gesteuertes Unrecht*, Opladen, Westdeutscher Verlag. 1996, pp. 22-23; BLOY, R., "Grenzen der Täterschaft bei fremdhändiger

Cour
Pénale
Internationale

International
Criminal
Court

Original: English

No.: ICC-01/04-01/06
Date: 10 July 2012

TRIAL CHAMBER I

Before: Judge Adrian Fulford, Presiding Judge
Judge Elizabeth Odio Benito
Judge René Blattmann

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF THE PROSECUTOR v .THOMAS LUBANGA DYILO

Public

Decision on Sentence pursuant to Article 76 of the Statute

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9. On 7 June 2012, the legal representatives filed their submissions on the defence request to introduce additional evidence.[16] The prosecution filed its submissions on this issue on 8 June 2012.[17]

10. The Chamber issued an Order on the defence request to provide the Chamber with additional evidence during the sentencing hearing on 11 June 2012,[18] granting leave to the defence to: (i) call two additional witnesses (D01-0039 and D01-0040) via a video-link with the DRC; (ii) rely on two documents when questioning witness D01-0040;[19] and (iii) introduce an additional document relevant to the time spent by Mr Lubanga in detention in the DRC.[20]

11. The sentencing hearing was held on 13 June 2012, during which the Chamber heard the evidence of witnesses D01-0039 and D01-0040. Thereafter the Prosecutor, the legal representatives of victims and the defence made their oral submissions. Following these submissions, Mr Lubanga made a statement to the Chamber.[21] The evidence of the two additional witnesses and all the oral submissions are considered below, where relevant.

II. The jurisprudence of other courts in relation to sentencing regarding child soldiers

12. Although the decisions of other international courts and tribunals are not part of the directly applicable law under Article 21 of the Statute, the *ad hoc* tribunals are in a comparable position to the Court in the context of sentencing. However, the

[16] Réponse des représentants légaux du groupe de victims VOl à la requête de la défense ICC-01/04-01/06-2892 du 4 juin 2012, 7 June 2012, ICC-01/04-01/06-2893.
[17] Prosecution's Response to « Requête de la Défense sollicitant l'autorisation de présenter des éléments de preuve supplémentaires lors de l'audience sur la peine prévue le 13 juin 2012 », 8 June 2012, ICC-01/04-01/06-2894.
[18] Order on the defence request to present evidence during the sentencing hearing, 11 June 2012, ICC-01/04-01/06-2895.
[19] ICC-01/04-01/06-2895, para. 22.
[20] DRC-D01-0001-0136.
[21] ICC-01/04-01/06-T-360-Red2-ENG. Transcripts are referred to hereinafter as "T-".

only convictions by an international criminal tribunal for the recruitment or use of child soldiers are from the Special Court for Sierra Leone ("SCSL"). There have been seven[22] convictions at the SCSL in four cases for the crime of using child soldiers under the age of 15.[23] In two of those cases,[24] the Trial Chamber did not address each count separately in its sentencing decision, and accordingly it is impossible to determine the effect the conviction for the use of child soldiers had on the overall sentences. The two cases in which separate sentences were handed down for the crime of using child soldiers are briefly discussed below.

13. The Trial Chamber in the RUF case, when addressing the issue of gravity, determined that the offences it was considering relating to the use of child soldiers were committed on a large scale and with a significant degree of brutality.[25] It was established that many children had been abducted from their families and they were subjected to cruel and harsh military training. Those who were unable to withstand the training regime were often summarily shot and killed.[26] Children as young as 10 were armed and used to ambush others, as well as acting as bodyguards for the commanders. The Chamber found that "very young children were used to engage in the perpetration of gruesome crimes directed against innocent civilians", including amputating the limbs of civilians and beheading corpses.[27] Many children were shot and killed in training and

[22] The conviction of Mr Kondewa was later overturned on appeal. *Prosecutor v. Fofana and Kondewa, Case No. SCSL-04-14-A*, Appeals Chamber, Judgment, 28 May 2008.
[23] SCSL, *Prosecutor v. Fofana and Kondewa, Case No. SCSL-04-14-T*, Trial Chamber, Judgment, 2 August 2007 ("CDF case"); *Prosecutor v. Taylor, Case No. SCSL-03-01-T*, Trial Chamber, Judgment, 18 May 2012 ("Taylor case"); *Prosecutor v. Sesay, Kallon and Gbao, Case No. SCSL-04-15-T*, Trial Chamber, Judgment, 25 February 2009 ("RUF case"); *Prosecutor v. Brima, Kamara and Kanu, Case No. SCSL-04-16-T*, Trial Chamber, Judgment, 20 June 2007 ("AFRC case").
[24] The AFRC and Taylor cases.
[25] SCSL, *The Prosecutor v. Sesay, Kallon and Gbao, Case No. SCSL-04-15-T*, Trial Chamber, Sentencing Judgment ("RUF Sentencing Judgment"), 8 April 2009, para. 180.
[26] RUF Sentencing Judgment, paras 180 – 185.
[27] RUF Sentencing Judgment, para. 181.

relied on for the purposes of sentence following Mr Lubanga's conviction.[45] The Chamber requested written submissions on: (i) the procedure to be adopted for sentencing and the principles to be applied by the Chamber;[46] and (ii) the relevant evidence presented during trial, the aggravating and mitigating factors, and the sentence to be imposed on Mr Lubanga.[47] This has ensured that he has had adequate notice of the matters that may be taken into consideration by the Chamber at this stage of the proceedings.

31. Moreover, the defence has been provided with adequate time and facilities, including the opportunity to identify and introduce evidence relevant to sentence.

2) Standard of proof

32. The prosecution argues that the Chamber should not follow the jurisprudence of the *ad hoc* tribunals when they decided that the relevant aggravating factors need to be established by the prosecution beyond reasonable doubt and they must be directly related to the offences that resulted in a conviction.[48] The prosecution submits that it is open to the Chamber to make findings as to the aggravating and mitigating factors on the basis of a "balance of probabilities".[49] The defence argues that the aggravating factors must be proved beyond a reasonable doubt.[50]

33. It is for the Chamber to establish the standard of proof for the purposes of sentencing, given the Statute and the Rules do not provide any guidance. Since any aggravating factors established by the Chamber may have a significant effect

[45] See William Schabas in Otto Triffterer (ed), Commentary on the Rome Statute of the International Criminal Court, Observers' Notes (2008), page 1414.
[46] See ICC-01/04-01/06-2868, ICC-01/04-01/06-2864 and ICC-01/04-01/06-2869.
[47] ICC-01/04-01/06-2881, ICC-01/04-01/06-2880 and ICC-01/04-01/06-2882.
[48] ICC-01/04-01/06-2868, para. 25.
[49] ICC-01/04-01/06-2868, para. 25.
[50] ICC-01/04-01/06-2891-Red, para. 50.

on the overall length of the sentence Mr Lubanga will serve, it is necessary that they are established to the criminal standard of proof, namely "beyond a reasonable doubt".

34. As to the mitigating circumstances, the defence submits that it is not limited to the facts relied on during the confirmation stage of the proceedings, and the standard of proof to be applied should be that of a balance of probabilities.[51] The Chamber accepts that the mitigating factors are not limited to the facts and circumstances described in the Confirmation Decision, particularly given Rule 145(2)(a)(ii) of the Rules refers to "the convicted person's conduct after the act" in this context. As to the standard of proof, the Chamber is of the view that the *in dubio pro reo* principle applies at the sentencing stage of the proceedings, and any mitigating circumstances are to be established on a balance of probabilities.

3) Double counting

35. Any factors that are to be taken into account when assessing the gravity of the crime will not additionally be taken into account as aggravating circumstances, and vice versa.[52]

C. The relevant factors

1) Gravity of the crime

36. The "gravity of the crime", as set out in Article 78(1) of the Statute and in Rule 145 of the Rules, is one of the principal factors to be considered in the

[51] ICC-01/04-01/06-2891-Red, para. 86.
[52] International Tribunal for the former Yugoslavia ("ICTY"), *Prosecutor v. Nikolić, Case No. IT-02-60/1-A*, Appeals Chamber, Judgment on Sentencing Appeal, 8 March 2006, para. 58.

Cour
Pénale
Internationale

International
Criminal
Court

Original: English

No.: ICC-01/04-01/10

Date: 16 December 2011

PRE-TRIAL CHAMBER I

Before: Judge Sanji Mmasenono Monageng, Presiding Judge
Judge Sylvia Steiner
Judge Cuno Tarfusser

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

IN THE CASE OF
THE PROSECUTOR V. CALLIXTE MBARUSHIMANA

Public Redacted version

Decision on the confirmation of charges

717

losses entailed by those attacks, in some instances blaming other armed parties to the conflict, in particular the DRC governmental *Forces Armées de la République Démocratique du Congo* ("FARDC").[16] The systematic denial was aimed at preventing the FDLR's leaders from being labelled as mass murderers, on the one hand, and at exploiting the international attention on the FDLR and its political agenda triggered by the attacks, on the other.[17]

8. According to the DCC, in his capacity as Executive Secretary of the FDLR, Mr Mbarushimana was the individual responsible for the implementation of this part of the FDLR strategy. On the one hand, whilst having full knowledge of the attacks perpetrated by the FDLR against the civilian population, he issued several press releases on behalf of the organisation in the aftermath of operations, systematically denying any responsibility of the group. On the other hand, he engaged in international peace talks and negotiations, shrewdly portraying the FDLR as an actor seeking peace and stability in the Kivu area.[18] In the words of the Prosecution, the Suspect was the "linchpin" of the overall FDLR strategy, namely "because of his ability to transform the FDLR's crimes on the ground into political capital".[19] As such, he is to be held criminally responsible under Article 25(3)(d) of the Rome Statute ("Statute"), since he knowingly and intentionally contributed "in any other way" – i.e., in a way other than the ones listed in article 25(3) (a), (b) and (c) of the Statute - to the commission of the war crimes and crimes against humanity charged by the Prosecution under Counts 1 to 13.

3. Defence Submissions

[16] DCC, para. 41.
[17] ICC-01/04-01/10-T-7-Red-ENG WT, p. 35, lines 2-12.
[18] DCC, paras 119-26.
[19] ICC-01/04-01/10-T-7-Red-ENG WT, p. 33, lines 8-11.

mentioned earlier, the jurisprudence of the *ad hoc* tribunals does not require the aider and abettor to share the intent of the perpetrator to commit the crime, whereas under article 25(3)(c) of the Statute the aider and abettor must act with the purpose of facilitating the commission of that crime. There is also scholarly disagreement as to whether the *actus reus* required should likewise differ from the *ad hoc* tribunals' "substantial contribution" requirement.[663]

282. JCE and 25(3)(d) liability are also not identical, as similar as they may appear. Some relevant differences between JCE and 25(3)(d) liability include: (i) whether a defendant who is found guilty is convicted as a principal[664] or accessory, (ii) whether a defendant must be in the group acting with the common purpose[665] or not, (iii) whether the contribution is to the common purpose[666] or to the crimes committed, and (iv) whether some form of intent[667] or mere knowledge is sufficient for responsibility. However, both 25(3)(d) liability and JCE emphasise group criminality and actions performed in accordance with a common plan, which, when coupled with the fact that JCE requires a lower threshold of contribution than aiding and abetting at the *ad hoc* tribunals, makes the modern formulation of JCE's concept of a "significant contribution" relevant to the present discussion.

283. In view of the foregoing considerations, the Chamber finds that the contribution to the commission of a crime under article 25(3)(d) of the Statute cannot be just any

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[663] *Compare* William Schabas, An Introduction to the International Criminal Court (4th ed., 2011), p. 228 (suggesting that the absence of the word "substantial" in the Rome Statute may suggest that the Statute was drafted to reject the higher threshold of the ICTY and ICTR); Kai Ambos, "Article 25", in O. Triffterer (ed.), *Commentary on the Rome Statute of the International Criminal Court: Observers' Notes, Article by Article* (Beck et al., 2nd ed., 2008), p. 757 ("the word 'facilitating' confirms that a direct and substantial assistance is not necessary"); *with* Gerhard Werle, 'Individual Criminal Responsibility in Article 25 ICC Statute', 5 Journal of International Criminal Justice 953 (2007), p. 969 ("The wording of Article 25(3)(c) does not require that the assistance has a substantial effect on the commission of the crime. However, within the ICC Statute's framework of modes of participation, it is reasonable to interpret the *actus reus* of assistance in this way."); ICC-01/04-01/10-T-8-Red2-ENG, p. 10, lines 10-16 (Professor Kai Ambos argues that "if you look at the case law - and in this case we can legitimately look at the case law of the ad hoc tribunals - a contribution in the sense of assistance, aiding and abetting, has been defined as a substantial contribution").

[664] Tadić AJ, para. 188 (participating in a criminal common purpose is a method of "commission" of a crime).

[665] Tadić AJ, para. 227.

[666] Krajišnik AJ, para. 675; Đorđjević TJ, para. 1863.

[667] Tadić AJ, para. 228.

B.

5. ICJ Jurisprudence

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

CASE CONCERNING APPLICATION OF THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

(BOSNIA AND HERZEGOVINA *v.* SERBIA AND MONTENEGRO)

JUDGMENT OF 26 FEBRUARY 2007

2007

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

AFFAIRE RELATIVE À L'APPLICATION DE LA CONVENTION POUR LA PRÉVENTION ET LA RÉPRESSION DU CRIME DE GÉNOCIDE

(BOSNIE-HERZÉGOVINE c. SERBIE-ET-MONTÉNÉGRO)

ARRÊT DU 26 FÉVRIER 2007

State, the necessary conclusion would be that the genocide was attributable to the State, which would be directly responsible for it, pursuant to the rule referred to above (paragraph 398), and no question of complicity would arise. But, as already stated, that is not the situation in the present case.

However there is no doubt that "complicity", in the sense of Article III, paragraph *(e)*, of the Convention, includes the provision of means to enable or facilitate the commission of the crime; it is thus on this aspect that the Court must focus. In this respect, it is noteworthy that, although "complicity", as such, is not a notion which exists in the current terminology of the law of international responsibility, it is similar to a category found among the customary rules constituting the law of State responsibility, that of the "aid or assistance" furnished by one State for the commission of a wrongful act by another State.

420. In this connection, reference should be made to Article 16 of the ILC's Articles on State Responsibility, reflecting a customary rule, which reads as follows:

> "*Article 16*
>
> *Aid or assistance in the commission of an internationally wrongful act*
>
> A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:
>
> *(a)* That State does so with knowledge of the circumstances of the internationally wrongful act; and
> *(b)* The act would be internationally wrongful if committed by that State."

Although this provision, because it concerns a situation characterized by a relationship between two States, is not directly relevant to the present case, it nevertheless merits consideration. The Court sees no reason to make any distinction of substance between "complicity in genocide", within the meaning of Article III, paragraph *(e)*, of the Convention, and the "aid or assistance" of a State in the commission of a wrongful act by another State within the meaning of the aforementioned Article 16 — setting aside the hypothesis of the issue of instructions or directions or the exercise of effective control, the effects of which, in the law of international responsibility, extend beyond complicity. In other words, to ascertain whether the Respondent is responsible for "complicity in genocide" within the meaning of Article III, paragraph *(e)*, which is what the Court now has to do, it must examine whether organs of the respondent State, or persons acting on its instructions or under its direction or effective control, furnished "aid or assistance" in the commission of the genocide in Srebrenica, in a sense not significantly different from that of those concepts in the general law of international responsibility.

8001

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

CASE CONCERNING MILITARY AND PARAMILITARY ACTIVITIES IN AND AGAINST NICARAGUA

(NICARAGUA *v.* UNITED STATES OF AMERICA)

MERITS

JUDGMENT OF 27 JUNE 1986

1986

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

AFFAIRE DES ACTIVITÉS MILITAIRES ET PARAMILITAIRES AU NICARAGUA ET CONTRE CELUI-CI

(NICARAGUA c. ÉTATS-UNIS D'AMÉRIQUE)

FOND

ARRÊT DU 27 JUIN 1986

723

from, *inter alia*, the attitude of the Parties and the attitude of States towards certain General Assembly resolutions, and particularly resolution 2625 (XXV) entitled "Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations". The effect of consent to the text of such resolutions cannot be understood as merely that of a "reiteration or elucidation" of the treaty commitment undertaken in the Charter. On the contrary, it may be understood as an acceptance of the validity of the rule or set of rules declared by the resolution by themselves. The principle of non-use of force, for example, may thus be regarded as a principle of customary international law, not as such conditioned by provisions relating to collective security, or to the facilities or armed contingents to be provided under Article 43 of the Charter. It would therefore seem apparent that the attitude referred to expresses an *opinio juris* respecting such rule (or set of rules), to be thenceforth treated separately from the provisions, especially those of an institutional kind, to which it is subject on the treaty-law plane of the Charter.

189. As regards the United States in particular, the weight of an expression of *opinio juris* can similarly be attached to its support of the resolution of the Sixth International Conference of American States condemning aggression (18 February 1928) and ratification of the Montevideo Convention on Rights and Duties of States (26 December 1933), Article 11 of which imposes the obligation not to recognize territorial acquisitions or special advantages which have been obtained by force. Also significant is United States acceptance of the principle of the prohibition of the use of force which is contained in the declaration on principles governing the mutual relations of States participating in the Conference on Security and Co-operation in Europe (Helsinki, 1 August 1975), whereby the participating States undertake to "refrain in their mutual relations, *as well as in their international relations in general,*" (emphasis added) from the threat or use of force. Acceptance of a text in these terms confirms the existence of an *opinio juris* of the participating States prohibiting the use of force in international relations.

190. A further confirmation of the validity as customary international law of the principle of the prohibition of the use of force expressed in Article 2, paragraph 4, of the Charter of the United Nations may be found in the fact that it is frequently referred to in statements by State representatives as being not only a principle of customary international law but also a fundamental or cardinal principle of such law. The International Law Commission, in the course of its work on the codification of the law of treaties, expressed the view that "the law of the Charter concerning the prohibition of the use of force in itself constitutes a conspicuous example of a rule in international law having the character of *jus cogens*" (paragraph (1) of the commentary of the Commission to Article 50 of its draft Articles on the Law of Treaties, *ILC Yearbook*, 1966-II, p. 247). Nicaragua in its

Memorial on the Merits submitted in the present case states that the principle prohibiting the use of force embodied in Article 2, paragraph 4, of the Charter of the United Nations "has come to be recognized as *jus cogens*". The United States, in its Counter-Memorial on the questions of jurisdiction and admissibility, found it material to quote the views of scholars that this principle is a "universal norm", a "universal international law", a "universally recognized principle of international law", and a "principle of *jus cogens*".

191. As regards certain particular aspects of the principle in question, it will be necessary to distinguish the most grave forms of the use of force (those constituting an armed attack) from other less grave forms. In determining the legal rule which applies to these latter forms, the Court can again draw on the formulations contained in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV), referred to above). As already observed, the adoption by States of this text affords an indication of their *opinio juris* as to customary international law on the question. Alongside certain descriptions which may refer to aggression, this text includes others which refer only to less grave forms of the use of force. In particular, according to this resolution :

> "Every State has the duty to refrain from the threat or use of force to violate the existing international boundaries of another State or as a means of solving international disputes, including territorial disputes and problems concerning frontiers of States.
>
> . . . . . .
>
> States have a duty to refrain from acts of reprisal involving the use of force.
>
> . . . . . .
>
> Every State has the duty to refrain from any forcible action which deprives peoples referred to in the elaboration of the principle of equal rights and self-determination of that right to self-determination and freedom and independence.
>
> Every State has the duty to refrain from organizing or encouraging the organization of irregular forces or armed bands, including mercenaries, for incursion into the territory of another State.
>
> Every State has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts, when the acts referred to in the present paragraph involve a threat or use of force."

292. For these reasons,

THE COURT

(1) By eleven votes to four,

Decides that in adjudicating the dispute brought before it by the Application filed by the Republic of Nicaragua on 9 April 1984, the Court is required to apply the "multilateral treaty reservation" contained in proviso *(c)* to the declaration of acceptance of jurisdiction made under Article 36, paragraph 2, of the Statute of the Court by the Government of the United States of America deposited on 26 August 1946 ;

IN FAVOUR : *President* Nagendra Singh ; *Vice-President* de Lacharrière ; *Judges* Lachs, Oda, Ago, Schwebel, Sir Robert Jennings, Mbaye, Bedjaoui and Evensen ; *Judge* ad hoc Colliard ;

AGAINST : *Judges* Ruda, Elias, Sette-Camara and Ni.

(2) By twelve votes to three,

Rejects the justification of collective self-defence maintained by the United States of America in connection with the military and paramilitary activities in and against Nicaragua the subject of this case ;

IN FAVOUR : *President* Nagendra Singh ; *Vice-President* de Lacharrière ; *Judges* Lachs, Ruda, Elias, Ago, Sette-Camara, Mbaye, Bedjaoui, Ni and Evensen ; *Judge* ad hoc Colliard ;

AGAINST : *Judges* Oda, Schwebel and Sir Robert Jennings.

(3) By twelve votes to three,

Decides that the United States of America, by training, arming, equipping, financing and supplying the *contra* forces or otherwise encouraging, supporting and aiding military and paramilitary activities in and against Nicaragua, has acted, against the Republic of Nicaragua, in breach of its obligation under customary international law not to intervene in the affairs of another State ;

IN FAVOUR : *President* Nagendra Singh ; *Vice-President* de Lacharrière ; *Judges* Lachs, Ruda, Elias, Ago, Sette-Camara, Mbaye, Bedjaoui, Ni and Evensen ; *Judge* ad hoc Colliard ;

AGAINST : *Judges* Oda, Schwebel and Sir Robert Jennings.

(4) By twelve votes to three,

Decides that the United States of America, by certain attacks on Nicaraguan territory in 1983-1984, namely attacks on Puerto Sandino on 13 September and 14 October 1983 ; an attack on Corinto on 10 October 1983 ; an attack on Potosí Naval Base on 4/5 January 1984 ; an attack on San Juan del Sur on 7 March 1984 ; attacks on patrol boats at Puerto Sandino on 28 and 30 March 1984 ; and an attack on San Juan del Norte on 9 April 1984 ; and further by those acts of intervention referred to in subparagraph (3) hereof which involve the use of force, has acted, against

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

CASE CONCERNING OIL PLATFORMS

(ISLAMIC REPUBLIC OF IRAN *v.* UNITED STATES OF AMERICA)

JUDGMENT OF 6 NOVEMBER 2003

2003

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

AFFAIRE DES PLATES-FORMES PÉTROLIÈRES

(RÉPUBLIQUE ISLAMIQUE D'IRAN c. ÉTATS-UNIS D'AMÉRIQUE)

ARRÊT DU 6 NOVEMBRE 2003

SEPARATE OPINION OF JUDGE SIMMA

Matters relating to United States use of force are at the heart of the case, therefore the approach of dealing with Article XX before turning to Article X of the 1955 Treaty is acceptable — The Court's position regarding the United States attacks on the oil platforms, although correct as such, is marked throughout by inappropriate self-restraint — While hostile military action not reaching the threshold of an "armed attack" within the meaning of Article 51 of the United Nations Charter may be countered by proportionate and immediate defensive measures equally of a military character, the United States actions did not qualify as such proportionate counter-measures — The Court's treatment of Article X on "freedom of commerce" between the territories of the Parties follows a step-by-step approach which is correct up to a certain point but then takes turns in two wrong directions: first, the platforms attacked in October 1987 did not lose protection under Article X through being temporarily inoperative because the freedom under the Treaty embraces also the possibility of commerce in the future; secondly, the indirect commerce in Iranian oil going on during the time of the United States embargo is also protected by the Treaty — The Court's finding on the United States counter-claim is profoundly inadequate particularly with regard to the so-called "generic" counter-claim which should have been upheld — The problems of attribution and causality posed by the existence of several tortfeasors in the case could have been solved by recourse to a general principle of joint-and-several responsibility recognized by major domestic legal systems — Neither would the "indispensable-third-party" doctrine have stood in the way of declaring Iran responsible for breaches of Article X.

I have voted in favour of the first part of the *dispositif* of the present Judgment with great hesitation. In fact, I see myself in a position to concur — in principle — with the Court's treatment of only one of the two issues dealt with there, namely that of the alleged security interests of the United States measured against the international law on self-defence. As to the remaining parts of the *dispositif*, neither can I agree with the Court's decision that the United States attacks on the Iranian oil platforms ultimately did not infringe upon Iran's treaty right to respect for its freedom of commerce with the United States; nor do I consider that the way in which the Court disposed of the so-called "generic" counter-claim of the United States is correct. In my view, this counter-claim ought to have been upheld. Regarding the part of the *dispositif* devoted to this counter-claim, I thus had no choice but to dissent.

The reason why I have not done so also with regard to the first part of

that I consider it of utmost importance, and a matter of principle, for the Court to pronounce itself on questions of the threat or use of force in international relations whenever it is given the opportunity to do so. In this regard, the desirable standard of vigour and clarity was set already in the *Corfu Channel* case where the Court condemned a right to self-help by armed force claimed by the United Kingdom

> "as the manifestation of a policy of force, such as has, in the past, given rise to most serious abuses and such as cannot, whatever be the present defects in international organization, find a place in international law"[9].

Unfortunately, in the sombre light of developments over the 50 years that have passed since the *Corfu Channel* case, but more particularly in the recent past, this statement of the Court shows traits of a prophecy.

6. My agreement with the present position of the Court in principle does not however keep me from criticizing the Judgment for what I consider the half-heartedness of the manner in which it deals with the question of the use of force.

I recognize of course that there are valid legal reasons for the Court to keep what has to be said on the legality of United States military actions against the oil platforms within the confines of the text of Article XX, paragraph 1 *(d)*, of the Treaty. In fact, my criticism of the Court's treatment of the issues arising under that provision does not stem from any disagreement with what the text of the Judgment is saying. Rather, what concerns me is what the Court has decided not to say. I find it regrettable that the Court has not mustered the courage of restating, and thus reconfirming, more fully fundamental principles of the law of the United Nations as well as customary international law (principles that in my view are of the nature of *jus cogens*) on the use of force, or rather the prohibition on armed force, in a context and at a time when such a reconfirmation is called for with the greatest urgency. I accept of course that, since its jurisdiction is limited to the bases furnished by the 1955 Treaty, it would not have been possible for the Court to go as far as stating in the *dispositif* of its Judgment that, since the United States attacks on the oil platforms involved a use of armed force that cannot be justified as self-defence, these attacks must not only, for reasons of their own, be found not to have been necessary to protect the essential security interests of the United States within the meaning of Article XX of the Treaty; they must also be found in breach of Article 2 (4) of the United Nations Charter. What the Court could have done, without neglecting any jurisdictional bounds as I see them, is to restate the backbone of the Charter law on use of force by way of strong, unequivocal *obiter dicta*. Everybody will be

[9] *Corfu Channel, Merits, Judgment, I.C.J. Reports 1949*, p. 35.

B.

6. Other Jurisprudence

B. (6)

i. International Jurisprudence

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា
Extraordinary Chambers in the Courts of Cambodia
Chambres Extraordinaires au sein des Tribunaux Cambodgiens

Kingdom of Cambodia
Nation Religion King
Royaume du Cambodge
Nation Religion Roi

អង្គជំនុំជម្រះសាលាដំបូង
Trial Chamber
Chambre de première instance

សំណុំរឿងលេខ: ០០១/១៨ កក្កដា ២០០៧/អវតក/អជសដ

Case File/Dossier No. 001/18-07-2007/ECCC/TC

Before:	**Judge NIL Nonn, President** **Judge Silvia CARTWRIGHT** **Judge YA Sokhan** **Judge Jean-Marc LAVERGNE** **Judge THOU Mony**
Greffiers:	**LIM Suy-Hong, Matteo CRIPPA, SE Kolvuthy, Natacha WEXELS-RISER, DUCH Phary**
Duration of hearing:	**30 March 2009 until 27 November 2009**
Date:	**26 July 2010**
Classification:	**PUBLIC**

JUDGEMENT

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Accused
KAING Guek Eav *alias* Duch

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KAR Savuth
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Marie-Paule CANIZARÈS

assistance, while "abetting" involves "facilitating the commission of an act by being sympathetic thereto."[933]

534. No evidence of a plan or agreement between the aider and abettor and the perpetrator is required.[934] An accused may not be convicted of aiding and abetting a crime that was never carried out. The perpetrator of the crime need not have been tried or even identified.[935]

535. Liability for aiding and abetting a crime requires proof that the accused knew that a crime would probably be committed, that the crime was in fact committed, and that the accused was aware that his conduct assisted the commission of that crime.[936] This knowledge can be inferred from the circumstances.[937] Further, the requirement that the accused be aware of, though need not share, the perpetrator's intent applies equally to specific-intent crimes, like persecution as a crime against humanity.[938]

2.7.9 Findings on aiding and abetting

536. The Amended Closing Order states:

> 161. DUCH's subordinates respected his authority, and that at nearly every level of S21's operation, he gave them practical assistance, encouragement or moral support. This substantially contributed to the crimes described in this Closing Order. Further, DUCH appreciated his behaviour would assist in the commission of these crimes; knew their essential elements; and was aware of the intention of the perpetrators.[939]

537. In light of the Chamber's previous findings, it is clear that the practical assistance, encouragement and moral support provided by the Accused to his staff had a substantial

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[933] *Milutinović* Trial Judgement, Vol. I, para. 89, fn. 107.
[934] *Tadić* Appeal Judgement, para. 229.
[935] *Milutinović* Trial Judgement, Vol. I, para. 92.
[936] *Prosecutor v. Blaskić*, Judgement, ICTY Appeals Chamber (IT-95-14-A), 29 July 2004, paras 49-50; *Brima* Appeal Judgement, para. 243.
[937] *Milutinović* Trial Judgement, Vol. I, para. 94; *Sesay* Trial Judgement, para. 280.
[938] *Prosecutor v. Blagojević et al.*, Judgement, ICTY Appeals Chamber (IT-02-60-A), 9 May 2007, para. 127 ("The requisite mental element of aiding and abetting is knowledge that the acts performed assist the commission of the specific crime of the principal perpetrator. In cases of specific intent crimes such as persecutions or genocide, the aider and abettor must know of the principal perpetrator's specific intent.") (footnotes omitted).
[939] Amended Closing Order, para. 161.

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TRIALS
OF
WAR CRIMINALS
BEFORE THE
NUERNBERG MILITARY TRIBUNALS



VOLUME XIV

"THE MINISTRIES CASE"

734

APPENDIX B

THE ROECHLING CASE—INDICTMENT, JUDGMENT, AND JUDGMENT ON APPEAL*

INDICTMENT

GENERAL TRIBUNAL OF MILITARY GOVERNMENT FOR THE FRENCH ZONE OF OCCUPATION IN GERMANY

Indictment Against the Directors of the Firm of Roechling

The Government Commissioner of the General Tribunal of the Military Government for the French Zone of Occupation in Germany

versus

Hermann Roechling, Ernst Roechling, Hans Lothar von Gemmingen-Hornberg, Albert Maier, Wilhelm Rodenhauser, Directors of the Roechling Enterprises

Under the Moscow Declaration of 30 October 1943; the London Agreement and the Charter of 8 August 1945; Law No. 10 of the Berlin Control Council of 20 December 1945; Ordinance No. 2 of the Supreme Interallied Commander on the Military Government Tribunals; Ordinance No. 36 of 25 February 1946 of the General in Command of the French Zone of Occupation in Germany; Decree No. 43 of 2 March 1946 of the Administrator General of the French Zone of Occupation in Germany; the judgment of the International Military Tribunal of the Major War Criminals dated 1 October 1946 has the honor to submit—

The International Military Tribunal in its judgment of 30 September 1946 has laid down in principle that the political leaders of the "Third Reich" were responsible for the preparation and the

* The materials reproduced herein have been translated from the French language. The Roechling case was tried at Rastatt, Germany (French Zone of Occupation), under Allied Control Council Law No. 10 and certain ordinances of the French Supreme Commander in Germany providing for the trial of war criminals in the French Zone. The case had many interesting features and was cited in numerous arguments at Nuernberg and in the judgment of the Farben case. (United States *vs.* Carl Krauch, et al., Case 6, vol. VIII, this series.) The principal prosecutor in the Roechling case, M. Charles Gerthoffer, had been one of the French prosecutors in the first Nuernberg trial before the International Military Tribunal. In the Ministries case he appeared before the Tribunal as special counsel.

The General Tribunal in the Roechling case was composed of seven judges, five of whom were French, one of whom was Belgium, and one of whom was Dutch. The prosecution in that case included a representative of the Polish Government. The judgment of the General Tribunal was the only judgment after that of the International Military Tribunal in which a defendant was found guilty of the waging (as distinguished from the planning, preparation, and initiation) of aggressive war, or in which an industrialist was found guilty upon charges of aggressive war. However, this finding was set aside on appeal by the Superior Military Government Court. The judgment on appeal directed the forfeiture of the property of the defendants Hermann and Ernst Roechling, and half of the property of the defendant von Gemmingen-Hornberg; measures not included in the original sentences of the General Tribunal hearing the case.

The defense of lack of knowledge—No superior may prefer this defense indefinitely; for it is his duty to know what occurs in his organization, and lack of knowledge, therefore, can only be the result of criminal negligence. For the rest, the acceptance of superior orders on the one hand, and the lack of knowledge as to their execution by subordinates, on the other, would lead to the abolishment of any penalty; the executing agents would seek cover behind the superior order, and the superior behind his lack of knowledge and say: "I had no knowledge of that."

Finally, the excuse of *total war* as taught by [von] Clausewitz doctrines cannot be taken into consideration even for one moment. It is said there: "War is an act of violence, and there are no limits to violence. Imperceptible restrictions under the name of 'international law' futilely sap its strength. He who ruthlessly serves violence will have the biggest advantage if the opponent acts otherwise."

In other words, it is the formula, "everything is permitted in war" or, "the end justifies the means," a doctrine which was also expressed in the course of a session by Hermann Roechling who said, "The most powerful is in the right."

For, it was just the Hague Convention, the Geneva Convention, etc., which—after the elapse of such a length of time and after the age of antiquity, of Christendom, of the medieval period had produced such interesting examples as God's Truce, the Golden Bull of Charles V—reestablished the principles of humane warfare as far as this was possible considering its direful effects.

Germany's intention deliberately to betray these principles to which she had become a party by signing the various diplomatic documents is clearly obvious.

It must be stated in addition that the defendants assert in this connection that the Hague Convention of 1907 had become void and was not in force any longer, but that they—contradicting themselves—refer to this international agreement whenever it provides the defense with a favorable argument.

Before proceeding to the examination of the facts, the Tribunal, finally, deems it expedient to affirm—if such affirmation is needed at all—that its findings will not be influenced by either the least feelings of the "right of the victor," or by the least feeling of hatred or, what in itself would be incomprehensible, by any feeling of anxiety on the part of anyone, whoever he may be, on account of the consequences which might result from this decision in future; it exclusively pursues the aim of finding a judgment in accordance with the principles of "human rights" which were masterfully brought to bear by the International Military Tribunal in Nuernberg.

The Court finds that Hermann Roechling's responsibility for the execution of the forced-labor program was of the same type as that with which the International Military Tribunal has charged Speer. For, the applications which were forwarded by Speer to Sauckel, which were the cause for the deportation of civilian workers, were drafted on behest of the Reich Plenipotentiary Hermann Roechling, president of the RVE, in order to obtain workers for the iron industry.

Moreover, the German industrialist, Flick, has confirmed this fact. He has stated that the plant executives concerned forwarded the requirement reports for foreign workers for the iron industry to the chairman of the RVE, Roechling, who in turn submitted them through the Minister, Speer, to Sauckel.

Hermann Roechling has admitted this fact. In a statement, dated 6 November 1945, which he made for the United States occupation authorities in Germany, he said that all manpower requirements were submitted to Speer through the RVE, and through Speer to Sauckel. There are numerous requirement reports of this type; it will suffice, however, to mention one of them in order to illustrate the methods used. On 12 August 1942 the RVE sent a memorandum to Speer concerning the program for raising the steel production in the last two quarters of that year.

In order to put this new plan into effect, the RVE stated that 60,000 workers would be required, of whom 55,000 could be foreigners. However, on 12 August 1942, Sauckel had been in office for 5 months, and the chairman of the RVE knew in what way such foreign workers were supplied.

On the other hand, Hermann Roechling stated the following in a report of the RVE, dated 15 August 1942: "In accordance with the requirement reports submitted by the Reich Association Iron * * * Russian civilians have arrived as the first transports during the last days of July." The exact number of workers required by the RVE and of these deported workers which were made available for the RVE by Sauckel and Speer, is not known; it is a fact, however, that their number was quite considerable and that they included civilians from France, Luxembourg, Belgium, Holland, Poland, and Soviet Russia.

A statement of Hermann Roechling shows that after 1942, approximately 200,000 foreign workers were employed in the iron industry in Germany proper. Thus, Hermann Roechling was connected with the war crime of deportation for the purpose of forced labor, and he was coresponsible for the deportation of all those workers who had been assigned to the iron and steel industry as of 29 May 1942, the day on which he assumed his supreme command of this industry.

Hermann Roechling and the other accused members of the Directorate of the Voelklingen works are not accused of having ordered this horrible treatment, but of having permitted it; and indeed supported it, and in addition, of not having done their utmost to put an end to these abuses. In adopting this attitude they permitted the continued existence and further development of this inhuman situation and thus, particularly through this tolerance, participated in the maltreatment within the meaning of Law No. 10.

As a result of the positions they held, *Ernst Roechling* and *Maier* were not connected with manpower matters, and their conduct can therefore not be considered as participation in these abuses.

In view of their positions and powers, this is not the case with Hermann Roechling, von Gemmingen-Hornberg, and Rodenhauser. It was Hermann Roechling's duty to keep himself informed about the treatment of the deportees; the fact that he did no longer concern himself about their fate, could only increase his responsibility. In his dual capacity as chief of the Voelklingen plants and chairman of the Reich Association Iron he had sufficient authority to intervene and to render the abuses less severe, even if he could not stop them. The contested judgment validly establishes that the witnesses declared Hermann Roechling to have had repeated opportunities during the inspection of his concerns to ascertain the fate meted out to his personnel, since he could not fail to notice the prisoners' uniform on those occasions.

Von Gemmingen-Hornberg was president of the Directorate of the Stahlwerke Roechling; he furthermore held the position of works manager, that is, as the works representative in negotiations with the authorities specially competent to deal with matters relating to labor. His sphere of competence also included contact with the Gestapo in regard to the works police.

Von Gemmingen-Hornberg declares that he was incapable of altering the conditions, of which he was aware, since the deported workers were under the jurisdiction of the Gestapo and the German Labor Front. However, the high position which he held provided him with sufficient authority to intervene and to ensure an improvement in the treatment of the convicted deportees. The contested judgment validly describes his conduct as showing negligence and lack of courage; a few measures which were apparently taken by him, can at the most be evaluated merely as extenuating circumstances.

With regard to Rodenhauser, the Court confirms the findings of the contested judgment, according to which Rodenhauser, as Director General, member of the Directorate, and Special Dele-

SPECIAL TRIBUNAL FOR LEBANON المحكمة الخاصة بلبنان TRIBUNAL SPÉCIAL POUR LE LIBAN

BEFORE THE APPEALS CHAMBER

Case No.:	**STL-11-01/I**
Before:	**Judge Antonio Cassese, Presiding, and Judge Rapporteur** **Judge Ralph Riachy** **Judge Sir David Baragwanath** **Judge Afif Chamsedinne** **Judge Kjell Erik Björnberg**
Registrar:	**Mr Herman von Hebel**
Date:	**16 February 2011**
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INTERLOCUTORY DECISION ON THE APPLICABLE LAW: TERRORISM, CONSPIRACY, HOMICIDE, PERPETRATION, CUMULATIVE CHARGING
with corrected front page

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SECTION II: MODES OF RESPONSIBILITY

I. Harmonising Articles 2 and 3 of the Tribunal's Statute

204. Close scrutiny of Articles 2 and 3 of the Tribunal's Statute shows that, in some respects, these two provisions may overlap, because they both deal with modes of responsibility (although Article 2 also contemplates the crimes subject to the Tribunal's jurisdiction). It is this ambiguity that motivates the Pre-Trial Judge's thirteenth question:

> xiii) In order to apply modes of criminal responsibility before the Tribunal, should reference be made to Lebanese law, to international law or to both Lebanese and international law? In this last case, how, and on the basis of which principles, should any conflict between these laws be resolved, with specific reference to commission and co-perpetration?

In answering this question, we will also discuss in greater depth questions (iv) and (xii), which relate to the characterisation of offences in the presence of *dolus eventualis*.

205. Article 2 states that the Tribunal shall apply provisions of the Lebanese Criminal Code relating to "criminal participation" (as a mode of responsibility) and "conspiracy", "illicit association" and "failure to report crimes and offences" (as crimes *per se*).

206. Article 3 incorporates principles of international criminal law regarding various modes of criminal liability, including commission, complicity, organising or directing others to commit a crime, and contribution to the commission of crimes by a multitude of persons or an organised group. The language of Article 3 draws verbatim from the Statutes of the ICC, the ICTY, the Nuremberg International Military Tribunal, and the more recent international conventions against terrorism; it reflects the status of customary international law as articulated in the case law of the ad hoc tribunals.[312] It thus implicitly incorporates into the Tribunal's Statute the body of international law setting out and applying these principles of individual criminal responsibility. However, as the Secretary General noted in his report to the Security Council on the establishment of this tribunal,

[312] Compare Article 3(1)(b) of the STL Statute to Article 25(3)(d) of the Rome Statute of the ICC, Article 2(3) of the International Convention for the Suppression of Terrorist Bombing, and Article 2(4) of the International Convention for the Suppression of Acts of Nuclear Terrorism; Article 3(2) of the STL Statute to Article 28(b) of the Rome Statute of the ICC; and Article 3(3) of the STL Statute with Article 7(4) of the ICTY Statute and Article 8 of the Charter of the IMT. See also Article 7(3) ICTYSt; Article 33 ICCSt; *Report of the Secretary-General on the Establishment of a Special Tribunal for Lebanon*, S/2006/893 (2006), para. 26. See also cases cited below in footnotes 355-362.



Article 3(1)(a) also "reflect[s]" the Lebanese Criminal Code,[313] presumably the provisions on criminal participation referenced in Article 2.

207. Since the matters covered by Article 2 are regulated by Lebanese law, whereas the concepts envisaged in Article 3 are governed by international criminal law, the question before us is how to harmonise the two bodies of law whenever there appears to be inconsistencies or differences in legal regulation.

208. According to the Prosecutor, while the Statute does not provide any express rule on the hierarchy applicable to the modes of criminal responsibility set out in Articles 2 and 3 of the Statute, the sentence in Article 2 "subject to the provisions of the Statute" "could be interpreted to mean that Article 3 modes of responsibility take precedence over any conflicting provision of the Lebanese law made applicable under Article 2, thereby indicating a preference for Article 3 modes of criminal responsibility over those in Lebanese law".[314] However, according to the Prosecutor, the better interpretation is that the Statute "allows for the application of modes of criminal responsibility from both Lebanese law and international criminal law",[315] with the consequence that "there exists no actual conflict between Articles 2 and 3" of the Statute.[316] The Prosecutor goes on to say that "no issue relating to conflicting modes of criminal responsibility arises so long as the Prosecutor has specified the meaning and elements of any mode of criminal responsibility it [*sic*] alleges in an indictment".[317] Insisting on the practical side of the application of the two provisions in question, the Prosecutor notes that "in any case, any potential unfairness or legal difficulty arising out of charges based on provisions from both Articles 2 and 3 may be resolved prior to trial and in any case would not result in any prejudice or unfairness to an accused".[318] In the Prosecutor's view, "[c]onsistent with the aims of uncovering the truth and ensuring the highest international standards of justice, the mode [of criminal responsibility] that most accurately captures the conduct of an accused may be applied".[319]

[313] S/2006/893 (2006), para. 26.
[314] Prosecution Submission, para. 71.
[315] Prosecution Submission, para. 85.
[316] Prosecution Submission, para. 107.
[317] Prosecution Submission, para. 89.
[318] Prosecution Submission, para. 107.
[319] Prosecution Submission, para. 107.



and this is our second remark, Article 2 also includes the proviso that Lebanese law, including the regulation of "criminal participation", should apply "subject to the provisions of this Statute", and it is clear that the drafters of the Statute intended to incorporate through Article 3 modes of criminal responsibility recognised in international criminal law. The Appeals Chamber cannot just assume that Article 3 was a mistake and should not be considered part and parcel of the Statute. Third, the principle of *nullum crimen* (in particular, its non-retroactivity requirement) applies not only to substantive crimes, but also to modes of criminal responsibility.

211. Applying these three principles, we conclude that generally speaking the appropriate approach is to (i) evaluate on a case-by-case basis whether there is any actual conflict between the application of Lebanese law and that of the international criminal law embodied in Article 3; (ii) if there is no conflict, apply Lebanese law; and (iii) if there is a conflict, apply the law that would lead to a result more favourable to the rights of the accused.

212. We do not undertake here a comprehensive survey of the modes of criminal responsibility that may be charged and prosecuted before this Tribunal. Instead we consider two particular modes: (i) perpetration and co-perpetration, under Lebanese and international law (including joint criminal enterprise as a mode of perpetration and co-perpetration under international law), as specifically mentioned by the Pre-Trial Judge in question (xiii); and (ii) complicity (or aiding and abetting), which shows how a conflict between Lebanese and international criminal law could result in the application, in this particular instance, of Lebanese law.[323]

[323] We do not, for example, consider "instigation", a significant mode of criminal responsibility under Lebanese law.



refrained from accomplishing his duty (this for instance applies to police officers), or where the passive conduct of the accomplice amounts to strengthening the resolve of the perpetrator to commit a crime;[336] (ii) complicity is punished even if the primary author of the crime is not punishable (for instance, he is a minor or is mentally incapacitated); (iii) where the perpetrator is guilty of an attempted crime, complicity is punished if the perpetrator has commenced the execution of the crime; (iv) complicity is punished even if the crime was committed abroad and falls under foreign jurisdiction; (v) conversely, if the crime is committed in Lebanon but the action by an accomplice took place abroad, complicity shall nevertheless be punished in Lebanon.

224. A case of complicity in terrorism is *Bombing of the Church of our Lady of Deliverance in Zouk Mikayel* (decision of 13 July 1996, no. 4/1996). The Court of Justice found that a defendant was an accomplice to terrorism where his acts:

> were confined to aiding and abetting the perpetrators in their preparation for the bombing by attending the meetings that were held to plan the operation, by helping to assemble one of the explosive devices, and by providing guidelines for the execution of the bombing operation, in the form of a sketch of the interior and exterior of the church, which enabled the perpetrators to determine the manner in which they should enter the church and the time and place at which they should plant the two explosive devices therein. He did that in full awareness of the perpetrators' intent.[337]

2. International Criminal Law

225. Aiding and abetting an international crime involves participating in the crime by assisting the principal in the commission of the criminal offence in the knowledge that the conduct of the principal perpetrator is criminal, even if the accomplice does not share the precise criminal intent of the principal perpetrator.

226. The *objective element* of accomplice liability is the accomplice's practical assistance, encouragement, or moral support to the principal perpetrator. In addition, such assistance or support

[336] See Mount-Lebanon Indictment Chamber (*Chambre d'accusation*), decision n° 304/1993, 21 October 1995, in R. Riachi (ed.), *Majmouat ijtihadat al-hay'a al-ittihamiy - tatbikat amaliya lil kaida al-kanouniya* [Collection of the decisions of the indictment Chamber - application of legal concepts], 3rd ed. (Beirut: Sader publishings, 2010), at 217. This would be the case of a husband who drives his wife to rob a bank, and waits for her outside in the car, or the example of a man who accompanies his mistress to the clinic where she is scheduled for an abortion (in the countries where abortion is prohibited), in which case he has provided the doctor, perpetrator of the abortion, with the necessary moral support or moral incentive to proceed with the said abortion. See also Samir Alia, *Shareh kanoun al-oukoubat, al-kism al-3am* [Explanation of the Criminal Code, General section], (Beirut: Al-mou'assassa al-jami'iya lil dirassat wal nasher wal tawzi'), 1998, at 320-321, and footnote 130 where the author cites relevant Lebanese cases.

[337] English translation, at p. 101.



must have a *substantial effect* on the perpetration of the crime. This assistance may be provided in the form of positive action or omission, and it may be provided before, during or after perpetration of the crime.[338] Furthermore, the assistance may be physical (or tangible) or moral and psychological.[339]

227. The *subjective element* of aiding and abetting resides in the accessory having *knowledge* that "his actions will assist the perpetrator in the commission of the crime".[340] Thus, this subjective element consists of two requirements: (i) awareness that the principal perpetrator will use the assistance for the purpose of engaging in criminal conduct, and (ii) intent to help or encourage the principal perpetrator to commit a crime. It is not required that the accessory be fully cognizant of the specificities of the crime that will be committed by the perpetrator.[341] Indeed, aiding and abetting does not presuppose that the accomplice shares a common plan or purpose with the principal perpetrator or his criminal intent; as stated by the ICTY Appeals Chamber in *Tadić*, at "the principal may not even know about the accomplice's contribution".[342] Instead, the aider and abettor is required to be aware either of the criminal intent of the perpetrator or at least of the *substantial likelihood* that the perpetrator will commit a crime.[343] In other words, it may suffice for the accomplice to entertain what in certain legal systems is defined as "advertent recklessness" (*dolus eventualis*) with regard to the specific conduct of the principal perpetrator,[344] if there is also an intent to encourage or enable

[338] See, e.g., ICTY, *Aleksovski*, Trial Judgment, 25 June 1999 ("*Aleksovski* TJ"), para. 62; ICTY, *Blaškić*, Appeal Judgment, 29 July 2004 ("*Blaškić* AJ"), para. 48.

[339] See ICTY, *Furundžija*, Trial Judgment, 10 December 1998 ("*Furundžija* TJ"), para. 231.

[340] See *Furundžija* TJ, para. 245; ICTY, *Kunarac et al*, Trial Judgment, 22 February 2001, para. 392; *Vasiljević* TJ, para. 71; ICTY, *Delalić*, Appeal Judgment, 20 February 2001, para. 352; ICTY, *Tadić*, Appeal Judgment, 15 July 1999 ("*Tadić* AJ"), para. 229; *Blaškić* AJ, para. 46; ICTY, *Krnojelac*, Appeal Judgment, 17 September 2003, para. 52; see also ICTR, *Ntakirutimana*, Trial Judgment, 21 February 2003, para. 787; ICTR, *Kajelijeli*, Trial Judgment, 1 December 2003, para. 766; ICTR, *Kamuhanda*, Trial Judgment, 22 January 2004, para. 597. In the ICC Statute aiding and abetting is envisaged in Article 25(3)(c), whereby a person is responsible if he, 'For the purpose of facilitating the commission of such a crime [i.e. a crime within the jurisdiction of the Court], aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission.'

[341] *Furundžija* TJ, para 246; *Blaškić* AJ, para. 50

[342] *Tadić* AJ, para. 229.

[343] In *Furundžija* an ICTY Trial Chamber held that 'it is not necessary that the aider and abettor should know the precise crime that was intended and which in the event was committed. If he is aware that one of a number of crimes will probably be committed, and one of those crimes is in fact committed, he has intended to facilitate the commission of that crime, and is guilty as an aider and abettor.' *Furundžija* TJ, para. 246. Another ICTY Trial Chamber supported this proposition in *Blaskić* (Trial Judgment, 3 March 2000, para. 287), and the Appeals Chamber concurred in it in its judgment in *Blaškić* AJ, para. 50. However, when the principal crime requires specific intent, such as genocide or persecution, the accused must have known that the person or persons he is aiding or abetting possessed that specific intent—*i e* , the genocidal or discriminatory intent. ICTY, *Popović et al*, Trial Judgment, 10 June 2010, para. 1017.

[344] As an SCSL Trial Chamber put it, "[t]he *mens rea* required for aiding and abetting is that the accused knew that his acts would assist the commission of the crime by the perpetrator or that he was aware of the substantial likelihood that his acts would assist the commission of a crime by the perpetrator" *Brima et al*, Trial Judgment, 20 June 2007, para. 776.



the principal's criminal conduct. This accords with fundamental principles of criminal law: if someone provides a gun to a well-known thug with the knowledge that it will be used (or is reasonably likely to be used) to commit a crime, he is liable for aiding and abetting whatever that crime is, regardless of whether he was fully aware of the specific crime the thug intended to perpetrate.[345]

3. Comparison between Lebanese and International Criminal Law

228. It is apparent from the above that to a large extent the Lebanese notion of complicity and the international notion of aiding and abetting overlap, with two important exceptions. First, Lebanese law limits the objective element to the discrete list of means of support included in Article 219: accomplice liability only attaches if support is provided through one of the enumerated means. Second, Lebanese law generally requires an accomplice to *know* of the crime to be committed, to join with the perpetrator in an *understanding*, whether immediate or long-standing, to commit the crime, and to share in the intent to further that particular crime. Thus the Lebanese Criminal Code's concept of complicity should be applied as it is more protective of the rights of the accused..

C. Other Modes of Participation in Criminal Conduct

1. Lebanese Law

229. We shall now examine how Lebanese law and international criminal law regulate other modes of participation in criminality, that is, modes of participation in collective crimes (crimes committed by a multiplicity of persons) other than co-perpetration or complicity.

As stated by the ICC in another context, "[t]he concept of [simple] recklessness requires only that the perpetrator be aware of the existence of a risk that the objective elements of the crime may result from his or her actions or omissions, but does not require that he or she reconcile himself or herself with the result [which is instead required by *dolus eventualis*]. In so far as recklessness does not require the suspect to reconcile himself or herself with the causation of the objective elements of the crime as a result of his or her actions or omissions, is it not part of the concept of intention." ICC, *Lubanga*, Decision on the Confirmation of Charges, 29 January 2007, fn. 438.

[345] As an example of this general principle of law applied in national courts, consider the *van Anraat* Case before the Hague Court of Appeal (Judgment of 9 May 2007). The accused had provided to Iraq, between 1980 and 1988, the chemical raw material TDG (Thiodiglycol) necessary for the manufacture of the mustard gas that the Iraqi Government had then used against the Kurds in 1987-88. The Court applied Dutch law, which does not require that the assistance provided by the accessory be indispensable or make a "causal contribution" to the main offence; it simply requires that "the assistance offered by the accessory [should] promote the offence or [make] it easier to commit that offence" (at para. 12.4). The Court first found that the accused *knew* that the quantity of TDG he provided could only be used to produce mustard gas (at para. 11.10) and then found that the accused *was aware of the high risk of use of the mustard gas in war*, particularly given the "unscrupulous character of the then Iraqi regime." (at para. 11.16).

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BEFORE THE

NUERNBERG MILITARY TRIBUNALS

UNDER

CONTROL COUNCIL LAW NO. 10

VOLUME IV

NUERNBERG
OCTOBER 1946 — APRIL 1949

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[re...] lated how he shot 30 Jews because they had left the ghetto without permission. He did this, he said, under orders from the chief of the Einsatzgruppe, Nebe, who ordered him "to establish an example". At the trial he gave a different explanation of this episode which, however, establishes even a clearer case of guilt. He said that three women had contacted some partisans and, returning to the town, had talked to the thirty Jews in their homes. This, according to the defendant, made them guilty of partisan action and he had them shot. He, of course, also shot the three women. He did, however, accord them a special consideration. He had them blindfolded for the execution and then ordered that they be given a separate grave.

Klingelhoefer has stated that his function in the Einsatzgruppe operation was only that of interpreter. Even if this were true it would not exonerate him from guilt because in locating, evaluating and turning over lists of Communist party functionaries to the executive department of his organization he was aware that the people listed would be executed when found. In this function, therefore, he served as an accessory to the crime.

> "Q. I asked you, Witness, didn't you know that when you were giving him these lists of Communist party functionaries that he was going to exterminate all those he could? You either knew it or you didn't know it.
>
> "A. Of course, I did."

But the evidence is clear that Klingelhoefer was no mere interpreter in the grim business of the Einsatzgruppe. He was an active leader and commander. He knew what the Einsatz units were doing to the Jews.

> "Q. You told us you knew that if he stayed in the ghetto he was killed. Now, if he left the ghetto, was he then set free?
>
> "A. If he left the ghetto, he violated the directives which

were given.

"Q. So that he was killed anyway?

"A. Then he had to be executed, yes."

In his own affidavit the defendant stated:

> "While I was assigned by Nebe to the leadership of the Vorkommando Moscow, Nebe ordered me to go from Smolensk to Tatarsk and Mstislavl to get furs for the German troops and to liquidate part of the Jews there. The Jews had already been arrested by order of Hauptsturmfuehrer Egon Noack. The executions proper were carried out by Noack *under my supervision.*" [Emphasis supplied.]

Although the defendant stated several times during his interrogation on the witness stand that he was morally opposed

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report which he was compiling on the morale of the population, and he replied he did not have a chance.

> "Q. Well, how much time would it take in an SD report which you were compelled to make and which it was your job to make, to say that there were excesses in Tarnopol to the extent that 600 Jews were murdered, — or if you didn't want to say murdered — were killed by the population. How much time would it take to include that, with your fingers on the typewriter, into a report? How much time would it take to say that?
>
> "A. Two seconds.
>
> "Q. Well, then, why didn't you have the two seconds to write that?
>
> "A. Because I made no report.
>
> "Q. Why didn't you make a report?
>
> "A. Because I was given the order by the Kommando leader to evaluate this material."

Fendler denies that he ever functioned as deputy to the Kommando leader and stated that, when he acted as an advance Kommando leader, he occupied himself only with the obtaining of intelligence files left behind by the Bolsbevists. But, in evaluating these reports, it is inevitable that he would need to tell someone what he found. In fact, he did admit that this information usually was "utilized for individual reports". The army was also informed "in a written form or orally".

In order to prove that the work of every officer was specialized and thus one would not know what the others were doing, the defendant stated that his unit never divided its forces. Thus, one officer would not need to do the job of others. However, since this would establish

that, by sheer proximity, the officers could not help but know each other's business, the defendant later stated that the unit was not always together because of the distance it had to travel.

The defendant knew that executions were taking place. He admitted that the procedure which determined the so-called guilt of a person which resulted in his being condemned to death was "too summary". But, there is no evidence that he ever did anything about it. As the second highest ranking officer in the Kommando, his views could have been heard in complaint or protest against what he now says was a too summary procedure, but he chose to let the injustice go uncorrected.

He was asked —

> "Do I understand you correctly that you were of the opinion that there was an insufficient safeguard for the suspected person, as there was no trial, that his rights as a defendant were

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VOLUME VI

"THE FLICK CASE"

cently led Tribunal III to "hold that crimes against humanity as defined in Control Council Law No. 10 must be strictly construed to exclude isolated cases of atrocity or persecution whether committed by private individuals or by governmental authority." United States vs. Altstoetter, et al., decided 4 December 1947. The transactions before us, if otherwise within the contemplation of Law No. 10 as crimes against humanity, would be excluded by this holding.

Whether we hold that we have not jurisdiction or whether we assume jurisdiction and hold that no crime against humanity has been proved, the result so far as these defendants are concerned is the same. They cannot be convicted on the fact that the evidence submitted on this count relates to subject matter not within its jurisdiction. Accordingly, count three is dismissed.

COUNTS FOUR AND FIVE

PRESIDING JUDGE SEARS: We consider together counts four and five. The latter charges Steinbrinck with membership subsequent to 1 September 1939 in the SS. The gist of count four is that as members of the Himmler Circle of Friends, Flick and Steinbrinck with knowledge of the criminal activities of the SS contributed funds and influence to its support.

The basis of liability of members of the SS, as declared by IMT, is that after 1 September 1939 they "became or remained members of the organization with knowledge that it was being used for the commission of acts declared criminal by Article 6 of the Charter, or who were personally implicated as members of the organization in the commission of such crimes, excluding, however, those who were drafted into membership by the State in such a way as to give them no choice in the matter and who had committed no such crimes." [1] Steinbrinck was a member of the SS from 1933 to the time of the German collapse. There is no evidence that he was personally implicated in the commission of its crimes. It is not contended that he was drafted into membership in such a way as to give him no choice. His liability therefore must be predicated on the fact that he remained a member after 1 September 1939 with knowledge that "it was being used for the commission of acts declared criminal."

IMT also found "that knowledge of these criminal activities was sufficiently general to justify declaring that the SS was a criminal organization to the extent * * *" [2] later described in the judgment, namely, that "the SS was utilized for purposes which were criminal under the Charter, involving the persecution and exter-

[1] Trials of the Major War Criminals, op. cit., volume I, page 278.

[2] Ibid., p. 272.

mination of the Jews, brutalities and killings in concentration camps, excesses in the administration of occupied territories, the administration of the slave-labor program and the mistreatment and murder of prisoners of war." [1]

It seems clear that mass extermination of the Jews, mass murders in the guise of experiments in concentration camps such as described in the judgment in Case 1 [2] recently decided by Tribunal I, and other atrocities referred to generally in the above quotation from the IMT judgment, were crimes against humanity and war crimes well recognized by international law quite independent of the legislation of the four powers embodied in the Charter and Law No. 10. An organization which on a large scale is responsible for such crimes can be nothing else than criminal. One who knowingly by his influence and money contributes to the support thereof must, under settled legal principles, be deemed to be, if not a principal, certainly an accessory to such crimes. So there can be no force in the argument that when, from 1939 on, these two defendants were associated with Himmler and through him with the SS they could not be liable because there had been no statute nor judgment declaring the SS a criminal organization and incriminating those who were members or in other manner contributed to its support.

Relying upon the IMT findings above quoted the prosecution took the position that it devolved upon Steinbrinck to show that he remained a member without knowledge of such criminal activities. As we have stated in the beginning the burden was all the time upon the prosecution. But in the face of the declaration of IMT that such knowledge was widespread we cannot believe that a man of Steinbrinck's intelligence and means of acquiring information could have remained wholly ignorant of the character of the SS under the administration of Himmler. The extent of his knowledge and the part he played with such knowledge will be treated later in the opinion.

Steinbrinck became a member of the Circle in 1932 in its early days when it was known as the Keppler Circle. At the instigation of Hitler or with his approval, Keppler gathered together a few industrial leaders including Steinbrinck for their advice upon economic questions including, it seems, the problem of solving the unemployment situation. There is evidence that industrialists believed Keppler would become Hitler's chief economic adviser and they were not unwilling to meet and exchange views with a man who was likely to become a powerful State leader. Flick was not drawn into the group until three years

[1] Ibid., p. 273.

[2] Medical case, United States vs. Brandt, et al., judgment, section XII, Volume II, this series.

later and then more or less casually. Keppler's influence with Hitler waned and Himmler's influence grew and his ascendancy began, so that even before the beginning of the war the group came to be known as the Circle of Friends of Himmler. In its early meetings SS leaders or officers were not present in any considerable number but as the war went on more of them came to the meetings, probably on the invitation or command of Himmler.

We do not find in the meetings themselves the sinister purposes ascribed to them by the prosecution. Kranefuss, an assistant of Keppler and Himmler, throughout its history controlled the invitations, doubtless with the approval of Himmler. There was an annual dinner in connection with the Party rally at Nuernberg. Later there were more frequent meetings taking the form of dinner parties with the usual beverages. It may be questioned whether the members of the SS who attended had any reason more compelling than Himmler's invitation and the opportunity as guests to get an excellent dinner. There was no regular seating and after dinner the party broke up into small groups of congenial acquaintances. Flick and Steinbrinck naturally drifted to groups of business men. Himmler was not always present. He did not single out Flick or Steinbrinck for attention. There is no evidence that the criminal activities of the SS were discussed. As a matter of fact, it was the policy of Himmler to conceal them. As a part of the program usually there were talks and sometimes showing of films on subjects foreign to the war such as the Tibet expedition, in which Himmler was interested, to which, with one exception later discussed, no criminal significance may be ascribed. There is credible evidence that Himmler was a man of dual personality; on the one hand a gentleman with cultural interests and on the other an inhuman monster. In these meetings we have no doubt he appeared the gentleman and genial host. So far we see nothing criminal nor immoral in the defendants' attendance at these meetings. As a group (it could hardly be called an organization) it played no part in formulating any of the policies of the Third Reich.

But Himmler was Reich Leader SS. His person can hardly be separated from his organization. Of this the defendants could not be unaware. In 1936 he took members of the Circle on an inspection trip to visit Dachau concentration camp which was under his charge. They were escorted through certain buildings including the kitchen where they tasted food. They saw nothing of the infamous atrocities perhaps already there begun. But Flick who was present got the impression that it was not a pleasant place. The members of the Circle visited at his invitation other places where money was being spent under Himmler's

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UNDER
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would result in the establishment of the fact that Germany, for obvious reasons, was unwilling to provide Jews with foreign currency, and thus the ultimate object would be reached, namely, to prove that it was again the German obstinacy which was responsible for the misery of the Jews; that merely for the act of making Germany the scapegoat he was unable to recommend Rublee's plan, but that he would pass the memorandum on to the competent office. In this memorandum he states that his answer to the American Ambassador was more placatory, but of the same tenor.

As stated, he was directed by von Ribbentrop to make no reply to the British memorandum. The British and Americans from time to time attempted to renew the matter, but von Weizsaecker and Woermann put them off with vague promises. The defendants claim that finally through their exclusive efforts, Rublee was permitted to visit Berlin and engaged in various conferences.

There can be no question whatsoever that here neither von Weizsaecker nor Woermann was in a position to control the matter. Their superior had given express orders as to the nature of the conversation they might conduct with the foreign representatives in question. They derived their powers only from and through him, and they merely repeated his decision. They did not execute or implement a policy of wrongdoing.

Wannsee conference and the part played by the Foreign Office. —The mass deportation of Jews to the East which resulted in the extermination of many millions of them found its expression in the celebrated Wannsee conference of 20 January 1942. The Foreign Office played an important part in these negotiations and in the actions thereafter taken to implement and assist the program. Von Weizsaecker or Woermann neither originated it, gave it enthusiastic support, nor in their hearts approved of it. The question is whether they knew of the program and whether in any substantial manner they aided, abetted, or implemented it. That both von Ribbentrop and Luther did, there can be no possible question.

On 8 December 1941 a memorandum was prepared by Luther's department "Deutschland" in preparation for a conference with Heydrich to set up the wishes and ideas of the Foreign Office concerning the "total solution" of the Jewish question in Europe. The document does not show on its face that it was submitted to von Weizsaecker or Woermann, and ordinarily this would indicate that it was not.

But on 4 December 1941 Luther prepared a memorandum which was submitted to von Weizsaecker and initialed by him regarding a proposal or suggestion made by Foreign Minister Popoff of

The witness Oswald Pohl was administration chief of the SS from 1934 to 1945. He was tried and condemned to death. He was called for cross-examination with respect to [Prosecution] Exhibits 3477, 2826, 2862, 2827, 2865 [Documents 4045–PS, NI–399, NI–470, NI–382, NID–14605 respectively]. He says that while a prisoner of the British he was badly mistreated, although he makes no claim that he was mistreated while in Nuernberg, either before, during, or after his interrogations here. He attempted to state that he did not know that the material came from concentration camps, or from extermination camps and dead Jews, or that it contained such items as gold rings, gold fillings, glasses, and gold watches.

August Frank testified, in the Oswald Pohl case, that as early as 8 October 1942 he had informed Himmler about this dental gold and suggested that further collections be sent to the Reich Bank, and further, that he knew that much of it came from concentration camps. We deem it highly unlikely that Pohl would not have at least as much definite information as his deputy, Frank.

We have carefully reviewed Pohl's testimony before a commission of this Tribunal. It is our opinion that he gave false oral testimony in an attempt to exonerate himself as well as defendant Puhl. Certainly Pohl's cross-examination shows that he would go to any lengths, wholly without regard to the facts, in order to avoid the effect of the affidavits which he had given.

From the records we draw and make the following findings of fact:

That Puhl was the managing director and vice president of the Bank, and that in Funk's absence he exercised all the powers of Funk;

That Funk was seldom in the bank and comparatively seldom exercised his powers as president;

That Puhl, at the time he received the direction from Funk and after he talked to Pohl, knew that what was to be received and disposed of was stolen property and loot taken from the inmates of concentration camps.

We do not believe that at that time he was informed that the grisly dental gold and wedding rings were part of it. However, we think it is fairly established by the record that long before the deliveries were completed he was informed of this. His part in this transaction was not that of a mere messenger or businessman. He went beyond the ordinary range of his duties to give directions that the matter be handled secretly by the appropriate departments of the bank. It is to be said in his favor that he neither originated the matter and that it was probably repugnant

to him. He had no part in the actual extermination of Jews and other concentration camp inmates, and we have no doubt that he would not, even under orders, have participated in that part of the program.

But without doubt he was a consenting participant in part of the execution of the entire plan, although his participation was not a major one.

We find him guilty under count five.

RASCHE

The defendant Rasche is a banker by profession, and after many years of banking experience in the Rhineland he joined the Dresdner Bank, became a member and finally the spokesman for its Vorstand. He was one of the most able and active executive officers of the bank.

The evidence clearly establishes that the Dresdner Bank loaned very large sums of money to various SS enterprises which employed large numbers of inmates of concentration camps, and also to Reich enterprises and agencies engaged in the so-called resettlement programs.

It is unnecessary to recapitulate the evidence in this case or the findings of others of these Tribunals to the unlawful nature of these enterprises.

Prosecution Exhibit 2825 [Document NI–10120] is a draft of a letter of recommendation which Rasche prepared or caused to be prepared for the signature of SS Gruppenfuehrer Pohl, which contains the statement:

> "Dr. Rasche is an old fighter for the Baltikum, and as a member of the delegation of the Reich Leader SS (Himmler) he also participated in the decisive measures concerning resettlement."

The defense that Pohl did not sign this letter and that it was never used is of no materiality, as they are Rasche's own words praising himself and not those of Pohl.

The record, however, does not disclose that Rasche was ever a member of any delegation of the Reich Leader SS, nor what the delegation did, if it ever existed, or what the decisive measures consisted of; nor are we able, from other evidence, to determine any relationship with Himmler or the SS from which any conclusive inference can be drawn.

Rasche was a member of Himmler's Circle of Friends, and the [Dresdner] Bank, with his knowledge, acquiescence, and approval, even in part at his insistence, made large annual contributions to

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a fund placed at Himmler's personal disposal. There is no evidence, however, that matters relating to the resettlement program were ever discussed or acted upon in the meetings of this circle, or that it was in any way a policy-making body. Nor is there any evidence that Rasche knew that any part of the fund to which the bank made contributions was intended to be or was ever used by Himmler for any unlawful purposes.

His participation in the loans made by the Dresdner Bank to various SS enterprises which employed slave labor and to those engaged in the resettlement program presents a more difficult problem.

The defendant is a banker and businessman of long experience and is possessed of a keen and active mind. Bankers do not approve or make loans in the number and amount made by the Dresdner Bank without ascertaining, having, or obtaining information or knowledge as to the purpose for which the loan is sought, and how it is to be used. It is inconceivable to us that the defendant did not possess that knowledge, and we find that he did.

The real question is, is it a crime to make a loan, knowing or having good reason to believe that the borrower will us the funds in financing enterprises which are employed in using labor in violation of either national or international law? Does he stand in any different position than one who sells supplies or raw materials to a builder building a house, knowing that the structure will be used for an unlawful purpose? A bank sells money or credit in the same manner as the merchandiser of any other commodity. It does not become a partner in enterprise, and the interest charged is merely the gross profit which the bank realizes from the transaction, out of which it must deduct its business costs, and from which it hopes to realize a net profit. Loans or sale of commodities to be used in an unlawful enterprise may well be condemned from a moral standpoint and reflect no credit on the part of the lender or seller in either case, but the transaction can hardly be said to be a crime. Our duty is to try and punish those guilty of violating international law, and we are not prepared to state that such loans constitute a violation of that law, nor has our attention been drawn to any ruling to the contrary.

The defendant Rasche should be and is found not guilty under count five.

RITTER

The defendant Ritter, now in his 66th year, entered the Foreign Office in 1922 after a career as a civil servant in various

B. (6)

ii. Domestic Jurisprudence

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued January 25, 2011 Decided July 8, 2011

No. 09-7125

JOHN DOE VIII, ET AL.,
APPELLANTS

v.

EXXON MOBIL CORPORATION, ET AL.,
APPELLEES

Consolidated with 09-7127, 09-7134, 09-7135

Appeals from the United States District Court
for the District of Columbia
(No. 1:07-cv-01022)
(No. 1:01-cv-01357)

Agnieszka Fryszman argued the cause for appellants on State Claims. *Paul Hoffman* argued the cause for appellants on Federal Claims. With them on the briefs were *Kathleen M. Konopka*, *Maureen E. McOwen*, *Terrence P. Collingsworth*, and *Piper M. Hendricks*. *Charles J. Ogletree Jr.* and *Joseph M. Sellers* entered appearances.

Marco B. Simons was on the brief for *amicus curiae* EarthRights International (ERI) in support of appellants.

rea standards, turn to the federal common law knowledge standard in addressing claims under the ATS.

The Second Circuit, in *Presbyterian Church of Sudan*, 582 F.3d at 259, nonetheless held that the aider and abettor must share the same purpose as the principal actor, relying on the Rome Statute of the International Criminal Court ("Rome Statute"), July 17, 1998, 2187 U.N.T.S. 90, and *United States v. von Weizsaecker* ("*The Ministries Case*"), *in* 14 TRIALS OF WAR CRIMINALS BEFORE THE NUERNBERG MILITARY TRIBUNALS UNDER CONTROL COUNCIL LAW NO. 10, at 308, 622 (1997) ("TRIALS OF WAR CRIMINALS"); *see also Khulumani*, 504 F.3d at 276 (Katzmann, J., concurring). Under that standard, "the defendant (1) provides practical assistance to the principal which has a substantial effect on the perpetration of the crime, and (2) does so with the purpose of facilitating the commission of that crime." *Khulumani*, 504 F.3d at 277 (Katzmann, J., concurring). The Second Circuit reasoned that whether to recognize "aiding and abetting liability is no less significant a decision than whether to recognize a whole new tort in the first place," *Presbyterian Church of Sudan*, 582 F.3d at 259, and consistent with *Sosa*'s command about the definiteness of new norms, it concluded from those two sources that "no such [international] consensus exists for imposing liability on individuals who knowingly (but not purposefully) aid and abet a violation of international law," *id.*

Although we agree with the Second Circuit's premise that aiding and abetting must be embodied in a norm of customary international law, *amici* international law scholars point out why its conclusion was flawed. The Rome Statute, which created the International Criminal Court ("ICC"), is properly viewed in the nature of a treaty and not as customary international law. *See* Int'l Law Scholars Amicus Br. 19–20 (citing Rome Statute, art. 10; Leila Nadya Sadat, *Custom, Codification and Some*

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Gillick (A.P.) (Respondent)

v.

West Norfolk and Wisbech Area Health Authority and the Department of Health and Social Security (Appellants)

(England)

JUDGMENT

Die Jovis 17° Octobris 1985

Upon Report from the Appellate Committee to whom was referred the Cause Gillick against West Norfolk and Wisbech Area Health Authority and the Department of Health and Social Security, That the Committee had heard Counsel on Monday the 24th, Tuesday the 25th, Wednesday the 26th and Thursday the 27th days of June, and Monday the 1st, Tuesday the 2nd, Wednesday the 3rd and Thursday the 4th days of July last, upon the Petition and Appeal of the Department of Health and Social Security of Alexander Fleming House, Elephant and Castle, London, SE1, praying that the matter of the Order set forth in the Schedule thereto, namely an Order of Her Majesty's Court of Appeal of the 20th day of December 1984, might be reviewed before Her Majesty the Queen in Her Court of Parliament and that the said Order might be reversed,

varied or altered or that the Petitioners might have such other relief in the premises as to Her Majesty the Queen in Her Court of Parliament might seem meet; as also upon the Case of Victoria Gillick lodged in answer to the said Appeal, and due consideration had this day of what was offered on either side in this Cause:

It is Ordered and Adjudged, by the Lords Spiritual and Temporal in the Court of Parliament of Her Majesty the Queen assembled, That the Appeal be Allowed, and the Declaration made in the said Order of Her Majesty's Court of Appeal of the 20th day of December 1984 against the Respondent Department of Health and Social Security complained of in the said Appeal be, and the same is hereby, **Set Aside:** And it is further Ordered, That the Costs of the Respondent be taxed in accordance with Schedule 2 to the Legal Aid Act 1974; And it is also further Ordered, That the Cause be, and the same is hereby, remitted back to the Queen's Bench Division of the High Court of Justice to do therein as shall be just and consistent with this Judgment.

Cler: Parliamentor:

HOUSE OF LORDS

GILLICK
(RESPONDENT)

WEST NORFOLK AND WISBECH AREA HEALTH AUTHORITY AND THE DEPARTMENT OF HEALTH AND SOCIAL SECURITY

(APPELLANTS) (ENGLAND)

Lord Fraser of Tullybelton
Lord Scarman
Lord Bridge of Harwich
Lord Brandon of Oakbrook
Lord Templeman

LORD FRASER OF TULLYBELTON

My Lords,

The main question in this appeal is whether a doctor can lawfully prescribe contraception for a girl under 16 years of age, without the consent of her parents. The second appellant, the Department of Health and Social Security ("the D.H.S.S.") maintains that a doctor can do so. The respondent, Mrs. Gillick, maintains that he cannot. The first appellant, West Norfolk and Wisbech Area Health Authority, was not represented when the appeal reached this House, but in the Court of Appeal they were represented by the same counsel as the D.H.S.S.

In December 1980, the D.H.S.S. issued guidance on family planning services for young people, which was a revised version of earlier guidance on the same subject, and which stated, or implied, that, at least in certain cases which were described as "exceptional," a doctor could lawfully prescribe contraception for a girl under 16 without her parents' consent. Mrs. Gillick, who is the mother of five daughters under the age of 16, objected to the guidance and she instituted the proceedings which have led to this appeal, and in which she claims a declaration against both appellants that the advice given in the guidance was unlawful. She also claims a further declaration against the first appellant alone, but it is of less general importance than the declaration to which I have already referred, and I defer consideration of it until later in this speech.

It will be convenient to dispose at once of some preliminary matters. In the first place, Mrs. Gillick's husband is not a party to the present proceedings, but we were informed that he is in full agreement with Mrs. Gillick's contention, and I proceed on that basis. Secondly, there is no suggestion that Mrs. Gillick's relationship with her daughters is other than normal and happy, nor is it suggested that there is any present likelihood of any of the daughters seeking contraceptive advice or treatment without the consent of their mother.

Thirdly, I must mention a procedural matter. The declaration which is claimed against the D.H.S.S., to the effect that the advice given in the guidance was unlawful, amounts to an assertion that the Secretary of State for Health and Social Security has acted illegally, in the sense of ultra vires. The remedy claimed is in the field of public law and, since the decision of your Lordships' House in the case of O'Reilly v. Mackman [1983] 2 A.C. 237, it is one which should normally be claimed in an application for judicial review. But the writ and statement of claim in this action were issued on 5 August 1982, three months before the decision in O'Reilly, which was on 25 November 1982. Accordingly, Mr. Laws, who appeared for the D.H.S.S., merely mentioned the procedural point but he did not submit that the procedure was out of order. I have had the benefit of reading in draft the speech prepared by my noble and learned friend Lord Scarman and I agree with him that, for the reasons explained by him, Mrs. Gillick was fully entitled to

proceed in the case by ordinary action.

The advice, the lawfulness of which is in dispute, is a revised version of part of a comprehensive Memorandum of Guidance on the family planning service which had been issued to health authorities in May 1974 under cover of a circular (H.S.C. (I.S.) 32) from the D.H.S.S. The Memorandum of Guidance was divided into a number of sections, one of which was section G which was headed "The Young." The revised section G, which contains the disputed advice, is as follows:

> "Clinic sessions should be available for people of all ages, but it may be helpful to make separate, less formal arrangements for young people. The staff should be experienced in dealing with young people and their problems.
>
> "There is widespread concern about counselling and treatment for children under 16. Special care is needed not to undermine parental responsibility and family stability. The Department would therefore hope that in any case where a doctor or other professional worker is approached by a person under the age of 16 for advice in these matters, the doctor, or other professional, will always seek to persuade the child to involve the parent or guardian (or other person in loco parentis) at the earliest stage of consultation, and will proceed from the assumption that it would be most unusual to provide advice about contraception without parental consent.
>
> "It is, however, widely accepted that consultations between doctors and patients are confidential; and the Department recognises the importance which doctors and patients attach to this principle. It is a principle which applies also to the other professions concerned. To abandon this principle for children under 16 might cause some not to seek professional advice at all. They could then be exposed to the immediate risks of pregnancy and of sexually-transmitted diseases, as well as other long-term physical, psychological and emotional consequences which are equally a threat to stable family life. This would apply particularly to young people whose parents are, for example, unconcerned, entirely unresponsive, or grossly disturbed. Some of these young people are away from their parents and in the care of local authorities or voluntary organisations standing in loco parentis.

> "The Department realises that in such exceptional cases the nature of any counselling must be a matter for the doctor or other professional worker concerned and that

> the decision whether or not to prescribe contraception must be for the clinical judgment of a doctor."

That advice emphasised, more strongly than section G in its original form had done, that the cases in which a doctor could properly advise a girl under 16 years of age about contraception without parental consent would be most unusual. If the advice had been contained in a legal document there might well have been room for argument as to its exact effect, but, in my view, it is perfectly clear that it would convey to any doctor or other person who read it that the decision whether or not to prescribe contraception for a girl under 16 was in the last resort a matter for the clinical judgment of a doctor, even if the girl's parents had not been informed that she had consulted the doctor, and even if they had expressed disapproval of contraception being prescribed for her. Mrs. Gillick objected to the guidance, in its amended form, and after some correspondence with the area health authority, she wrote to the acting area administrator on 3 March 1981 a letter which included this paragraph:

> "I formally FORBID any medical staff employed by Norfolk A.H.A. to give any contraceptive or abortion advice or treatment whatsoever to my four daughters whilst they are under 16 years without my consent."

Mrs. Gillick's youngest (fifth) daughter has been born since that letter was sent. The acting administrator replied on 9 March 1981 acknowledging the letter and stating that the A.M.A. held to the view "that treatment prescribed by a doctor is a matter for that doctor's clinical judgment, taking into account all the factors of the case."

On 5 August 1982 Mrs. Gillick began these proceedings against the area health authority and the D.H.S.S., in which she seeks the following declarations (as amended before the Master):

> "(i) A declaration against the [Area Health Authority] and the [D.H.S.S.] on a true construction of the said notice and in the events which have happened, including and in particular the publication and the circulation of the said notice, the said notice has no authority in law and gives advice which is unlawful and wrong, and which adversely affects or which may adversely affect the welfare of the plaintiff's said children, and/or the rights of the plaintiff as parent and custodian of the said children, and/or the ability of the plaintiff properly and effectively to discharge her duties as such parent and custodian;
>
> "(ii) A declaration against the [Area Health Authority] that no doctor or other professional person employed by the [Area Health Authority] either in the Family Planning Service or otherwise may give any

contraceptive and/or abortion advice and/or treatment to any child of the plaintiff below the age of 16 without the prior knowledge and consent of the said child's parent or guardian."

Woolf J. [1984] Q.B. 581 refused to grant the declarations sought by Mrs. Gillick and dismissed the action. The Court of Appeal (Eveleigh, Fox and Parker L.JJ.) [1985] 2 W.L.R. 413 allowed the appeal and granted the declarations. Against that decision the D.H.S.S. now appeals.

The central issue in the appeal is whether a doctor can ever, in any circumstances, lawfully give contraceptive advice or treatment to a girl under the age of 16 without her parents' consent. The effect of the Court of Appeal's judgment is to answer that question in the negative. The answer is subject certainly to one exception, in the case of an order by a competent court; this exception was recognised by Parker LJ. in the Court of Appeal, [1985] 2 W.L.R. 413, 420H, and it is accepted in Mrs. Gillick's printed case. But it is of theoretical rather than practical importance, because it would inevitably involve disclosing to the parents the doctor's advice to the girl, and thus would destroy its confidentiality, and also because the delay and expense of obtaining a court order makes frequent use of such procedure impracticable. There must, I think, be a second exception for cases in which the parents, or the sole surviving parent, have deliberately abandoned their parental responsibilities; in such cases it would, in my opinion, be wrong to allow them to emerge from the shadows solely in order to veto contraceptive advice or treatment for their daughter. But these exceptions do not touch the principle which is at issue in the appeal.

The guidance is addressed to regional health authorities and other authorities concerned in administering the National Health Service ("N.H.S."), and the appeal therefore only directly concerns doctors and other persons working in the N.H.S. I shall refer throughout to doctors, to include bevitatis causa other professional persons working in the N.H.S.

The first statutory provision for contraceptive advice and treatment in the N.H.S. was made by section 1 of the National Health Service (Family Planning) Act 1967. That section empowered local health authorities in England and Wales, with the approval of the Minister of Health, to make arrangements for giving advice on contraception, for medical examination of persons seeking such advice and for the supply of contraceptive substances and appliances. There appears to have been no similar provision applying to Scotland. The Act of 1967 was repealed by the National Health Service Reorganisation Act 1973 which, by section 4, replaced the power of local health authorities to provide such advice and treatment with a duty on the Secretary of State to do

so. A similar duty was placed on the Secretary of State for Scotland by section 8 of the National Health Service (Scotland) Act 1972. The 1973 provision for England and Wales has now been superseded by the National Health Service Act 1977 which by section 5(l)(b) imposes a duty on the Secretary of State:

> "to arrange, to such extent as he considers necessary to meet all reasonable requirements in England and Wales, for the giving of advice on contraception, the medical examination of persons seeking advice on contraception, the treatment of such persons and the supply of contraceptive substances and appliances."

These, and other, provisions show that Parliament regarded "advice" and "treatment" on contraception and the supply of appliances for contraception as essentially medical matters. So they are, but they may also raise moral and social questions on which many people feel deeply, and in that respect they differ from ordinary medical advice and treatment. None of the provisions to which I have referred placed any limit on the age (or the sex) of the persons to whom such advice or treatment might be supplied.

Three strands of argument are raised by the appeal. These are:

1. Whether a girl under the age of 16 has the legal capacity to give valid consent to contraceptive advice and treatment including medical examination.

2. Whether giving such advice and treatment to a girl under 16 without her parents' consent infringes the parents' rights.

3. Whether a doctor who gives such advice or treatment to a girl under 16 without her parents' consent incurs criminal liability.

I shall consider these strands in order.

1. <u>The legal capacity of a girl under 16 to consent to contraceptive advice, examination and treatment.</u>

There are some indications in statutory provisions to which we were referred that a girl under 16 years of age in England and Wales does not have the capacity to give valid consent to contraceptive advice and treatment. If she does not have the capacity, then any physical examination or touching of her body

without her parents' consent would be an assault by the examiner. One of those provisions is section 8 of the Family Law Reform Act 1969 which is in the following terms:

> "(1) The consent of a minor who has attained the age of 16 years to any surgical, medical or dental treatment which, in the absence of consent, would constitute a trespass to his person, shall be as effective as it would be if he were of full age; and where a minor has by virtue of this section given an effective consent to any treatment it shall not be necessary to obtain any consent for it from his parent or guardian.
>
> 2. In this section 'surgical, medical or dental treatment' includes . . .
>
> 3. Nothing in this section shall be construed as making ineffective any consent which would have been effective if this section had not been enacted."

The contention on behalf of Mrs. Gillick was that subsection (1) of section 8 shows that, apart from the subsection, the consent of a minor to such treatment would not be effective. But I do not accept that contention because subsection (3) leaves open the

question whether consent by a minor under the age of 16 would have been effective if the section had not been enacted. That question is not answered by the section, and subsection (1) is, in my opinion, merely for the avoidance of doubt.

Another statutory provision which was referred to in this connection is the National Health Service (General Medical and Pharmaceutical Services) Regulations 1974 (S.I. 1974 No. 160) as amended by the National Health Service (General Medical and Pharmaceutical Services) Amendment Regulations 1975 (S.I. 1975 No. 719). These regulations prescribe the mechanism by which the relationship of doctor and patient under the National Health Service is created. Contraceptive services, along with maternity medical services, are treated as somewhat apart from other medical services in respect that only a doctor who specially offers to provide contraceptive or maternity medical services is obliged to provide them. See the definition of "medical card" and "treatment" in regulation 2(1), regulations 6(1)(a) and 14(2)(a) and Schedule 1 paragraph 13. But nothing turns on this fact. Two points in those regulations have a bearing on the present question although, in my opinion, only an indirect bearing. The first is that by regulation 14 any "woman" may apply to a doctor to be accepted by him for the provision of contraceptive services. The

word "woman" is not defined so as to exclude a girl under 16 or under any other age. But regulation 32 provides as follows:

> "An application to a doctor for inclusion on his list . . . may be made, either -
>
> > (a) on behalf of any person under 16 years of age, by the mother, or in her absence, the father, or in the absence of both parents the guardian or other adult person who has the care of the child; or
> >
> > (b) on behalf of any other person who is incapable of making such an application by a relative or other adult person who has the care of such person; or . . ." (Emphasis added).

The words in paragraph (b) which I have emphasised are said, by counsel for Mrs. Gillick, to imply that a person under 16 years of age is incapable of applying to a doctor for services and therefore give some support to the argument on behalf of Mrs. Gillick. But I do not regard the implication as a strong one because the provision is merely that an application "may" be made by the mother or other parent or guardian and it applies to the doctor's list for the provision of all ordinary medical services as well as to his list for the provision of contraception services. I do not believe that a person aged 15, who may be living away from home, is incapable of applying on his own behalf for inclusion in the list of a doctor for medical services of an ordinary kind not connected with contraception.

Another provision, in a different branch of medicine, which is said to carry a similar implication is contained in the Mental Health Act 1983 section 131 which provides for informal admission of patients to mental hospitals. It provides by subsection (2) that:

> "In the case of a minor who has attained the age of 16 years and is capable of expressing his own wishes, any such arrangements as are mentioned in subsection (1) above [for informal admission] may be made, carried out and determined notwithstanding any right of custody or control vested by law in his parent or guardian."

That provision has only a remote bearing on the present question because there is no doubt that a minor under the age of 16 is in the custody of his or her parents. The question is whether such custody necessarily involves the right to veto contraceptive advice or treatment being given to the girl.

Reference was also made to the Education Act 1944 section 48 which deals with medical inspection and treatment of pupils at state school. Subsection (3) of section 48 which imposes on the Secretary of State a duty to provide for medical and dental inspection of pupils was repealed and superseded by the National Health Service Reorganisation Act 1973 section 3 and Schedule 5. The Act of 1973 in turn was replaced by the National Health Service Act 1977 section 5(l)(a). Subsection (4) of Section 48 of the Education Act 1944 which has not been repealed imposes a duty on the Secretary of State to arrange for encouraging pupils to take advantage of any medical treatment provided under Section 43 but it includes a proviso in the following terms:

> "Provided that if the parent of any pupil gives to the authority notice that he objects to the pupil availing himself of any medical treatment provided under this section, the pupil shall not be encouraged ... so to do."

I do not regard that provision as throwing light on the present question. It does not prohibit a child under the stipulated age from availing himself of medical treatment or an education authority from providing it for him. If the child, without encouragement from the education authority, "wishes to avail himself of medical treatment" the section imposes no obstacle in his way. Accordingly, in my opinion, the proviso gives no support to the contention from Mrs. Gillick, but on the contrary points in the opposite direction.

The statutory provisions to which I have referred do not differentiate so far as the capacity of a minor under 16 is concerned between contraceptive advice and treatment and other forms of medical advice and treatment. It would, therefore, appear that, if the inference which Mrs. Gillick's advisers seek to draw from the provisions is justified, a minor under the age of 16 has no capacity to authorise any kind of medical advice or treatment or examination of his own body. That seems to me so surprising that I cannot accept it in the absence of clear provisions to that effect. It seems to me verging on the absurd to suggest that a girl or a boy aged 15 could not effectively consent, for example, to have a medical examination of some trivial injury to his body or even to have a broken arm set. Of course the consent of the parents should normally be asked, but they may not be immediately available. Provided the patient, whether a boy or a girl, is capable of understanding what is proposed, and of expressing his or her own wishes, I see no good reason for holding that he or she lacks the capacity to express

them validly and effectively and to authorise the medical man to make the examination or give the treatment which he advises.

After all, a minor under the age of 16 can, within certain limits, enter into a contract. He or she can also sue and be sued, and can give evidence on oath. Moreover, a girl under 16 can give sufficiently effective consent to sexual intercourse to lead to the legal result that the man involved does not commit the crime of rape - see Reg. v. Howard [1966] 1 W.L.R. 13, 15 when Lord Parker C.3. said:

> "... in the case of a girl under 16 the prosecution, in order to prove rape, must prove either that she physically resisted, or if she did not, that her understanding and knowledge were such that she was not in a position to decide whether to consent or resist. . . There are many girls under 16 who know full well what it is all about and can properly consent."

Accordingly, I am not disposed to hold now, for the first time, that a girl aged less than 16 lacks the power to give valid consent to contraceptive advice or treatment, merely on account of her age.

Out of respect for the comprehensive and fully researched argument submitted by Mr. Laws for the D.H.S.S. I should notice briefly two old Acts to which he referred, but which do not appear to me to be helpful. One of these is the Abduction Act 1557 (4 and 5 Ph. & M. c.3) for punishing "such as shall take away maidens that be inheritors, being within the age of 16 years, or that marry them, without consent of their parents." That Act was evidently passed for the protection of property rather than for protection of the virtue of maidens. It was repealed by the Offences Against the Person Act 1823 (9 Geo. 4, c.31). We were referred to section 20 of the Act of 1823, but that section was concerned only with punishing abduction of any unmarried girl under the age of 16 and appears to me to have little or no bearing on the present problem.

On this part of the case accordingly I conclude that there is no statutory provision which compels me to hold that a girl under the age of 16 lacks the legal capacity to consent to contraceptive advice, examination and treatment provided that she has sufficient understanding and intelligence to know what they involve. I can deal with the case law more conveniently in what follows.

2. The parents' rights and duties in respect of medical treatment of their child. "

The amended guidance expressly states that the doctor will proceed from the assumption that it would be "most unusual" to provide advice about contraception without parental consent. It also refers to certain cases where difficulties might arise if the doctor refused to promise that his advice would remain confidential and it concludes that the department realises that "in such exceptional cases" the decision whether or not to prescribe contraception must be for the clinical judgment of a doctor. Mrs.

Gillick's contention that the guidance adversely affects her rights and duties as a parent must, therefore, involve the assertion of an absolute right to be informed of and to veto such advice or

treatment being given to her daughters even in the "most unusual" cases which might arise (subject, no doubt, to the qualifications applying to the case of court order or to abandonment of parents' duties).

It was, I think, accepted both by Mrs. Gillick and by the D.H.S.S., and in any event I hold, that parental rights to control a child do not exist for the benefit of the parent. They exist for the benefit of the child and they are justified only in so far as they enable the parent to perform his duties towards the child, and towards other children in the family. If necessary, this proposition can be supported by reference to Blackstone Commentaries, 17th ed. (1830), vol. 1, p. 452, where he wrote "The power of parents over their children is derived from . . . their duty." The proposition is also consistent with the provisions of the Guardianship of Minors Act 1971 section 1 as follows:

> "Where in any proceedings before any court . . . -
>
> (a) the custody or upbringing of a minor; or ... is in question, the court, in deciding that question, shall regard the welfare of the minor as the first and paramount consideration, and shall not take into consideration whether from any other point of view the claim of the father, or any right at common law possessed by the father, in respect of such custody, upbringing, administration or application is superior to that of the mother, or the claim of the mother is superior to that of the father."

From the parents' right and duty of custody flows their right and duty of control of the child, but the fact that custody is its origin throws but little light on the question of the legal extent of control at any particular age. Counsel for Mrs. Gillick placed some reliance on the Children Act 1975. Section 85(1) provides that in that Act the expression "the parental rights and duties" means "all the rights and duties which by law the mother and father have in relation to a legitimate child and his property," but the subsection does not define the extent of the rights and duties which by law the mother and father have. Section 86 of the Act provides:

> "In this Act, unless the context otherwise requires, 'legal

custody' means, as respects a child, so much of the parental rights and duties as relate to the person of the child (including the place and manner in which his time is spent)."

In the Court of Appeal Parker L.J. attached much importance to that section especially to the words in brackets. He considered that the right relating to the place and manner in which the child's time is spent included the right, as he put it, "completely to control the child" subject of course always to the intervention of the court. The learned Lord Justice went on thus at [1985] 2 W.L.R. 413, 423A:

"Indeed there must, it seems to me, be such a right from birth to a fixed age unless whenever, short of majority, a question arises it must be determined, in relation to a particular child and a particular matter, whether he or she

is of sufficient understanding to make a responsible and reasonable decision. This alternative appears to me singularly unattractive and impracticable, particularly in the context of medical treatment."

My Lords, I have, with the utmost respect reached a different conclusion from that of the learned Lord Justice. It is, in my view, contrary to the ordinary experience of mankind, at least in Western Europe in the present century, to say that a child or a young person remains in fact under the complete control of his parents until he attains the definite age of majority, now 18 in the United Kingdom, and that on attaining that age he suddenly acquires independence. In practice most wise parents relax their control gradually as the child develops and encourage him or her to become increasingly independent. Moreover, the degree of parental control actually exercised over a particular child does in practice vary considerably according to his understanding and intelligence and it would, in my opinion, be unrealistic for the courts not to recognise these facts. Social customs change, and the law ought to, and does in fact, have regard to such changes when they are of major importance. An example of such recognition is to be found in the view recently expressed in your Lordships' House by my noble and learned friend Lord Brandon of Oakbrook, with which the other noble and learned Lords who were present agreed, in Reg. v. D [1984] 1 A.C. 778, 806 D. Dealing with the question of whether the consent of a child to being taken away by a stranger would be a good defence to a charge of kidnapping, my noble and learned friend said:

"In the case of a very young child, it would not have the understanding or the intelligence to give its consent, so that

absence of consent would be a necessary inference from its age. In the case of an older child, however, it must, I think be a question of fact for a jury whether the child concerned has sufficient understanding and intelligence to give its consent; if, but only if, the jury considers that a child has these qualities, it must then go on to consider whether it has been proved that the child did not give its consent. While the matter will always be for the jury alone to decide, I should not expect a jury to find at all frequently that a child under 14 had sufficient understanding and intelligence to give its consent."

That expression of opinion seems to me entirely contradictory of the view expressed by Cockburn C.J. in Reg. v. Howes (1860) 1 E. & E. 332, 336-337:

"We repudiate utterly, as most dangerous, the notion that any intellectual precocity in an individual female child can hasten the period which appears to have been fixed by statute for the arrival at the age of discretion; for that very precocity, if uncontrolled, might very probably lead to her irreparable injury. The legislature has given us a guide, which we may safely follow, in pointing out 16 as the age up to which the father's right to custody of his female child

is to continue; and short of which such a child has no discretion to consent to leaving him."

The question for decision in that case was different from that in the present, but the view that the child's intellectual ability is irrelevant cannot, in my opinion, now be accepted. It is a question of fact for the judge (or jury) to decide whether a particular child can give effective consent to contraceptive treatment.

In times gone by the father had almost absolute authority over his children until they attained majority. A rather remarkable example of such authority being upheld by the court was the case of In re Agar-Ellis (1883) 24 Ch.D. 317 which was much relied on by the Court of Appeal. The father in that case restricted the communication which his daughter aged 17 was allowed to have with her mother, against whose moral character nothing was alleged, to an extent that would be universally-condemned today as quite unreasonable. The case has been much criticised in recent years and, in my opinion, with good reason. In Hewer v. Bryant [1970] 1 Q.B. 357,369 Lord Denning M.R. said:

"I would get rid of the rule in In re Agar-Ellis and of the

> suggested exceptions to it. That case was decided in the year 1883. It reflects the attitude of a Victorian parent towards his children. He expected unquestioning obedience to his commands. If a son disobeyed, his father would cut him off with a shilling. If a daughter had an illegitimate child, he would turn her out of the house. His power only ceased when the child became 21. I decline to accept a view so much out of date. The common law can, and should, keep pace with the times. It should declare, in conformity with the recent Report of the Committee on the Age of Majority [Cmnd. 3342, 1967], that the legal right of a parent to the custody of a child ends at the 18th birthday: and even up till then, it is a dwindling right which the courts will hesitate to enforce against the wishes of the child, and the more so the older he is. It starts with a right of control and ends with little more than advice."

I respectfully agree with every word of that and especially with the description of the father's authority as a dwindling right. In J. v. C. [1970] A.C. 668 Lord Guest and Lord MacDermott referred to the decision in Agar-Ellis as an example of the almost absolute power asserted by the father over his children before the Judicature Act 1873 and plainly thought such an assertion was out of place at the present time - see Lord MacDermott at pp. 703-704. In Reg. v. D. [1984] A.C. 778 Lord Brandon of Oakbrook cited Agar-Ellis as an example of the older view of a father's authority which his Lordship and the other members of the House rejected. In my opinion, the view of absolute paternal authority continuing until a child attains majority which was applied in Agar-Ellis is so out of line with present day views that it should no longer be treated as having any authority. I regard it as a historical curiosity. As Fox L.J. pointed out in the Court of Appeal [1985] 2 W.L.R. 413, 439D, the Agar-Ellis cases (1878) 10 Ch.D. 49; 24 Ch.D. 317 seemed to have been regarded as somewhat extreme even in their own day, as they were quickly followed by the Guardianship of Infants Act 1886 (49 & 50 Vict. c.27) which, by section 5, provided that the court may:

> "upon the application of the mother of any infant [whether over 16 or not] make such order as it may think fit regarding the custody of such infant and the right of access thereto of either parent, having regard to the welfare of the infant, and to the conduct of the parents, . . ." (Emphasis added).

Once the rule of the parents' absolute authority over minor children is abandoned, the solution to the problem in this appeal can no longer be found by referring to rigid parental rights at any particular age. The solution depends upon a judgment of what is best for the welfare of the particular child. Nobody. doubts, certainly I do not doubt, that in the overwhelming majority of

cases the best judges of a child's welfare are his or her parents. Nor do I doubt that any important medical treatment of a child under 16 would normally only be carried out with the parents' approval. That is why it would and should be "most unusual" for a doctor to advise a child without the knowledge and consent of the parents on contraceptive matters. But, as I have already pointed out, Mrs. Gillick has to go further if she is to obtain the first declaration that she seeks. She has to justify the absolute right of veto in a parent. But there may be circumstances in which a doctor is a better judge of the medical advice and treatment which will conduce to a girl's welfare than her parents. It is notorious that children of both sexes are often reluctant to confide in their parents about sexual matters, and the D.H.S.S. guidance under consideration shows that to abandon the principle of confidentiality for contraceptive advice to girls under 16 might cause some of them not to seek professional advice at all, with the consequence of exposing them to "the immediate risks of pregnancy and of sexually-transmitted diseases." No doubt the risk could be avoided if the patient were to abstain from sexual intercourse, and one of the doctor's responsibilities will be to decide whether a particular patient can reasonably be expected to act upon advice to abstain. We were told that in a significant number of cases such abstinence could not reasonably be expected. An example is the case of In re P (A Minor) (1981) 80 L.G.R. 301 in which Butler-Sloss J. ordered that a girl aged 15 who had been pregnant for the second time and who was in the care of a local authority should be fitted with a contraceptive appliance because, as the learned judge is reported to have said at p. 312:

> "I assume that it is impossible for this local authority to monitor her sexual activities, and, therefore, contraception appears to be the only alternative."

There may well be other cases where the doctor feels that because the girl is under the influence of her sexual partner or for some other reason there is no- realistic prospect of her abstaining from intercourse. If that is right it points strongly to the desirability of the doctor being entitled in some cases, in the girl's best interest, to give her contraceptive advice and treatment if necessary without the consent or even the knowledge of her parents. The only practicable course is, in my opinion, to entrust the doctor with a discretion to act in accordance with his view of what is best in the interests of the girl who is his patient. He should, of course, always seek to persuade her to tell her parents that she is seeking contraceptive advice, and the nature of the advice that she receives. At least he should seek to persuade her

to agree to the doctor's informing the parents. But there may well be cases, and I think there will be some cases, where the girl refuses either to tell the parents herself or to permit the doctor

to do so and in such cases, the doctor will, in my opinion, be justified in proceeding without the parents' consent or even knowledge provided he is satisfied on the following matters:

1. that the girl (although under 16 years of age) will understand his advice;

2. that he cannot persuade her to inform her parents or to allow him to inform the parents that she is seeking contraceptive advice;

3. that she is very likely to begin or to continue having sexual intercourse with or without contraceptive treatment;

(4) that unless she receives contraceptive advice or treatment her physical or mental health or both are likely to suffer;

(5) that her best interests require him to give her contraceptive advice, treatment or both without the parental consent.

That result ought not to be regarded as a licence for doctors to disregard the wishes of parents on this matter whenever they find it convenient to do so. Any doctor who behaves in such a way would, in my opinion, be failing to discharge his professional responsibilities, and I would expect him to be disciplined by his own professional body accordingly. The medical profession have in modern times come to be entrusted with very wide discretionary powers going beyond the strict limits of clinical judgment and, in my opinion, there is nothing strange about entrusting them with this further responsibility which they alone are in a position to discharge satisfactorily.

3. <u>Is a doctor who gives contraceptive advice or treatment to a girl under 16 without her parents' consent likely to incur criminal liability?</u>

The submission was made to Woolf J. on behalf of Mrs. Gillick that a doctor who provided contraceptive advice and treatment to a girl under 16 without her parents' authority would be committing an offence under section 28 of the Sexual Offences Act 1956 by aiding and abetting the commission of unlawful sexual intercourse. When the case reached the Court of Appeal counsel on both sides conceded that whether a doctor who followed the guidelines would be committing an offence or not would depend on the circumstances. It would depend upon the doctor's intentions; this appeal is concerned with doctors who honestly intend to act in the best interests of the girl, and I think it is unlikely that a doctor who gives contraceptive advice or treatment with that intention would commit an offence under section 28. It must be remembered that a girl under 16 who has sexual intercourse does

not thereby commit an offence herself, although her partner does - see the Sexual Offences Act 1956 sections 5 and 6. In any event, even if the doctor would be committing an offence, the fact that

he had acted with the parents' consent would not exculpate him as Woolf 3. pointed out [1984] Q.B. 581, 595G. Accordingly, I regard this contention as irrelevant to the question that we have to answer in this appeal. Parker L.J. in the Court of Appeal dealt at some length with the provisions of criminal law intended to protect girls under the age of 16 from being seduced, and perhaps also to protect them from their own weakness. The learned Lord Justice at [1985] 2 W.L.R. 413, 435B expressed his conclusion on this part of the case as follows:

> "It appears to me that it is wholly incongruous, when the act of intercourse is criminal, when permitting it to take place on one's premises is criminal and when, if the girl were under 13, failing to report an act of intercourse to the police would up to 1967 have been criminal, that either the . department [or] the area health authority should provide facilities which would enable girls under 16 the more readily to commit such acts. It seems to me equally incongruous to assert that doctors have the right to accept the young, down, apparently to any age, as patients, and to provide them with contraceptive advice and treatment without reference to their parents and even against their known wishes."

My Lords, the first of those two sentences is directed to the question, which is not in issue in this appeal, of whether contraceptive facilities should be available at ail under the National Health Service for girls under 16. I have already explained my reasons for thinking that the legislation does not limit the duty of providing such facilities to women of 16 or more. The second sentence, which does bear directly on the question in the appeal, does not appear to me to follow necessarily from the first and with respect I cannot agree with it. If the doctor complies with the first of the conditions which I have specified, that is to say if he satisfies himself that the girl can understand his advice there will be no question of his giving contraceptive advice to very young girls.

For those reasons I do not consider that the guidance interferes with the parents' rights.

The Second Declaration

The second declaration is directed only against the area health authority. Its practical importance would be minimal

because doctors are not "employed" by the area health authority in the family planning service and, if they were, the declaration could easily be avoided by the girl going to a doctor in a different area. The Court of Appeal made the declaration sought, and the authority has not appealed against its decision. I am, therefore, of opinion that we should not reverse the decision of the Court of Appeal on this part of the case. But it is clearly inconsistent with the views I have expressed on the first declaration, and I agree with Lord Scarman that it should be overruled.

I would allow the appeal against the first declaration granted by the Court of Appeal, and I would overrule the second declaration as being erroneous.

LORD SCARMAN

My Lords,

I have had the advantage of reading in draft the speech delivered by my noble and learned friend, Lord Fraser of Tullybelton. Agreeing with it, I shall endeavour in delivering my opinion to avoid repetition. The importance of the case is, however, such that I believe it necessary, even at the cost of some repetition, to deliver my opinion in my own words. The case is the beginning, not the conclusion, of a legal development in a field glimpsed by one or two judges in recent times (notably Butler-Sloss 3. In re P (A Minor) (1981) 80 L.G.R. 301) but not yet fully explored. Mrs. Gillick, even though she may lose the appeal, has performed a notable public service in directing judicial attention to the problems arising from the interaction of parental right and a doctor's duty in a field of medicine unknown to our fathers but of immense consequence to our society. The contraceptive pill has introduced a new independence, and offers new options, for women: but has it in the process undermined parental right and duty? In my judgment, the answer is "no", even though parental right may not be as extensive or as long lasting as she believes it to be.

Victoria Gillick, mother of five daughters under the age of 16, challenges the lawfulness of a memorandum of guidance issued by the Department of Health and Social Security which she says encourages and in certain circumstances recommends health authorities, doctors, and others concerned in operating the department's family planning services to provide contraceptive advice and treatment to girls under the age of 16 without the knowledge or consent of a parent. Mrs. Gillick is a wife and mother living in a united family with her husband and their children. The husband supports the action being taken, as they both see it, to protect their daughters. No further need be said

of their family situation in deciding this appeal.

Mrs. Gillick began her proceedings by the issue of a writ against two defendants, the health authority for the area in which she lives and the department. She claims in an ordinary civil action declaratory relief against both defendants that the guidance is unlawful, and against the area health authority alone a declaration that no doctor or other person in its employ may give contraception or abortion advice to Mrs. Gillick's children under the age of 16 without her prior knowledge and consent. The area health authority has taken no part in the litigation, but the department has fought the case strenuously. The appeal to the House is that of the department: the health authority has not appealed and is not represented.

The written case submitted on Mrs. Gillick's behalf to the House formulates three propositions of law, any one of which, if made good, would suffice to entitle her to relief. They are as follows:

> "(i) parental rights should be protected from any invasion or interference neither authorised by a competent court nor expressly authorised by statute: [the parental rights case]

> "(ii) the provision of contraceptive treatment to girls under the age of 16 either constitutes criminal conduct in itself or is so closely analogous thereto as to be contrary to public policy: [the criminal law case]

> "(iii) a girl below the age of 16 is not capable in law of giving a valid consent to medical treatment and in the particular context of this case to contraceptive or abortion treatment." [the age of consent point].

Before, however, considering these propositions, it is necessary to clear out of the way certain procedural questions, which, though not urged upon our attention, do call for a brief consideration.

Procedure

Three procedural questions have emerged in the course of the litigation. First, Mr. Simon Brown, who before his elevation to the bench had the conduct of the case as counsel for the department, raised at the trial the question as to the propriety of the civil court granting a declaration in a case which involved the criminal law. The judge saw no reason why he should be inhibited on this ground from dealing with the issues in the action; and I agree with him. It was not contended that the issue of the

guidance was itself a crime: the case against the department was simply that the guidance, if followed, would result in unlawful acts and that the department by issuing it was exercising a statutory discretion in a wholly unreasonable way; i.e. the classical "Wednesbury" case for judicial review: Associated Provincial Picture Houses Ltd, v. Wednesbury Corporation [1948] 1 K.B. 223.

The second question is as to the propriety of proceeding in this case by ordinary civil action. Should not Mrs. Gillick have proceeded by way of judicial review under R.S.C. Ord. 53? No point was taken at trial or in the Court of Appeal against Mrs. Gillick that she should have proceeded not by issuing a writ, but by applying for judicial review. Woolf J. did, however, mention the matter only to hold that there was a relevant precedent for proceeding by writ in this House's decision in Royal College of Nursing of the United Kingdom v. Department of Health and Social Security [1981] A.C. 800. "

The point having been brought to the attention of the House I think it desirable to consider it if only because of the later decision of the House in O'Reilly v. Mackman [1983] 2 A.C. 237, where Lord Diplock, with whose opinion their other Lordships agreed, laid down a rule in these terms at p. 285D:

> "Now that those disadvantages [i.e. those previously associated with prerogative order procedure] to applicants have been removed and all remedies for infringements of rights protected by public law can be obtained upon an application for judicial review, as can also remedies for infringements of rights under private law if such infringements should also be involved, it would in my view as a general rule [emphasis supplied] be contrary to public policy, and as such an abuse of the process of the court, to

> permit a person seeking to establish that a decision of a public authority infringed rights to which he was entitled to protection under public law to proceed by way of an ordinary action and by this means to evade the provisions of Order 53 for the protection of such authorities."

If there be in the present case an abuse of the process of the court, the House cannot overlook it, even if the parties are prepared to do so, and even though the writ in this case was issued before the decision of the House in O'Reilly's case [1983] 2 A.C. 237.

Mrs. Gillick's action is essentially to protect what she alleges to be her rights as a parent under private law. Although

she is proceeding against two public authorities and invokes the criminal law and public policy in support of her case, she claims as a parent whose right of custody and guardianship in respect of her children under the age of 16 is (she says) threatened by the guidance given by the department to area health authorities, doctors, and others concerned in the provision by the department of a family health service. This is a very different case from O'Reilly [1983] 2 A.C. 237 where it could not be contended that there was any infringement or threat of infringment of any right derived from private law. For the appellants in O'Reilly's case were convicted prisoners faced with forfeiture of remission, and they were held to have not a right to remission of their prison sentences but merely "a legitimate expectation" which could, if the necessary facts were established, entitle them "to a remedy in public law." They had, therefore, no private right in the matter, and could rely only on the "public law" doctrine of legitimate expectation.

It is unnecessary to embark upon an analysis of the newly fledged distinction in English law between public and private law, for I do not see Mrs. Gillick's claim as falling under the embargo imposed by O'Reilly's case [1983] 2 A.C. 237. If I should be wrong in this view, I would nevertheless think that the private law content of her claim was so great as to make her case an exception to the general rule. Lord Diplock at p. 285F recognised that the general rule which he was laying down admitted of exceptions including cases:

> "where the invalidity of [the public authority's] decision arises as a collateral issue in a claim for infringement of a right of the plaintiff arising under private law, or where none of the parties objects to the adoption of the procedure by writ or originating summons."

Both these exceptions can be said to apply in the present case. Like Lord Diplock, I think that procedural problems in the field of public law must be left to be decided on a case to case basis. Mrs. Gillick was, in my opinion, fully entitled to proceed by ordinary action, even though she could also have proceeded by way of judicial review.

The third and final procedural question is a mere technicality: as such, it creates - no lawyer would be surprised - more trouble than the other two. If the House should allow the department's appeal against the guidance declaration what is to be

done about the other declaration granted exclusively against the area health authority? As a matter of common sense, if Mrs.

Gillick fails to establish that the department's guidance is unlawful she cannot upon the evidence in this case establish her entitlement to the other declaration against the health authority. The Court of Appeal treated the second declaration as consequential upon the guidance declaration, which upon the evidence they were plainly, right to do. But there is a difficulty in allowing an appeal where there is no appellant and no appeal. Fortunately in this case there is no issue between the parties as to costs. If the department succeeds, it does not ask for costs against Mrs. Gillick here or below: and the area health authority has incurred no costs. Two courses are open to the House: one would be to ignore the technicalities, allow the appeal (if that be the view of the House), and set aside both declarations: the other, which is strictly correct, would be to allow the department's appeal and to declare that the reasoning was also applicable to the Court of Appeal's decision in favour of the health authority which must, therefore, be held to be overruled. If the second course should be taken, the only order to be made by the House would be to allow the department's appeal and set aside the "guidance" declaration. I favour the second course.

The Department's Guidance

In 1974 the department assumed statutory responsibility for the provision of family planning services on a national basis. This involved a reorganisation which included a transfer of services from the agencies previously concerned to area health authorities. In the course of the reorganisation which took some two years to complete the department issued guidance as to the duties and responsibilities of doctors and others concerned with the provision of such services. It was empowered so to do by its assumption, pursuant to statute, of responsibility for the provision of such services. In May 1974 the department circulated a memorandum of guidance HN(80)46: it included a section (section G.) as to the provision of services to young people. The text of section G. aroused some public concern, and in December 1980 a revised section G. was issued to replace the earlier text. It is this revision which lies at the heart of the case, being the subject of Mrs. Gillick's challenge. I set it out in full:

"REVISED SECTION G - THE YOUNG

"Clinic sessions should be available for people of all ages, but it may be helpful to make separate, less formal arrangements for young people. The staff should be experienced in dealing with young people and their problems.

"There is widespread concern about counselling and treatment for children under 16. Special care is needed not to undermine parental responsibility and family stability. The Department would therefore hope that in any case where a doctor or other professional worker is approached by a person under the age of 16 for advice in these matters, the doctor, or other professional, will always seek

to persuade the child to involve the parent or guardian (or other person in loco parentis) at the earliest stage of consultation, and will proceed from the assumption that it

would be most unusual to provide advice about contraception without parental consent.

'It is, however, widely accepted that consultations between doctors and patients are confidential; and the Department recognises the importance which doctors and patients attach to this principle. It is a principle which applies also to the other professions concerned. To abandon this principle for children under 16 might cause some not to seek professional advice at all. They could then be exposed to the immediate risks of pregnancy and of sexually-transmitted diseases, as well as other long-term physical, psychological and emotional consequences which are equally a threat to stable family life. This would apply particularly to young people whose parents are, for example, unconcerned, entirely unresponsive, or grossly disturbed. Some of these young people are away from their parents and in the care of local authorities or voluntary organisations standing in loco parentis.

'The Department realises that in such exceptional cases the nature of any counselling must be a matter for the doctor or other professional worker concerned and that the decision whether or not to prescribe contraception must be for the clinical judgment of a doctor."

The first question in the appeal is simply: what is the true meaning of this text? Does it, or does it not, permit doctors concerned in the provision of a statutory service to prescribe contraceptive treatment for a girl under 16 without the knowledge and consent of her parents? And, if it does, in what circumstances?

There can be no doubt that it does permit doctors to prescribe in certain circumstances contraception for girls under 16 without the knowledge and consent of a parent or guardian. (In this opinion I shall use the term "parent" to include "guardian"). The text is not, however, clear as to the circumstances (variously described as "unusual" and "exceptional") which justify a doctor in so doing. The House must be careful not to construe the guidance as though it was a statute or even to analyse it in the way appropriate to a judgment. The question to be asked is: what would a doctor understand to be the guidance offered to him, if he should be faced with a girl under 16 seeking contraceptive treatment without the knowledge or consent of her parents?

He would know that it was his duty to seek to persuade the girl to let him bring into consultation her parents (or one of them). If she refused, he (or the counsellor to whom the girl had gone) must ask himself whether the case was one of those exceptional cases in which the guidance permitted a doctor to prescribe contraception without the knowledge or consent of a parent (provided always that in the exercise of his clinical judgment he thought this course to be in the true interest of his patient). In my judgment the guidance clearly implies that in exceptional cases the parental right to make decisions as to the care of their children, which derives from their right of custody, can lawfully be overridden, and that in such cases the doctor may without parental consultation or consent prescribe contraceptive treatment in the exercise of his clinical judgment. And the

guidance reminds the doctor that in such cases he owes the duty of confidentiality to his patient, by which is meant that the doctor would be in breach of his duty to her if he did communicate with her parents.

The guidance leaves two areas of the doctor's responsibility in some obscurity. Though it provides illustrations of exceptional cases, it offers no definition. And it gives no clue as to what is meant by "clinical judgment" other than that it must at least include the professional judgment of a doctor as to what is the medically appropriate advice or treatment to be offered to his patient. .

This lack of definition does not, in my judgment, assist Mrs. Gillick. If, contrary to her submission, the law recognises that exceptional cases can arise in which it is lawful for a doctor to prescribe contraceptive treatment for a girl under 16 without the knowledge and consent of a parent, the guidance would be within the law notwithstanding its lack of precision, unless its vagueness created so obscure a darkness that it could reasonably be understood by a doctor as authorising him to prescribe without the parent's consent whenever he should think fit.

I do not find upon a fair reading of the guidance anything to obscure or confuse its basic message that a doctor is only in exceptional circumstances to prescribe contraception for a young person under the age of 16 without the knowledge and consent of a parent. No reasonable person could read it as meaning that the doctor's discretion could ordinarily override parental right. Illustrations are given in the text of exceptional cases in which the doctor may take the "most unusual" course of not consulting the parent. Only in exceptional cases does the guidance contemplate him exercising his clinical judgment without the parent's knowledge and consent. Lastly, there really can be no

compulsion in law upon a government department to spell out to a doctor what is meant by "clinical judgment."

The Question in the Appeal

It is only if the guidance permits or encourages unlawful conduct in the provision of contraceptive services that it can be set aside as being the exercise of a statutory discretionary power in an unreasonable way.

The question, therefore, for the House is - can a doctor in any circumstances lawfully prescribe contraception for a girl under 16 without the knowledge and consent of a parent?

Before discussing the question, I put out of the way the two exceptions which I understand both parties to the appeal accept? namely the order of a competent court, and emergency. Nobody disputes the existence of the court exception, nor does the other situation call for more than a brief mention.

If, as is clear in the light of section 5 of the National Health Service Act 1977 (re-enacting earlier legislation) and section 41 of the National Health Service (Scotland) Act 1978, contraceptive medical treatment is recognised as a legitimate and

beneficial treatment in cases in which it is medically indicated, it must be an available option for the doctor in an emergency where treatment is urgently needed and the consent of the patient or his parent cannot be obtained either in time or at all. And the case of a teenage girl abandoned by her parents and not yet received into the care of a local authority or placed under the protection of a responsible adult in loco parentis can be seen to be a true emergency. Both Mrs. Gillick, as I understand her case, and the department accept these exceptions to the general rule that a parent must be consulted and give consent and I say no more than that it would be unthinkable for the law not to recognise them.

Parental Right and the Age of Consent

Mrs. Gillick relies on both the statute law and the case law to establish her proposition that parental consent is in all other circumstances necessary. The only statutory provision directly in point is section 8 of the Family Law Reform Act 1969. Subsection (1) of the section provides that the consent of a minor who has attained the age of 16 to any surgical, mental, or dental treatment which in the absence of consent would constitute a trespass to his person shall be as effective as if he were of full age and that the consent of his parent or guardian need not be

obtained. Subsection (3) of the section provides that:

> "Nothing in this section shall be construed as making ineffective any consent which would have been effective if this section had not been enacted."

I cannot accept the submission made on Mrs. Gillick's behalf that subsection (1) necessarily implies that prior to its enactment the consent of a minor to medical treatment could not be effective in law. Subsection (3) leaves open the question whether the consent of a minor under 16 could be an effective consent. Like my noble and learned friend, Lord Fraser of Tullybelton, I read the section as clarifying the law without conveying any indication as to what the law was before it was enacted. So far as minors under 16 are concerned, the law today is as it was before the enactment of the section.

Nor do I find in the provisions of the statute law to which Parker L.J. refers in his judgment in the Court of Appeal [1985] 2 W.L.R. 413 any encouragement, let alone any compelling reason, for holding that Parliament has accepted that a child under 16 cannot consent to medical treatment. I respectfully agree with the reasoning and conclusion of my noble and learned friend, Lord Fraser of Tullybelton, on this point.

The law has, therefore, to be found by a search in the judge-made law for the true principle. The legal difficulty is that in our search we find ourselves in a field of medical practice where parental right and a doctor's duty may point us in different directions. This is not surprising. Three features have emerged in today's society which were not known to our predecessors:- (1) contraception as a subject for medical advice and treatment; (2) the increasing independence of young people; and (3) the changed status of women. In times past contraception was rarely a matter for the doctor: but with the development of the contraceptive pill

for women it has become part and parcel of every-day medical practice, as is made clear by the Department's Handbook of Contraceptive Practice (1984 revision), particularly para. 1.2. Family planning services are now available under statutory powers to all without any express limitation as to age or marital status. Young people, once they have attained the age of 16, are capable of consenting to contraceptive treatment, since it is medical treatment: and, however extensive be parental right in the care and upbringing of children, it cannot prevail so as to nullify the 16-year's old capacity to consent which is now conferred by statute. Furthermore, women have obtained by the availability of

the pill a choice of life-style with a degree of independence and of opportunity undreamed of until this generation and greater, I would add, than any law of equal opportunity could by itself effect.

The law ignores these developments at its peril. The House's task, therefore, as the supreme court in a legal system largely based on rules of law evolved over the years by the judicial process is to search the overfull and cluttered shelves of the law reports for a principle, or set of principles recognised by the judges over the years but stripped of the detail which, however appropriate in their day, would, if applied today, lay the judges open to a justified criticism for failing to keep the law abreast of the society in which they live and work.

It is, of course, a judicial common place to proclaim the adaptability and flexibility of the judge-made common law. But this is more frequently proclaimed than acted upon. The mark of the great judge from Coke through Mansfield to our day has been the capacity and the will to search out principle, to discard the detail appropriate (perhaps) to earlier times, and to apply principle in such a way as to satisfy the needs of their own time. If judge-made law is to survive as a living and relevant body of law, we must make the effort, however inadequately, to follow the lead of the great masters of the judicial art,

In this appeal, therefore, there is much in the earlier case law which the House must discard - almost everything I would say but its principle. For example, the horrendous Agar-Ellis decisions 10 Ch.D. 49; 24 Ch.D. 317 of the late 19th century asserting the power of the father over his child were rightly remaindered to the history books by the Court of Appeal in Hewer v. Bryant [1970] 1 Q.B. 357, an important case to which I shall return later. Yet the decisions of earlier generations may well afford clues to the true principle of the law: e.g. Reg. v. Howes (1860) 3 E. & E. 332, 336, which I also later quote. It is the duty of this House to look at, through, and past the decisions of earlier generations so that it may identify the principle which lies behind them. Even Lord Eldon, (no legal revolutionary), once remarked, when invited to study precedent, (the strength of which he never under-rated):

> "All law ought to stand upon principle; and unless decision has removed out of the way all argument and all principle, so as to make it impossible to apply them to the case before you, you must find out what is the principle upon which it must be decided." 1 Bligh 486 quoted by Lord Campbell, Lives of the Lord Chancellors, 4th ed. (1857), vol. 10, chap. 213, p. 244.

Approaching the earlier law in this way, one finds plenty of

indications as to the principles governing the law's approach to parental right and the child's right to make his or her own decision. Parental rights clearly do exist, and they do not wholly disappear until the age of majority. Parental rights relate to both the person and the property of the child - custody, care, and control of the person and guardianship of the property of the child. But the common law has never treated such rights as sovereign or beyond review and control. Nor has our law ever treated the child as other than a person with capacities and rights recognised by law. The principle of the law, as I shall endeavour to show, is that parental rights are derived from parental duty and exist only so long as they are needed for the protection of the person and property of the child. The principle has been subjected to certain age limits set by statute for certain purposes: and in some cases the courts have declared an age of discretion at which a child acquires before the age of majority the right to make his (or her) own decision. But these limitations in no way undermine the principle of the law, and should not be allowed to obscure it.

Let me make good, quite shortly, the proposition of principle.

First, the guardianship legislation. Section 5 of the Guardianship of Infants Act 1886 began the process which is now complete of establishing the equal rights of mother and father. In doing so the legislation, which is currently embodied in section 1 of the Guardianship of Minors Act 1971, took over from the Chancery courts a rule which they had long followed (it was certainly applied by Lord Eldon, during his quarter of a century as Lord Chancellor, as Parker L.3. in this case, quoting Heilbron 3. at [1985] 2 W.L.R. 413, 424, reminds us) that when a court has before it a question as to the care and upbringing of a child it must treat the welfare of the child as the paramount consideration in determining the order to be made. There is here a principle which limits and governs the exercise of parental rights of custody, care, and control. It is a principle perfectly consistent with the law's recognition of the parent as the natural guardian of the child; but it is also a warning that parental right must be exercised in accordance with the welfare principle and can be challenged, even overridden, if it be not.

Secondly, there is the common law's understanding of the nature of parental right. We are not concerned in this appeal to catalogue all that is contained in what Sachs L.J. has felicitously described as the "bundle of rights" (Hewer v. Bryant, [1970] Q.B. 357, 373) which together constitute the rights of custody, care, and control. It is abundantly plain that the law recognises that there is a right and a duty of parents to determine whether or not to seek medical advice in respect of their child, and, having received advice, to give or withhold consent to medical treatment. The question in the appeal is as to the extent, and duration of the right and the circumstances in which outside the two admitted exceptions to which I have earlier referred it can be overridden by the exercise of medical judgment.

As Parker and Fox L.JJ. noted in the Court of Appeal, the modern statute law recognises the existence of parental right: e.g. sections 85 and 86 Children Act 1975 and sections 2. 3, and 4

Child Care Act 1980. It is derived from parental duty. A most illuminating discussion of parental right is to be found in Blackstone's Commentaries, 17th ed. (1830), vol. 1 chapters 16 and 17. He analyses the duty of the parent as the "maintenance . . . protection, and . . . education" of the child: p. 446. He declares that the power of parents over their children is derived from their duty and exists "to enable the parent more effectually to perform his duty, and partly as a recompense for his care and trouble in the faithful discharge of it:" op.cit. p. 452. In chapter 17 he discusses the relation of guardian and ward. It is, he points out, a relation "derived out of [the relation of parent and child]: the guardian being only a temporary parent, that is, for so long a time as the ward is an infant, or under age": op.cit. chap. 17, p. 460. A little later in the same chapter he again emphasises that the power and reciprocal duty of a guardian and ward are the same, pro tempore, as that of a father and child and adds that the guardian, when the ward comes of age, (as also the father who becomes guardian "at common law" if an estate be left to his child) must account to the child for all that he has transacted on his behalf: pp. 462-463. He then embarks upon a discussion of the different ages at which for different purposes a child comes of sufficient age to make his own decision; and he cites examples, viz. a boy might at 12 years old take the oath of allegiance; at 14 he might consent to marriage or choose his guardian "and, if his discretion be actually proved, may make his testament of his personal estate;" at 17 he could be an executor - all these rights and responsibilities being capable of his acquiring before reaching the age of majority at 21: op.cit. p. 463.

The two chapters provide a valuable insight into the principle and flexibility of the common law. The principle is that parental right or power of control of the person and property of his child exists primarily to enable the parent to discharge his duty of maintenance, protection, and education until he reaches such an age as to be able to look after himself and make his own decisions. Blackstone does suggest that there was a further justification for parental right, viz. as a recompense for the faithful discharge of parental duty: but the right of the father to the exclusion of the mother and the reward element as one of the reasons for the existence of the right have been swept away by the Guardianship of Minors legislation to which I have already referred. He also accepts that by statute and by case law varying ages of discretion have been fixed for various purposes. But it is clear that this was done to achieve certainty where it was considered necessary and in no way limits the principle that

parental right endures only so long as it is needed for the protection of the child.

Although statute has intervened in respect of a child's capacity to consent to medical treatment from the age of 16 onwards, neither statute nor the case law has ruled on the extent and duration of parental right in respect of children under the age of 16. More specifically, there is no rule yet applied to contraceptive treatment, which has special problems of its own and is a late-comer in medical practice. It is open, therefore, to the House to formulate a rule. The Court of Appeal favoured a fixed age limit of 16, basing themselves on a view of the statute law which I do not share and upon their view of the effect of the older case law which for the reasons already given I cannot

accept. They sought to justify the limit by the public interest in the law being certain. Certainty is always an advantage in the law, and in some branches of the law it is a necessity. But it brings with it an inflexibility and a rigidity which in some branches of the law can obstruct justice, impede the law's development, and stamp upon the law the mark of obsolescence where what is needed is the capacity for development. The law relating to parent and child is concerned with the problems of the growth and maturity of the human personality. If the law should impose upon the process of "growing up" fixed limits where nature knows only a continuous process, the price would be artificiality and a lack of realism in an area where the law must be sensitive to human development and social change. If certainty be thought desirable, it is better that the rigid demarcations necessary to achieve it should be laid down by legislation after a full consideration of all the relevant factors than by the courts confined as they are by the forensic process to the evidence adduced by the parties and to whatever may properly fall within the judicial notice of judges. Unless and until Parliament should think fit to intervene, the courts should establish a principle flexible enough to enable justice to be achieved by its application to the particular circumstances proved by the evidence placed before them.

The underlying principle of the law was exposed by Blackstone and can be seen to have been acknowledged in the case law. It is that parental right yields to the child's right to make his own decisions when he reaches a sufficient understanding and intelligence to be capable of making up his own mind on the matter requiring decision. Lord Denning M.R. captured the spirit and principle of the law when he said in Hewer v. Bryant [1970] 1 Q.B. 357, 369:

"I would get rid of the rule in In re Agar-Ellis, 24 Ch.D.

317 and of the suggested exceptions to it. That case was decided in the year 1883. It reflects the attitude of a Victorian parent towards his children. He expected unquestioning obedience to his commands. If a son disobeyed, his father would cut him off with a shilling. If a daughter had an illegitimate child, he would turn her out of the house. His power only ceased when the child became 21. I decline to accept a view so much out of date. The common law can, and should, keep pace with the times. It should declare, in conformity with the recent Report of the Committee on the Age of Majority [Cmnd. 3342, 1967], that the legal right of a parent to the custody of a child ends at the 18th birthday: and even up till then, it is a dwindling right which the courts will hesitate to enforce against the wishes of the child, and the more so the older he is. It starts with a right of control and ends with little more than advice."

But his is by no means a solitary voice. It is consistent with the opinion expressed by the House in J. v. C. [1970] A.C. 668 where their Lordships clearly recognised as out of place the assertion in the Agar-Ellis cases 10 Ch.D. 49; 24 Ch.D. 317 of a father's power bordering on "patria potestas." It is consistent with the view of Lord Parker C.J. in Reg. v. Howard [1966] 1 W.L.R. 13, 14 where he ruled that in the case of a prosecution charging

rape of a girl under 16 the Crown must prove either lack of her consent or that she was not in a position to decide whether to consent or resist and added the comment that "there are many girls who know full well what it is all about and can properly consent." And it is consistent with the views of the House in the recent criminal case where a father was accused of kidnapping his own child, Reg. v. D. [1984] A.C. 778, a case to which I shall return.

For the reasons which I have endeavoured to develop the case law of the 19th and earlier centuries is no guide to the application of the law in the conditions of today. The Agar-Ellis cases 10 Ch.D. 49; 24 Ch.D. 317 (the power of the father) cannot live with the modern statute law. The habeas corpus "age of discretion" cases are also no guide as to the limits which should be accepted today in marking out the bounds of parental right, of a child's capacity to make his or her own decision, and of a doctor's duty to his patient. Nevertheless the "age of discretion" cases are helpful in that they do reveal the judges as accepting that a minor can in law achieve an age of discretion before coming of full age. The "age of discretion" cases are cases in which a parent or guardian (usually the father) has applied for habeas corpus to secure the return of his child who has left home

without his consent. The courts would refuse an order if the child had attained the age of discretion, which came to be regarded as 14 for boys and 16 for girls, and did not wish to return. The principle underlying them was plainly that an order would be refused if the child had sufficient intelligence and understanding to make up his own mind. A passage from the judgment of Cockburn C.J. in Reg. v. Howes (1860) 3 E. & E. 332, which Parker L.J. quoted in the Court of Appeal, illustrates their reasoning and shows how a fixed age was used as a working rule to establish an age at which the requisite "discretion" could be held to be achieved by the child. The Chief Justice said at pp. 336-337:

> "Now the cases which have been decided on this subject shew that, although a father is entitled to the custody of his children till they attain the age of 21, this court will not grant a habeas corpus to hand a child which is below that age over to its father, provided that it has attained an age of sufficient discretion to enable it to exercise a wise choice for its own interests. The whole question is, what is that age of discretion? We repudiate utterly, as most dangerous, the notion that any intellectual precocity in an individual female child can hasten the period which appears to have been fixed by statute for the arrival of the age of discretion; for that very precocity, if uncontrolled, might very probably lead to her irreparable injury. The legislature has given us a guide, which we may safely follow, in pointing out 16 as the age up to which the father's right to the custody of his female child is to continue; and short of which such a child has no discretion to consent to leaving him"

The principle is clear: and a fixed age of discretion was accepted by the courts by analogy from the Abduction Acts (the first being the Act of 1557 4 & 5 Ph. & M. c.8). While it is unrealistic today to treat a 16th century Act as a safe guide in the matter of a girl's discretion, and while no modern judge would dismiss the intelligence of a teenage girl as "intellectual precocity," we can agree with Cockburn C.J. as to the principle of the law - the attainment by a child of an age of sufficient discretion to enable him or her to exercise a wise choice in his or her own interests.

The modern law governing parental right and a child's capacity to make his own decisions was considered in Reg. v. D; [1984] A.C. 778. The House must, in my view, be understood as having in that case accepted that, save where statute otherwise provides, a minor's capacity to make his or her own decision depends upon the minor having sufficient understanding and intelligence to make the decision and is not to be determined by reference to any judicially fixed age limit. The House was faced with a submission that a father, even if he had taken his child away by force or fraud, could not be guilty of a criminal offence of any kind. Lord Brandon of Oakbrook, with whom their other

Lordships agreed, commented at pp. 804-805 that this might well have been the view of the legislature and the courts in the 19th century, but had this to say about parental right and a child's capacity in our time to give or withhold a valid consent:

> "This is because in those times both the generally accepted conventions of society, and the courts by which such conventions were buttressed and enforced, regarded a father as having absolute and paramount authority, as against all the world, over any children of his who were still under the age of majority (then 21), except for a married daughter. The nature of this view of a father's rights appears clearly from various reported cases, including, as a typical example, In re Agar-Ellis (1883) 24 Ch.D. 317. The common law, however, while generally immutable in its principles, unless different principles are laid down by statute, is not immutable in the way in which it adapts, develops and applies those principles in a radically changing world and against the background of radically changed social conventions and conditions."

and later, at p. 806 -

> "I see no good reason why, in relation to the kidnapping of a child, it should not in all cases be the absence of the child's consent which is material, whatever its age may be. In the case of a very young child, it would not have the understanding or the intelligence to give its consent, so that absence of consent would be a necessary inference from its age. In the case of an older child, however, it must, I think be a question of fact for a jury whether the child concerned has sufficient understanding and intelligence to give its consent; if, but only if, the jury considers that a child has these qualities, it must then go on to consider whether it has been proved that the child did not give its consent. While the matter will always be for the jury alone to decide, I should not expect a jury to find at all frequently that a child under 14 had sufficient understanding and intelligence to give its consent."

In the light of the foregoing I would hold that as a matter of law the parental right to determine whether or not their minor child below the age of 16 will have medical treatment terminates

if and when the child achieves a sufficient understanding and intelligence to enable him or her to understand fully what is proposed. It will be a question of fact whether a child seeking advice has sufficient understanding of what is involved to give a consent valid in law. Until the child achieves the capacity to

consent, the parental right to make the decision continues save only in exceptional circumstances. Emergency, parental neglect, abandonment of the child, or inability to find the parent are examples of exceptional situations justifying the 'doctor proceeding to treat the child without parental knowledge and consent: but there will arise, no doubt, other exceptional situations in which it will be reasonable for the doctor to proceed without the parent's consent.

When applying these conclusions to contraceptive advice and treatment it has to be borne in mind that there is much that has to be understood by a girl under the age of 16 if she is to have legal capacity to consent to such treatment. It is not enough that she should understand the nature of the advice which is being given: she must also have a sufficient maturity to understand what is involved. There are moral and family questions, especially her relationship with her parents; long-term problems associated with the emotional impact of pregnancy and its termination; and there are the risks to health of sexual intercourse at her age, risks which contraception may diminish but cannot eliminate. It follows that a doctor will have to satisfy himself that she is able to appraise these factors before he can safely proceed upon the basis that she has at law capacity to consent to contraceptive treatment. And it further follows that ordinarily the proper course will be for him, as the guidance lays down, first to seek to persuade the girl to bring her parents into consultation, and if she refuses, not to prescribe contraceptive treatment unless he is satisfied that her circumstances are such that he ought to proceed without parental knowledge and consent.

Like Woolf J., I find illuminating and helpful the judgment of Addy J. of the Ontario High Court in Johnston v. Wellesley Hospital (1970) 17 D.L.R. (3d) 139, a passage from which he quotes in his judgment in this case, [1984] Q.B. 581, 597. The key passage bears repetition!

> "But, regardless of modern trend, I can find nothing in any of the old reported cases, except where infants of tender age or young children were involved, where the courts have found that a person under 21 years, of age was legally incapable of consenting to medical treatment. If a person under 21 years were unable to consent to medical treatment, he would also be incapable of consenting to other types of bodily interference. A proposition purporting to establish that any bodily interference acquiesced in by a youth of 20 years would nevertheless constitute an assault would be absurd. If such were the case, sexual intercourse with a girl under 21 years would constitute rape. Until the minimum age of consent to sexual acts was fixed at 14 years by a statute, the courts often held that infants were capable of consenting at a considerably earlier age than 14 years.

> "I feel that the law on this point is well expressed in the volume on Medical Negligence (1957), by Lord Nathan, p. 176: 'It is suggested that the most satisfactory solution of the problem is to rule that an infant who is capable of appreciating fully the nature and consequences of a particular operation or of particular treatment can give an effective consent thereto, and in such cases the consent of the guardian is unnecessary; but that where the infant is without that capacity, any apparent consent by him or her will be a nullity, the sole right to consent being vested in the guardian.'"

I am, therefore, satisfied that the Department's guidance can be followed without involving the doctor in any infringement of parental right. Unless, therefore, to prescribe contraceptive treatment for a girl under the age of 16 is either a criminal offence or so close to one that to prescribe such treatment is contrary to public policy, the department's appeal must succeed.

The Criminal Law Case

If this case should be made good, the discussion of parental right is, of course, an irrelevance. If it be criminal or contrary to public policy to prescribe contraception for a girl under the age of 16 on the ground that sexual intercourse with her is unlawful and a crime on the part of her male partner, the fact that her parent knew and consented would not make it any less so. I confess that I find the submission based upon criminality or public policy surprising. So far as criminality is concerned, I am happy to rest on the judgment of Woolf J. whose approach to the problem I believe to be correct. Clearly a doctor who gives a girl contraceptive advice or treatment not because in his clinical judgment the treatment is medically indicated for the maintenance or restoration of her health but with the intention of facilitating her having unlawful sexual intercourse may well be guilty of a criminal offence. It would depend, as my noble and learned friend, Lord Fraser of Tullybelton observes, upon the doctor's intention - a conclusion hardly to be wondered at in the field of the criminal law. The department's guidance avoids the trap of declaring that the decision to prescribe the treatment is wholly a matter of the doctor's discretion. He may prescribe only if she has the capacity to consent or if exceptional circumstances exist which justify him in exercising his clinical judgment without parental consent. The adjective "clinical" emphasises that it must be a medical judgment based upon what he honestly believes to be necessary for the physical, mental, and emotional health of his patient. The bona fide exercise by a doctor of his clinical judgment must be a complete negation of the guilty mind which is an essential ingredient of the criminal offence of aiding and abetting the commission of unlawful sexual intercourse*

The public policy point fails for the same reason. It cannot

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be said that there .is anything necessarily contrary to public policy in medical contraceptive treatment if it be medically indicated as in the interest of the patient's health: for the provision of such treatment is recognised as legitimate by Parliament: section 5 National Health Service Act 1977. If it should be prescribed for a girl under 16 the fact that it may eliminate a health risk in the event of the girl having unlawful sexual intercourse is an

irrelevance unless the doctor intends to encourage her to have that intercourse. If the prescription is the bona fide exercise of his clinical judgment as to what is best for his patient's health, he has nothing to fear from the criminal law or from any public policy based on the criminality of a man having sexual intercourse with her.

It can be said by way of criticism of this view of the law that it will result in uncertainty and leave the law in the hands of the doctors. The uncertainty is the price which has to be paid to keep the law in line with social experience, which is that many girls are fully able to make sensible decisions about many matters before they reach the age of 16. I accept that great responsibilities will lie on the medical profession. It is, however, a learned and highly trained profession regulated by statute and governed by a strict ethical code which is vigorously enforced. Abuse of the power to prescribe contraceptive treatment for girls under the age of 16 would render a doctor liable to severe professional penalty. The truth may well be that the rights of parents and children in this sensitive area are better protected by the professional standards of the medical profession than by 'a priori' legal lines of division between capacity and lack of capacity to consent since any such general dividing line is sure to produce in some cases injustice, hardship, and injury to health.

For these reasons I would allow the Department's appeal, and set aside the declaration that the guidance is unlawful. I would add that, since the second declaration granted by the Court of Appeal, which concerns only the area health authority, was based on the same reasoning as the first, it must be held to have been wrongly granted. The Court of Appeal's decision to grant it should be, in my opinion, overruled as erroneous in law.

LORD BRIDGE OF HARWICH

My Lords,

The prelude to the proceedings from which this appeal arises

was an exchange of correspondence between the present respondent, Mrs. Victoria Gillick, and her local area health authority in which she sought, but failed to obtain, an assurance that in no circumstances would any of her daughters when under 16 be offered contraceptive advice or treatment. Mrs. Gillick now has her declaration against the health authority, from which they do not appeal. I should suppose that in such a family as Mrs. Gillick's the possibility of any of her daughters under 16 seeking to use contraceptives secretly was in any event so remote as to make the issue in the proceedings against the health authority purely academic. But what prompted the correspondence was a "Memorandum of Guidance" (to which I will refer simply as "the Memorandum") on the subject of contraceptive advice and treatment for children under 16 issued to all health authorities by the present appellants, the Department of Health and Social Security ("D.H.S.S."). The terms of the Memorandum are set out in full in the speeches of my noble and learned friends Lord Fraser of Tullybelton and Lord Scarman. The Memorandum has

been declared by the Court of Appeal to be contrary to law and it is that declaration that gives rise to the only live issue in this appeal. It is against the ethos expressed in the Memorandum that Mrs. Gillick's crusade, as my noble and learned friend Lord Templeman aptly calls it, is primarily directed.

Throughout the hearing of the argument in the appeal and in subsequent reflection on the questions to which it gives rise I have felt doubt and difficulty as to the basis of the jurisdiction which Mrs. Gillick invokes in her claim to a declaration against the D.H.S.S. If the claim is well founded, it must surely lie in the field of public rather than private law. Mrs. Gillick has no private right which she is in a position to assert against the D.H.S.S. But the point which troubles me has nothing to do with the purely procedural technicality that the proceedings were commenced by writ rather than by application for judicial review. I agree that no objection has been, nor could now be, raised on that ground. My difficulty is more fundamental. I ask myself what is the nature of the action or decision taken by the D.H.S.S. in the exercise of a power conferred upon it which entitles a court of law to intervene and declare that it has stepped beyond the proper limits of its power. I frame the question in that way because I believe that hitherto, certainly in general terms, the court's supervisory jurisdiction over the conduct of administrative authorities has been confined to ensuring that their actions or decisions were taken within the scope of the power which they purported to exercise or conversely to providing a remedy for an authority's failure to act or to decide in circumstances where some appropriate statutory action or decision was called for.

Now it is true that the Secretary of State for Health and Social Security under section 5(1)(b) of the National Health Service Act 1977 has a general responsibility for the provision within the National Health Service of what may be described shortly as family planning services. But only in a very loose sense could the issue of the Memorandum be considered as part of the discharge of that responsibility. The Memorandum itself has no statutory force whatever. It is not and does not purport to be issued in the exercise of any statutory power or in the performance of any statutory function. It is purely advisory in character and practitioners in the National Health Service are, as a matter of law, in no way bound by it.

In the light of these considerations I cannot, with all respect, agree that the Memorandum is open to review on "Wednesbury" principles on the ground that it involves an unreasonable exercise of a statutory discretion. Such a review must always begin by examining the nature of the statutory power which the administrative authority whose action is called in question has purported to exercise, and asking, in the light of that examination, what were, and what were not, relevant considerations for the authority to take into account in deciding to exercise that power. It is only against such a specific statutory background that the question whether the authority has acted unreasonably, in the Wednesbury sense, can properly be asked and answered. Here there is no specific statutory background by reference to which the appropriate Wednesbury questions could be formulated.

The issue by a department of government with administrative responsibility in a particular field of non-statutory guidance to subordinate authorities operating in the same field is a familiar feature of modern administration. The innumerable circulars issued over the years by successive departments responsible in the field of town and country planning spring to mind as presenting a familiar example. The question whether the advice tendered in such non-statutory guidance is good or bad, reasonable or unreasonable, cannot, as a general rule, be subject to any form of judicial review. But the question arises whether there' is any exception to that general rule.

Your Lordships have been referred to the House's decision in Royal College of Nursing v. Department of Health and Social Security [1981] A.C. 800. The background to that case was exceptional, as only becomes fully clear when one reads the judgment of Woolf 3. at first instance, reported at [1981] 1 All E.R. 545. The Royal College of Nursing ("R.C.N.") and the D.H.S.S. had received conflicting legal advice as to whether or not it was lawful, on the true construction of certain provisions of the

Abortion Act 1967, for nurses to perform particular functions in the course of a novel medical procedure for the termination of pregnancy, when acting on the orders and under the general supervision of a registered medical practitioner but not necessarily in his presence. The R.C.N. had issued a memorandum and a later circular to its members to the effect that it was not lawful. The D.H.S.S. had issued a circular advising that it was lawful. The desirability of an authoritative resolution of this dispute on a pure question of law was obvious in the interests both of the nursing profession and of the public. The proceedings took the form of a claim by the R.C.N. against the D.H.S.S. for a suitable declaration and the D.H.S.S. in due course counterclaimed a declaration to the opposite effect. As Woolf J. pointed out, neither side took any point as to the jurisdiction of the court to grant a declaration. Woolf J. himself felt it necessary to raise and examine certain questions as to the locus standi of the R.C.N. to bring the proceedings and as to the propriety of their form. He answered these questions in a favourable sense to enable him to decide the disputed question of law on its merits. No technical question bearing on jurisdiction attracted any mention in the Court of Appeal or in this House. In the litigation the original conflict between the parties was reflected in a conflict of judicial opinion. On a count of judicial heads a majority of 5 to 4 favoured the R.C.N. But by a majority of 3 to 2 in your Lordships' House the D.H.S.S.. carried the day and obtained the declaration they sought.

Against this background it would have been surprising indeed if the courts had declined jurisdiction. But I think it must be recognised that the decision (whether or not it was so intended) does effect a significant extension of the court's power of judicial review. We must now say that if a government department, in a field of administration in which it exercises responsibility, promulgates in a public document, albeit non-statutory in form, advice which is erroneous in law, then the court, in proceedings in appropriate form commenced by an applicant or plaintiff who possesses the necessary locus standi, has jurisdiction to correct the error of law by an appropriate declaration. Such an extended jurisdiction is no doubt a salutary and indeed a necessary one in certain circumstances, as the Royal College of Nursing case [1981]

A.C. 800 itself well illustrates. But the occasions of a departmental non-statutory publication raising, as in that case, a clearly defined issue of law, unclouded by political, social or moral overtones, will be rare. In cases where any proposition of law implicit in a departmental advisory document is interwoven with questions of social and ethical controversy, the court should, in my opinion, exercise its jurisdiction with the utmost restraint, confine itself to deciding whether the proposition of law is erroneous and avoid either expressing ex cathedra opinions in areas of social and

ethical controversy in which it has no claim to speak with authority or preferring answers to hypothetical questions of law which do not strictly arise for decision.

My Lords, the Memorandum, in expressing the view that in exceptional and unusual cases it may be proper for a doctor to offer contraceptive advice and treatment to a girl under 16 without the knowledge or consent of her parent, guardian or other person in loco parentis, implies that the law does not prohibit the doctor from so acting. The exceptional and unusual cases contemplated are clearly not confined to cases of children abandoned by their parents and not yet taken into care by a local authority or to cases of "emergency", whatever meaning one may give to that word in this context. I am content to assume, without deciding, that Mrs. Gillick, in view of her dispute with the health authority, has sufficient locus standi to contest the issue of the lawfulness of the Memorandum. To succeed in her action against the D.H.S.S. she must at least establish that, leaving aside cases of abandoned children or emergencies, the law does absolutely prohibit the prescription of contraception for a girl under 16 without parental consent or an order of the court.

The most direct support for that proposition is to be found in the opinion of my noble and learned friend Lord Brandon of Oakbrook that to prescribe contraception for a girl under 16, with or without parental consent, is either to aid and abet the offence which will be committed by the man with whom she has intercourse, or at least so far to facilitate his criminal conduct as to be contrary to public policy. I appreciate the logical cogency of my noble and learned friend's reasoning, but I cannot agree with his conclusion. With reference to the possible criminal complicity of the doctor I am content gratefully to adopt the relevant passage from the judgment of Woolf J., [1984] 1 Q.B. 581, 593B - 595G, with which I fully agree. On the issue of public policy, it seems to me that the policy consideration underlying the criminal sanction imposed by statute upon men who have intercourse with girls under 16 is the protection of young girls from the untoward consequences of intercourse. Foremost among these must surely be the risk of pregnancy leading either to abortion or the birth of a child to an immature and irresponsible mother. In circumstances where it is apparent that the criminal sanction will not, or is unlikely to, afford the necessary protection it cannot, in my opinion, be contrary to public policy to prescribe contraception as the only effective means of avoiding a wholly undesirable pregnancy. On the facts presented to Butler-Sloss J. in the case of In re P. (A Minor) (1981) 80 L.G.R. 301, I think, if I may respectfully say so, that she took an eminently sensible and entirely proper course.

The alternative and more extensively argued ground on which Mrs. Gillick challenges the lawfulness of the Memorandum depends on the two closely related propositions:

1. that no girl under 16 can have the capacity in law to give a valid consent to submit to contraceptive treatment;

2. that the prescription of such treatment without parental consent is an unlawful invasion of parental rights.

Both these propositions are comprehensively examined in the speeches of my noble and learned friends Lord Fraser of Tullybelton and Lord Scarman. I fully agree with the reasons expressed by both my noble and learned friends for reaching the conclusion that neither proposition is well founded in law.

Accordingly I would allow the appeal of the D.H.S.S. to the extent of setting aside the declaration made by the Court of Appeal that the Memorandum was contrary to law.

LORD BRANDON OF OAKBROOK

My Lords,

In this case your Lordships are concerned with the legal aspect of three activities relating to the sexual conduct of girls who are under the age of 16. The first activity is the giving to such girls by professional persons other than doctors (e.g. social workers) of advice about contraception. The second activity is the physical examination of such girls by doctors with a view to their using one or other form of contraception. The third activity is the prescribing for such girls of contraceptive treatment, especially that form which is commonly called "the pill."

The question with regard to these three activities which has been raised in the two courts below, and again in your Lordships' House, is whether such activities can be lawfully carried on without the prior knowledge and consent of the parents of any girl of the age concerned.

In my opinion the formulation of the question for decision in this way involves the rolling up in one composite question of two quite separate and distinct points of law. The first point of law is whether the three activities to which I have referred can be carried on lawfully in any circumstances whatever. If, on the one hand, the right answer to this first point of law is "no", then no second point of law arises for decision. If, on the other hand, the answer to the first question is "yes", then a second point of law

arises, namely, whether the three activities referred to can only be lawfully carried on with the prior knowledge and consent of the parents of the girl concerned.

The first point of law appears to me to be one of public policy, the answer to which is to be gathered from an examination

of the statutory provisions which Parliament has enacted from time to time in relation to men having sexual intercourse with girls either under the age of 13 or between the ages of 13 to 16.

It is, I think, sufficient to begin with the Criminal Law Amendment Act 1885 (48 & 49 Viet. C. 69) and then to go on to the Sexual Offences Act 1956, by which the former Act was repealed and largely replaced.

Part I of the Act of 1885, which contained sections 2-12, had the cross-heading "Protection of Women and Girls." Sections 4 and 5 provided, so far as material:

> "4. Any person who –
>
> unlawfully and carnally knows any girl under the age of 13 years shall be guilty of felony, and being convicted thereof shall be liable at the discretion of the court to be kept in penal servitude for life, or for any term not less than five years, or to be imprisoned for any term not exceeding two years, with or without hard labour. . . .
>
> 6. Any person who –
>
> 6. unlawfully and carnally knows or attempts to have unlawful carnal knowledge of any girl being of or above the age of 13 years and under the age of 16 years; ...
>
> shall be guilty of a misdemeanour, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding two years, with or without hard labour. . . ."

In Reg. v. Tyrrell [1894] 1 Q.B. 710 it was held by the Court of Crown Cases Reserved that it was not a criminal offence for a girl between the ages of 13 and 16 to aid and abet a man in committing, or to incite him to commit, the misdemeanour of having carnal knowledge of her contrary to section 5 of the Criminal Law Amendment Act 1885 set out above. The ground of

this decision was that the Act of 1885 had been passed for the purpose of protecting women and girls against themselves: see the judgment of Lord Coleridge C.J. at p. 712.

The Sexual Offences Act 1956 represents the latest pronouncement of Parliament on these matters. Sections 5 and 6 provide, so far as material!

> "5. It is a felony for a man to have unlawful sexual intercourse with a girl under the age of 13.
>
> 6. - (i) It is an offence . . . for a man to have unlawful sexual intercourse with a girl not under the age of 13 but under the age of 16."

Further, by section 37 and the Second Schedule, the maximum punishment for an offence under section 5 is imprisonment for life, and that for an offence under section 6 imprisonment for two years. Since the passing of the Act of 1956 the distinction

between felonies and misdemeanours has been abolished. For the purposes of this case, however, nothing turns on this change of terminology.

My Lords, the inescapable inference from the statutory provisions of the Acts of 1885 and 1956 to which I have referred is that Parliament has for the past century regarded, and still regards today, sexual intercourse between a man and a girl under 16 as a serious criminal offence so far as the man who has such intercourse is concerned. So far as the girl is concerned, she does not commit any criminal offence, even if she aids, abets or incites the having of such intercourse. The reason for. this, as explained earlier, is that the relevant statutory provisions have been enacted by Parliament for the purpose of protecting the girl from herself. The having of such intercourse is, however, unlawful, and the circumstance that the man is guilty of a criminal offence, while the girl is not, cannot alter that situation.

On the footing that the having of sexual intercourse by a man with a girl under 16 is an unlawful act, it follows necessarily that for any person to promote, encourage or facilitate the commission of such an act may itself be a criminal offence, and must, in any event, be contrary to public policy. Nor can it make any difference that the person who promotes, encourages or facilitates the commission of such an act is a parent or a doctor or a social worker.

The question then arises whether the three activities to

which I referred earlier should properly be regarded as, directly or indirectly, promoting, encouraging or facilitating the having, contrary to public policy, of sexual intercourse between a man and a girl under 16. In my opinion there can be only one answer to this question, namely, that to give such a girl advice about contraception, to examine her with a view to her using one or more forms of protection, and finally to prescribe contraceptive treatment for her, necessarily involves promoting, encouraging or facilitating the having of sexual intercourse, contrary to public policy, by that girl with a man.

The inhibitions against the having of sexual intercourse between a man and a girl under 16 are primarily two-fold. So far as the man is concerned there is the inhibition of the criminal law as contained in sections 5 and 6 of the Act of 1956. So far as both are concerned there is the inhibition arising from the risk of an unwanted pregnancy. To give the girl contraceptive treatment, following appropriate advice and examination, is to remove largely the second of these two inhibitions. Such removal must involve promoting, encouraging or facilitating the having of sexual intercourse between the girl and the man.

It has been argued that some girls under 16 will have sexual intercourse with a man whether contraceptive treatment is made available to them or not, and that the provision of such treatment does not, therefore, promote, encourage or facilitate the having of such intercourse. In my opinion this argument should be rejected for two quite separate reasons. The first reason is that the mere fact that a girl under 16 seeks contraceptive advice and treatment, whether of her own accord or at the suggestion of others, itself indicates that she, and probably also the man with

whom she is having, **or** contemplating having, sexual intercourse, are conscious of the inhibition arising from the risk of an unwanted pregnancy. They are conscious of it and are more likely to indulge their desires if it can be removed. The second reason is that, if all a girl under 16 needs to do in order to obtain contraceptive treatment is to threaten that she will go ahead with, or continue, unlawful sexual intercourse with a man unless she is given such treatment, a situation tantamount to blackmail will arise which no legal system ought to tolerate. The only answer which the law should give to such a threat is "wait till you are 16."

The D.H.S.S. has contended that section 5(1) of the National Health Service Act 1977 imposes on it a statutory duty to carry out, in relation to girls under 16 as well as to older girls or women, the three activities to which I referred earlier. That provision reads:

"5. - (1) It is the Secretary of State's duty - . . .

(b) to arrange, to such extent as he considers necessary to meet all reasonable requirements in England and Wales, for the giving of advice on contraception, the medical examination of persons seeking advice on contraception, the treatment of such persons and the supply of contraceptive substances and appliances."

This provision does not define the "persons" who are the subject-matter of it, nor is there any definition of that expression anywhere else in the Act. In these circumstances it seems to me that a court, in interpreting the provision, must do so in a way which conforms with considerations of public policy rather than in a way which conflicts with them. For the reasons which I have given earlier, I am of the opinion that, in the case of girls under 16, the giving of advice about contraception, medical examination with a view to the use of one or other form of contraception, and the prescribing of contraceptive treatment, are all contrary to public policy. It follows that I would interpret the expression "persons" in section 5(1)(b) above as not including girls under 16. Alternatively I would say that the expression "all reasonable retirements", which occurs earlier in the provision, cannot be interpreted as including the requirements of a girl under 16 which, if satisfied, will promote, encourage or facilitate unlawful acts of sexual intercourse between a man and her.

My Lords, reference was made in the course of the argument before you to a decision of Butler-Sloss J. in In re P (A Minor) 80 L.G.R. 301. In that case the learned judge, in wardship proceedings, ordered that a girl of 15, who had been pregnant for the second time and was in the care of a local authority, should be fitted with a contraceptive appliance because it appeared that it was impossible for the local authority, in whose care she was, to control her sexual conduct. It was contended that this decision was authority for the proposition that, in wardship proceedings at any rate, an order could lawfully be made for the supply and fitting of a contraceptive appliance to a girl under 16.

I do not know what arguments were or were not addressed to Butler-Sloss J. in that case, and it is, in any event, unnecessary for your Lordships to decide in these proceedings the limits of the powers of a court exercising wardship jurisdiction. As at present advised, however, I am of opinion, with great respect to Butler-Sloss 3., that the order which she made was not one which she could lawfully make.

My Lords, great play was made in the argument before you

of the disastrous consequences for a girl under 16 of becoming pregnant as a result of her willingly having unlawful sexual intercourse with a man. I am fully conscious of these considerations, but I do not consider that, if the views which I have so far expressed are right in law, those considerations can alter the position.

It is sometimes said that the age of consent for girls is presently 16. This is, however, an inaccurate way of putting the matter, since, if a man has sexual intercourse with a girl under 16 without her consent, the crime which he thereby commits is that of rape. The right way to put the matter is that 16 is the age of a girl below which a man cannot lawfully have sexual intercourse with her. It was open to Parliament in 1956, when the Sexual Offences Act of that year was passed, and it has remained open to Parliament throughout the 29 years which have since elapsed, to pass legislation providing for some lower age than 16, if it thought fit to do so. Parliament has not thought fit to do so, and I do not consider that it would be right for your Lordships' House, by-holding that girls under 16 can lawfully be provided with contraceptive facilities, to undermine or circumvent the criminal law which Parliament has enacted. The criminal law and the civil law should, as it seems to me, march hand in hand on all issues, including that raised in this case, and to allow inconsistency or contradiction between them would, in my view, serve only to discredit the rule of law as a whole.

Since I am of opinion that the first question which I posed earlier, namely, whether the provision of contraceptive facilities to girls under 16 was lawful in any circumstances at all, should be answered in the negative, the second question which I posed relating to the need for prior parental knowledge and consent, does not arise. This is because, on the view which I take of the law, making contraception available to girls under 16" is unlawful, whether their parents know of and consent to it or not.

My Lords, it remains for me to indicate what order I Consider that the House should make on this appeal. With regard to the first declaration made by the Court of Appeal, I would uphold it, albeit on grounds wider than those on which it was founded in that court. With regard to the second declaration, there is no appeal against it and I would uphold it also, although, for the reasons which I have given, I regard the four lines which follow the words "the age of 16" as surplusage.

In the result, I would dismiss the appeal of the D.H.S.S. with costs.

My Lords,

This appeal involves consideration of the independence of a teenager, the powers of a parent and the duties of a doctor. The question is, who has the right to decide whether an unmarried girl under the age of 16 may practise contraception?

An unmarried girl under the age of 16 does not, in my opinion, possess the power in law to decide for herself to practise contraception. Section 6 of the Sexual Offences Act 1956 makes it an offence for a man to have unlawful sexual intercourse with a girl under the age of 16. Consent by the girl does not afford a defence to the man or constitute an offence by the girl. Parliament has thus indicated that an unmarried girl under the age of 16 is not sufficiently mature to be allowed to decide for herself that she will take part in sexual intercourse. Such a girl cannot therefore be regarded as sufficiently mature to be allowed to decide for herself that she will practise contraception for the purpose of frequent or regular or casual sexual intercourse. Section 6 of the Sexual Offences Act 1956 does not, however, in my view, prevent parent and doctor from deciding that contraceptive facilities shall be made available to an unmarried girl under the age of 16 whose sexual activities are recognised to be uncontrolled and uncontrollable. Section 6 is designed to protect the girl from sexual intercourse. But if the girl cannot be deterred then contraceptive facilities may be provided, not for the purpose of aiding and abetting an offence under Section 6 but for the purpose of avoiding the consequences, principally pregnancy, which the girl may suffer from illegal sexual intercourse where sexual intercourse cannot be prevented. In general, where parent and doctor agree that any form of treatment, including contraceptive treatment, is in the best interests of the girl, there is, in my opinion, no legal bar to that treatment.

Difficulties arise when parent and doctor differ. The parent, claiming the right to decide what is in the best interests of a girl in the custody of that parent may forbid the -provision of contraceptive facilities. A doctor, claiming the right to decide what is in the best interests of a patient, may wish to override the parent's objections. A conflict which is express may be resolved by the court which may accept the view of either parent or doctor or modify the views of both of them as to what is in the best interests of the girl. The present appeal is concerned with a conflict which is known to the doctor but is concealed from the parent and from the court. The girl, aware that the parent will forbid contraception, requests the doctor to provide and the doctor agrees to provide contraceptive facilities and to keep the parent in ignorance.

A parent is the natural and legal guardian of an infant under the age of 18 and is responsible for the upbringing of an

infant who is in the custody of that parent. The practical exercise of parental powers varies from control and supervision to guidance and advice depending on the discipline enforced by the parent and the age and temperament of the infant. Parental power must be exercised in the best interests of the infant and the court may intervene in the interests of the infant at the

behest of the parent or at the behest of a third party. The court may enforce parental right, control the misuse of parental power or uphold independent views asserted by the infant. The court will be guided by the principle that the welfare of the infant is paramount. But subject to the discretion of the court to differ from the views of the parent, the court will, in my opinion, uphold the right of the parent having custody of the infant to decide on behalf of the infant all matters which the infant is not competent to decide. The prudent parent will pay attention to the wishes of the infant and will normally accept them as the infant approaches adulthood. The parent is not bound by the infant's wishes, but an infant approaching adulthood may be able to flout the wishes of the parent with ease.

A doctor tenders advice and offers treatment which the doctor considers to be in the best interests of the patient. A patient is free to reject the advice and refuse the treatment; Sidaway v. Board of Governors of the Bethlem Royal Hospital and the Maudsley Hospital [1985] 2 W.L.R. 480, 508. Where the patient is an infant, the medical profession accept that a parent having custody and being responsible for the infant is entitled on behalf of the infant to consent to or reject treatment if the parent considers that the best interests of the infant so require. Where doctor and parent disagree, the court can decide and is not slow to act. I accept that if there is no time to obtain a decision from the court, a doctor may safely carry out treatment in an emergency if the doctor believes the treatment to be vital to the survival or health of an infant and notwithstanding the opposition of a parent or the impossibility of alerting the parent before the treatment is carried out. In such a case the doctor must have the courage of his convictions that the treatment is necessary and urgent in the interests of the patient and the court will, if necessary, approve after the event treatment which the court would have authorised in advance, even if the treatment proves to be unsuccessful.

I accept also that a doctor may lawfully carry out some forms of treatment with the consent of an infant patient and against the opposition of a parent based on religious or any other grounds. The effect of the consent of the infant depends on the nature of the treatment and the age and understanding of the infant. For example, a doctor with the consent of an intelligent boy or girl of 15 could in my opinion safely remove tonsils or a

troublesome appendix. But any decision on the part of a girl to practise sex and contraception requires not only knowledge of the facts of life and of the dangers of pregnancy and disease but also an understanding of the emotional and other consequences to her family, her male partner and to herself. I doubt whether a girl under the age of 16 is capable of a balanced judgment to embark on frequent, regular or casual sexual intercourse fortified by the illusion that medical science can protect her in mind and body and ignoring the danger of leaping from childhood to adulthood without the difficult formative transitional experiences of adolescence. There are many things which a girl under 16 needs to practise but sex is not one of them. Parliament could declare this view to be out of date. But in my opinion the statutory provisions discussed in the speech of noble and learned friend Lord Fraser of Tullybelton, and the provisions of section 6 of the Sexual Offences Act 1956 indicate that as the law now stands an unmarried girl

under 16 is not competent to decide to practise sex and contraception.

In the present case it is submitted that a doctor may lawfully make a decision on behalf of the girl and in so doing may overrule or ignore the parent who has custody of the girl. It is submitted that a doctor may at the request of a girl under 16 provide contraceptive facilities against the known or assumed wishes of the parent and on terms that the parent shall be kept in ignorance of the treatment. The justification is advanced that if the girl's request is not met, the girl may persist in sexual intercourse and run the risk of pregnancy. It is not in the interests of a girl under 16 to become pregnant and therefore the doctor may, in her interests, confidentially provide contraceptive facilities unless the doctor can persuade the girl to abstain from sexual intercourse or can persuade her to ensure that precautions are taken by the male participant. The doctor is not bound to provide contraceptive facilities but, it is said, is entitled to do so in the best interests of the girl. The girl must be assured that the doctor will be pledged to secrecy otherwise the girl may .not seek advice or treatment but will run all the risks of disease and pregnancy involved in sexual activities without adequate knowledge or mature consideration and preparation. The D.H.S.S.

memorandum instructs a doctor to seek to persuade the girl to involve the parent but concludes that "the decision whether or not to prescribe contraception must be for the clinical judgment of a doctor."

There are several objections to this approach. The first objection is that a doctor, acting without the views of the parent, cannot form a "clinical" or any other reliable judgment that the best interests of the girl require the provision of contraceptive

facilities. The doctor at the family planning clinic only knows that which the girl chooses to tell him. The family doctor may know some of the circumstances of some of the families who form his registered patients but his information may be incomplete or misleading. The doctor who provides contraceptive facilities without the knowledge of the parent deprives the parent of the opportunity to protect the girl from sexual intercourse by persuading and helping her to avoid sexual intercourse or by the exercise of parental power which may prevent sexual intercourse. The parent might be able to bring pressure on a male participant to desist from the commission of the offence of sexual intercourse with a girl under 16. The parent might be able and willing to exercise parental power by removing the family or the girl to a different neighbourhood and environment and away from the danger of sexual intercourse.

The second objection is that a parent will sooner or later find out the truth, probably sooner, and may do so in circumstances which bring about a complete rupture of good relations between members of the family and between the family and the doctor. It is inevitable that when the parent discovers that the girl is practising sexual intercourse, the girl will in self justification and in an attempt to reassure the parent reveal that she is relying on contraceptive facilities provided by the doctor in order to avoid pregnancy. The girl and the doctor will be the loser by this revelation.

The third and main objection advanced on behalf of the respondent parent, Mrs. Gillick, in this appeal is that the secret provision of contraceptive facilities for a girl under 16 will, it is said, encourage participation by the girl in sexual intercourse and this practice offends basic principles of morality and religion which ought not to be sabotaged in stealth by kind permission of the National Health Service. The interests of a girl under 16 require her to be protected against sexual intercourse. Such a girl is not sufficiently mature to be allowed to decide to flout the accepted rules of society. The pornographic press and the lascivious film may falsely pretend that sexual intercourse is a form of entertainment available to females on request and to males on demand but the regular frequent or casual practice of sexual intercourse by a girl or a boy under the age of 16 cannot be beneficial to anybody and may cause harm to character and personality. Before a girl under 16 is supplied with contraceptive facilities, the parent who knows most about the girl and ought to have the most influence with the girl is entitled to exercise parental rights of control, supervision, guidance and advice in order that the girl may, if possible, avoid sexual intercourse until she is older. Contraception should only be considered if and when the

combined efforts of parent and doctor fail to prevent the girl from participating in sexual intercourse and there remains only the possibility of protecting the girl against pregnancy resulting from sexual intercourse.

These arguments have provoked great controversy which is not legal in character. Some doctors approve and some doctors disapprove of the idea that a doctor may decide to provide contraception for a girl under 16 without the knowledge of the parent. Some parents agree and some parents disagree with the proposition that the decision must depend on the judgment of the doctor. Those who favour doctor power assert that the failure to provide confidential contraceptive treatment will lead to an increase in pregnancies amongst girls under 16. As a general proposition, this assertion is not supported by evidence in this case, is not susceptible to proof and in my opinion is of doubtful validity. Availability of confidential contraceptive treatment may increase the demand for such treatment. Contraceptive treatment for females usually requires daily discipline in order to be effective and girls under 16 frequently lack that discipline. The total number of pregnancies amongst girls of under 16 may, therefore, be increased and not decreased by the availability of contraceptive treatment. But there is no doubt that an individual girl who is denied the opportunity of confidential contraceptive treatment may invite or succumb to sexual intercourse and thereby become pregnant. Those who favour parental power assert that the availability of confidential contraceptive treatment will increase sexual activity by girls under 16. This argument is also not supported by evidence in the present case, and is not susceptible to proof. But it is clear that contraception removes or gives an illusion of removing the possibility of pregnancy and therefore removes restraint on sexual intercourse. Some girls would come under pressure if contraceptive facilities were known to be available and some girls under 16 are susceptible to male domination.

Parliament could decide whether it is better to have more contraception with the possibility of fewer pregnancies and less

disease or whether it is better to have less contraception with the possibility of reduced sexual activity by girls under 16. Parliament could ensure that the doctor prevailed over the parent by reducing the age of consent or by expressly authorising a doctor to provide contraceptive facilities for any girl without informing the parent, provided the doctor considered that his actions were for the benefit of the girl. Parliament could, on the other hand, ensure

that the parent prevailed over the doctor by forbidding contraceptive treatment for a girl under 16 save by or on the recommendation of the girl's general medical practitioner and with the consent of the parent who has registered the girl as a patient of that general practitioner. Some girls, it is said, might pretend to be over 16 but a doctor in doubt could always require confirmation from the girl's registered medical practitioner.

This appeal falls to be determined by the existing law. No authority has been cited which prevents an infant from seeking medical or any other advice or which forbids a doctor to advise an infant who has not been tendered by the parent as a patient. No authority compels a doctor to disclose to a parent, otherwise than in the course of litigation, any information obtained as a result of a conversation between the doctor and the infant. On the other hand, in my opinion, confidentiality owed to an infant is not breached by disclosure to a parent responsible for that infant if the doctor considers that such disclosure is necessary in the interests of the infant. A doctor who gave a pledge to a girl under 16 that he would not disclose the fact or content of a conversation would no doubt honour that pledge, but the doctor ought to hesitate before committing himself. A doctor who gave an unconditional pledge of confidentiality to a girl under 16 would, for example, be in a difficult position if the girl then disclosed information which made the doctor suspect that she was being introduced to sexual intercourse by a man who was also introducing her to drugs.

Although a doctor is entitled to give confidential advice to an infant, the law will, in my opinion, uphold the right of a parent to make a decision which the infant is not competent to make. The decision to authorise and accept medical examination and treatment for contraception is a decision which a girl under 16 is not competent to make. In my opinion a doctor may not lawfully provide a girl under 16 with contraceptive facilities without the approval of the parent responsible for the girl save pursuant to a court order, or in the case of emergency or in exceptional cases where the parent has abandoned or forfeited by abuse the right to be consulted. Parental rights cannot be insisted upon by a parent who is not responsible for the custody and upbringing of a infant or where the parent has abandoned or abused parental rights. And a doctor is not obliged to give effect to parental rights in an emergency.

A girl under 16 is usually living with a parent and is usually attending school. It is sufficient for the doctor to obtain the consent of the parent or guardian with whom the girl is living. It seems to me to be contrary to law and offensive to professional standards that a doctor should provide contraceptive facilities against the known or presumed wishes of such a parent and that the doctor should conspire with the girl to keep the parent in ignorance of the fact that the girl intends to participate in

frequent, regular or casual sexual intercourse in the belief that the only bar to sexual intercourse is the risk of pregnancy and in complacent reliance on the doctor's contraceptive facilities to obviate that risk.

But parental rights may have been abandoned. If the doctor discovers, for example, that the girl is not living with a parent but has been allowed to live in an environment in which the danger of sexual intercourse is pressing, the doctor may lawfully provide facilities for contraception until the parent has been alerted to the danger and has been afforded the opportunity to reassert parental rights and to protect the girl by means other than contraception. The court will uphold the doctor's actions if the doctor reasonably believes that parental rights have, for the time being at any rate, been abandoned.

Parental rights may have been abused. The dangers of sexual intercourse may emanate from the girl's home. The doctor would be entitled to provide the girl with contraceptive facilities but would then be bound to consider whether the local welfare authorities should be alerted to the possibility that the girl is in need of care and protection. Again, the doctor may be satisfied that the parent is a brute and that the girl has been driven to seek solace outside the family. The doctor might decide that it was necessary to provide contraceptive facilities for the girl without informing the parent but the doctor would be bound to consider the possible consequences if the parent, known to be brutal, discovered the truth.

The doctor may also be faced with circumstances which could properly be described as a medical emergency. The doctor may decide that the girl is unable to control her sexual appetite or is acting under an influence which cannot be counteracted immediately. The doctor would be entitled to provide contraceptive facilities as a temporary measure but would, in my opinion, be bound to inform the parent. A subsequent decision to continue contraceptive treatment would be open to the doctor and the parent acting jointly; in default of agreement between them, the welfare authority or the court could be asked to intervene.

There may be other exceptional circumstances and emergencies which would impel the doctor to provide contraceptive facilities without the prior consent of the parent but in most cases the doctor would be bound to inform the parent as soon as possible in order that the parent might have the opportunity of exercising parental rights in such manner as to deter or prevent the girl from indulging in sexual intercourse.

The position seems to me to be as follows. A doctor is not entitled to decide whether a girl under the age of 16 shall be provided with contraceptive facilities if a parent who is in charge of the girl is ready and willing to make that decision in exercise

of parental rights. The doctor is entitled in exceptional circumstances and in emergencies to make provision, normally temporary provision, for contraception but in most cases would be bound to inform the parent of the treatment. The court would not hold the doctor liable for providing contraceptive facilities if the doctor had reasonable grounds for believing that the parent had abandoned or abused parental rights or that there was no

parent immediately available for consultation or that there was no parent who was responsible for the girl. But exceptional circumstances and emergencies cannot be expanded into a general discretion for the doctor to provide contraceptive facilities without the knowledge of the parent because of the possibility that a girl to whom contraceptive facilities are not available may irresponsibly court the risk of pregnancy. Such a discretion would enable any girl to obtain contraception on request by threatening to sleep with a man.

In the present state of the law the D.H.S.S. memorandum appears to me to be defective. The principal defect lies. in the assertion that "the decision whether or not to prescribe contraception must be for the clinical judgment of a doctor." In my opinion a decision by a doctor to provide contraceptive facilities for an unmarried girl of 16 against the known or presumed wishes of a parent who has custody of the girl and without the knowledge, of the parent would constitute an unlawful interference with the rights of the parent, subject to the intervention of the court, to make that decision on behalf of the girl and an unlawful interference with the right of the parent to influence the conduct of the girl by the exercise of parental powers of control, guidance and advice.

There are two further defects. The memorandum asserts "that consultations between doctors and patients are confidential" without making any distinction between adult patients and infant patients. The memorandum also suggests that doctors should consider providing contraceptive facilities without the knowledge of the parent where "parents are, for example, unconcerned, entirely unresponsive or grossly disturbed." Of course a doctor must protect a girl against a parent who is grossly disturbed although the doctor must also consider the possible consequences if such a parent discovers that the daughter has been practising sexual intercourse with the ostensible approval of the doctor manifested by the secret supply of contraceptives. And if it is plain that the parent is "unconcerned" in the sense that parental control has been abandoned, then the provision of contraceptive facilities without the prior knowledge of the parent would be lawful. But any girl who is anxious to practise sexual intercourse may plausibly represent that the parent is "entirely unresponsive." On behalf of

Mrs. Gillick it was urged with some force that the practical effect of the memorandum couched in this opaque language was to enable an inexperienced doctor in a family planning clinic, exuding sympathy and veiled in ignorance of the girl's personality and history, to provide contraceptives as if they were sweets withheld from a deprived child by an unfeeling parent; and that any parent who was concerned with the girl's immortal soul or with moral or religious principles might be said to be "entirely unresponsive" to a proposal that an unmarried girl under the age of 16 should be provided with contraceptives. As the memorandum now stands, a "clinical judgment" by the doctor may amount to no more than a belief that a parent will not consent to contraception and a fear that the girl may practise sex without contraception.

These defects in the memorandum constitute in my opinion a mistake of law on the part of the D.H.S.S. The memorandum assumes and asserts that the doctor is entitled by himself to decide whether an unmarried girl under the age of 16 shall be

provided with contraceptive facilities and that the doctor is entitled to conceal that decision from the parent. In my opinion the decision cannot lawfully be made without the consent of the parent in charge of the girl unless the parent has abandoned or abused parental powers or is not available. If the memorandum is defective by reason of a mistake of law and if, in consequence, a doctor making a decision in reliance on the views, expressed in the memorandum may unlawfully interfere with the rights of a parent and make and act upon a decision which the doctor is in law not entitled to make, then in my opinion, the D.H.S.S. which is responsible for the memorandum is amenable to the remedies of judicial review. It matters not whether the memorandum constitutes an order or guidance or advice or a mere expression of views directed to the medical profession or directed to doctors who are engaged in the National Health Service. The issue is not whether the D.H.S.S. are exercising a statutory discretion in a reasonable way but whether by mistake of law the D.H.S.S., a public authority, purports by the memorandum to authorise or approve an unlawful interference with parental rights. In this respect I gratefully acknowledge and accept the observations of my noble and learned friend, Lord Bridge of Harwich, and his warning against the involvement of the courts in areas of social and ethical controversy or hypothetical questions. Nevertheless the questions raised by this appeal must now be answered and, differing from a majority of your Lordships, I consider that Mrs. Gillick has succeeded in her crusade and is entitled in judicial review proceedings to a declaration that the memorandum is unlawful insofar as it purports to authorise or approve of the provision of contraceptive facilities for an unmarried girl under the age of 16 without the knowledge of a parent who holds custody of

the girl and has not abandoned or abused the parental right to decide whether such facilities shall be provided. The danger that other parents or individuals may exploit judicial review proceedings by referring social problems to the courts or by seeking general pronouncements of law based on hypothetical facts can be averted by the exercise of the judicial, discretion to refuse leave to prosecute judicial review proceedings. In the present case the proceedings are not in form judicial review proceedings but at this stage the technicality can be ignored because the legal issues raised in these proceedings cannot be allowed to remain unanswered. I would therefore grant the relief I have indicated in substitution for the declarations made by the Court of Appeal and I would order Mrs. Gillick's costs to be paid by the D.H.S.S.

My Lords, in this appeal social issues are entangled with legal issues. In my view the law is consistent with social policy in forbidding the provision of contraceptive facilities for young girls who are under the' care and protection of a parent without the involvement of the parent. But social issues need not finally be determined and are not best determined by lawyers or by doctors.

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CASE No. 9

THE ZYKLON B CASE

TRIAL OF BRUNO TESCH AND TWO OTHERS

BRITISH MILITARY COURT, HAMBURG,
1ST–8TH MARCH, 1946

Complicity of German industrialists in the murder of interned allied civilians by means of poison gas.

Bruno Tesch was owner of a firm which arranged for the supply of poison gas intended for the extermination of vermin, and among the customers of the firm were the S.S. Karl Weinbacher was Tesch's Procurist or second-in-command. Joachim Drosihn was the firm's first gassing technician. These three were accused of having supplied poison gas used for killing allied nationals interned in concentration camps, knowing that it was so to be used. The Defence claimed that the accused did not know of the use to which the gas was to be put; for Drosihn it was also pleaded that the supply of gas was beyond his control. Tesch and Weinbacher were condemned to death. Drosihn was acquitted.

A. OUTLINE OF THE PROCEEDINGS

1. THE COURT

The Court consisted of Brigadier R. B. L. Persse, as President, and, as members, Lt. Col. Sir Geoffrey Palmer, Bart., Coldstream Gds., and Major S. M. Johnstone, Royal Tank Regt.

Capt. H. S. Marshall was Waiting Member.

C. L. Stirling, Esq., C.B.E., Barrister-at-Law, Deputy Judge Advocate General, was Judge Advocate.

Major G. I. D. Draper, Irish Guards, Judge Advocate General's Branch, HQ. B.A.O.R., was Prosecutor.

Three German Counsel appeared on behalf of the accused. Dr. O. Zippel, Dr. C. Stumme and Dr. A. Stegemann defended Tesch, Weinbacher and Drosihn respectively.

2. THE CHARGE

The accused, Bruno Tesch, Joachim Drosihn and Karl Weinbacher, were charged with a war crime in that they "at Hamburg, Germany, between 1st January, 1941, and 31st March, 1945, in violation of the laws and usages of war did supply poison gas used for the extermination of allied nationals interned in concentration camps well knowing that the said gas was to be so used." The accused pleaded not guilty.

3. THE CASE FOR THE PROSECUTION

The prosecuting Counsel, in his opening address, stated that Dr. Bruno Tesch was by 1942 the sole owner of a firm known as Tesch and Stabenow, whose activities were divided into three main categories. In the first place, it distributed certain types of gas and gassing equipment for disinfecting various public buildings, including Wehrmacht barracks and S.S. concentration camps. Secondly, it provided, where required, expert technicians to carry out these gassing operations. Lastly, Dr. Tesch and Dr. Drosihn, the firm's senior gassing technician, carried out instruction for the Wehrmacht and the S.S. in the use of the gas which the firm supplied. The predominant importance of these gassing operations in war-time lay in their value in the extermination of lice.

The chief gas involved was Zyklon B, a highly dangerous poison gas, 99 per cent. of which was prussic acid. The gas was manufactured by another firm. Tesch and Stabenow had the exclusive agency for the supply of the gas east of the River Elbe, but the Zyklon B itself went directly from the manufacturers to the customer.

The contention for the Prosecution was that from 1941 to 1945 Zyklon B was being supplied as a direct result of orders accepted by the accused's firm, Tesch and Stabenow. On that basis, the Zyklon B was going in vast quantities to the largest concentration camps in Germany east of the Elbe. In these same camps the S.S. Totenkopfverbände were, from 1942 to 1945, systematically exterminating human beings to an estimated total of six million, of whom four and a half million were exterminated by the use of Zyklon B in one camp alone, known as Auschwitz/Birkenau. In these concentration camps were a vast number of people from the occupied territories of Europe, including Czechs, Russians, Poles, French, Dutch and Belgians, and people from neutral countries and from the United States. The Prosecutor also claimed that over a period of time the three accused got to know of this wholesale extermination of human beings in the eastern concentration camps by the S.S. using Zyklon B gas, and that, having acquired this knowledge, they continued to arrange supplies of the gas to these customers in the S.S. in ever-increasing quantities, until in the early months of 1944 the consignment per month to Auschwitz concentration camp was nearly two tons.

The accused Weinbacher was a " Procurist " ; when Tesch was absent he was fully empowered and authorised to do all acts on behalf of his principal which his principal could have done. His position was of great importance, since his principal would travel on the business of the firm for as many as 200 days in the year.

The case for the Prosecution was that knowingly to supply a commodity to a branch of the State which was using that commodity for the mass extermination of Allied civilian nationals was a war crime, and that the people who did it were war criminals for putting the means to commit the crime into the hands of those who actually carried it out. The action of the accused was in violation of Article 46 of the Hague Regulations of 1907, to which the German government and Great Britain were both parties.

4. THE EVIDENCE FOR THE PROSECUTION

Emil Sehm, a former bookkeeper and accountant employed by Tesch and Stabenow, supplied information, regarding the legitimate business activities of the firm and the positions of the three accused therein, which substantially bore out the opening statements of the Prosecutor on these points. He went on to state that in the Autumn of 1942 he saw in the files of the firm's registry one of the reports, dictated by Tesch, which gave accounts of his business journeys. In this travel report, Tesch recorded an interview with leading members of the Wehrmacht, during which he was told that the burial, after shooting, of Jews in increasing numbers was proving more and more unhygienic, and that it was proposed to kill them with prussic acid. Dr. Tesch, when asked for his views, had proposed to use the same method, involving the release of prussic acid gas in an enclosed space, as was used in the extermination of vermin. He undertook to train the S.S. men in this new method of killing human beings.

Sehm had written down a note of these facts and taken it away with him, but had burnt it the next day on the advice of an old friend, named Wilhelm Pook, to whom he had related what he had seen.

Dr. Marx, a German Barrister practising since 1934, who was called upon to define the status of a Procurist in German law, said :

> " The procurist had the right to act in the name and on behalf of the firm. He is a man who, out of all the others mentioned in the law who have also the right to act on behalf of the firm, has most of these rights. He has the right to act on behalf of the firm and to conclude any transactions or any sort of act on behalf of the firm, and to conclude any transactions or any sort of legal proceedings in which the firm might find itself involved. One can say that anybody who has any sort of transactions with a man who holds the ' Procura ' and who is called the Procurist is in exactly the same position as if he had had that transaction with the head of the firm."

Erna Biagini, a former stenographer of the firm, who was also in charge of the registry, claimed to have read, in " approximately 1942," a travel report of Dr. Tesch which stated that Zyklon B could be used for killing human beings as well as vermin.

Anna Uenzelmann, a former stenographer of the firm, said that in about June 1942 Tesch, after he had dictated a travel report on returning from Berlin, had told her that Zyklon B was being used for gassing human beings, and had appeared to be as terrified and shocked about the matter as she was.

Karl Ruehmling, who had been a bookkeeper and assistant gassing master with the firm, said that Zyklon B was sent by the concern to the concentration camps at Auschwitz, Sachsenhausen and Neuengamme, but Auschwitz was sent the largest consignments.

Alfred Zaun, who was in charge of the firm's bookkeeping, said that, in his opinion, Auschwitz of all the concentration camps had received the most Zyklon B during the war.

Wilhelm Bahr, an ex-medical orderly at Neuengamme, described a prussic acid course which he had attended in the S.S. Hospital at Oranienburg in

1942, and which Dr. Tesch had conducted. He said that he himself had gassed two hundred Russian prisoners of war in Neuengamme in 1942, using prussic acid gas, but that it was not Dr. Tesch who had taught him the procedure which he had applied.

Perry Broad, who had been a Rottenführer in the Kommandatur of the Auschwitz camp from June 1942 until early 1945, described how persons were gassed there with Zyklon B. The people being gassed, to his knowledge, at Auschwitz and Birkenau were German deportees, Jews from Belgium, Holland, France, North Italy, Czechoslovakia and Poland, and Gypsies.

Dr. Bendel, who had been a prisoner at Auschwitz and had acted as a doctor to the inmates, said that from February 1944 to January 1945 a million people had been killed there by Zyklon B.

The remaining Prosecution witnesses were a member of a British war crimes investigation team, who identified pre-trial statements made by the accused ; Wilhelm Pook and his wife ; and five more employees of Tesch and Stabenow. The evidence of Pook and his wife supported that of Sehm to a degree, though not in every detail, but the fact that they had discussed the events of 1942 between his and their giving evidence was recognised by the Judge Advocate to be " undoubtedly unfortunate."

The Prosecution, acting in accordance with Regulation 8(i) (*a*) of the Royal Warrant, submitted to the Court a sworn affidavit in which Dr. Diels, a former high-ranking German government official, stated that it was common knowledge in 1943 in Germany that gas was being used for killing people.

Among various other documents(1) Dr. Tesch's S.S. subscription card was produced before the Court ; the Defence pointed out, however, that this did not prove that Dr. Tesch had been an active member of the S.S.

5. THE OPENING STATEMENTS OF DEFENCE COUNSEL

(i) *Counsel for Tesch*

Before calling Tesch to the witness-box, his Counsel stated that he intended to prove to the court, first, that Tesch had no knowledge of the killing of human beings by means of Zyklon B ; secondly, that Zyklon B was delivered only for normal purposes of disinfection and for medical reasons ; thirdly, that parts of gas chambers were sold only for the purpose of exterminating vermin ; fourthly, that concentration camps got the gas only in amounts which were quite normal in relation to the number of inhabitants, and only for killing vermin ; and fifthly, that instruction courses were held only according to the relevant laws and regulations, and again only for the purpose of teaching the method of exterminating vermin.

(ii) *Counsel for Weinbacher*

Dr. Stumme, defending Weinbacher, said that by the evidence which he would call, he would try to prove that Weinbacher had no knowledge of any note or report by Dr. Tesch to the effect that human beings were being killed by poison gas, and that until the capitulation of Germany he never

(1) Of the various documents admitted as evidence in the trial (including five affidavits, and the pre-trial statements by all of the accused) the Secretariat of the United Nations War Crimes Commission has only been able to examine an extract from the affidavit of Dr. Diels.

had any reason to believe that Zyklon B was being used for any other purpose than the destruction of vermin.

(iii) *Counsel for Drosihn*

Counsel for Drosihn set out to prove, by the evidence which he called, first, that Dr. Drosihn had nothing to do with the business concerning the supply of gas ; secondly, that, being on journeys for considerable periods, he had only a very scanty knowledge of the activities of the business ; thirdly, that he heard about the gassing of human beings only after the capitulation of Germany ; and fourthly, that he never carried out instruction either in concentration camps or for S.S. personnel.

6. THE EVIDENCE FOR THE DEFENCE

(i) *Dr. Tesch*

All three accused gave evidence on oath. Dr. Tesch stated that he had heard nothing and had known nothing about human beings being killed in concentration camps with prussic acid. He denied ever having attended any conference, or having been approached by any official or military authority on the subject, or having written in any document that human beings should be killed by prussic acid. He specifically denied that he had made the remarks referred to by Anna Uenzelmann. He had never been to Auschwitz himself and had had no reason to believe that the camps were incorrectly run.

He did not think that deliveries to Auschwitz were very high because it was a large camp and, further, it " administered more camps in the General Government of Poland." He could not remember Dr. Drosihn ever having instructed S.S. men. Although the witness had paid subscriptions to both the S.S. and the Nazi Party, he had never been an active member of either. He thought that the passage in the travel report which Erna Biagini had read might have been a record of an answer put to him by a pupil.

Drosihn, stated Tesch, was a technical expert and was not concerned with the administration of the firm or the office. Weinbacher, however, had complete control when Tesch was away from the office.

(ii) *Karl Weinbacher*

This accused, giving evidence on oath, said that his work was, briefly, to look after the current business affairs in the absence of Dr. Tesch, seeing to the incoming and the outgoing mail, answering any queries, and confirming any orders received. He read some of Dr. Tesch's travel reports but not all, because there were too many ; in particular, he had not read any dealing with the possibility of destroying Jews with Zyklon B. Dr. Tesch had not mentioned any such possibility to him, nor had the witness heard during the war that Jews were being gassed. He had never been inside a concentration camp, nor had he received unfavourable reports during the war about such camps. He, too, stated that Drosihn had nothing to do with the business management. He could not agree that the S.S. would necessarily come to Dr. Tesch for advice on the extermination of human beings with Zyklon B, since, although Dr. Tesch was an expert on the use of the gas, there were plenty of books available on prussic acid.

(iii) *Dr. Drosihn*

Drosihn claimed that his part in the activities of the firm consisted in collaborating on scientific issues, being in charge of the gassing, for instance, of ships in Hamburg docks, and examining delousing chambers to see whether they were working correctly. He spent about 150 to 200 days a year in travelling on business. He had been to check the working of the delousing chambers in Sachsenhausen and Ravensbruck and had been to Neuengamme ; but had neither been to Auschwitz, nor given instructions to the S.S. in any place. He knew nothing of the size of consignments of gas to Auschwitz. Contrary to Tesch's evidence, the witness claimed to have reported to him once that he had seen happening in the camps things that were contrary to human dignity.

(iv) *The Remaining Defence Witnesses*

Nine other witnesses called by the Defence did not add very substantially to the evidence before the Court. The subjects covered by their remarks included the character of Dr. Tesch, and the extent of general knowledge in Germany concerning the killing of Jews. *Inter alia*, they were called to prove that Zyklon B was widely used for the legitimate purpose of killing vermin. These witnesses were two Medical Officers from Hamburg, a doctor and two chemists employed by the German Hygiene Institute, a retired professor of the same institute, the Manager of the Disinfection Institute of Hamburg, a stenotypist formally employed by Tesch and Stabenow, and Dr. Stumme, one of the Defence Counsel, who gave evidence regarding the German law regarding State secrets.

7. THE CLOSING ADDRESSES OF THE DEFENCE COUNSEL

(i) *Counsel for Tesch*

In his closing address, Dr. Zippel, dealing with the point of law involved, submitted that, since the charge was not one of destroying human life but only of supplying the means of doing so, such action would only be contrary to the laws and usages of war if the means supplied were necessarily intended to kill human beings. To supply a material which also had quite legitimate purposes was no war crime.(2)

Turning to the facts, Counsel claimed that while supplies of Zyklon B to the S.S. were large, it was the duty of the S.S. to see that the state of health in the eastern provinces was kept at a high level, and it was concerned not only with the Wehrmacht itself, but also with the state of health of those parts of the eastern provinces whose population was repatriated to Germany before the entry of Germany into war with Russia. Supplies were not too great to have been used wholly for legitimate purposes. Since 1944 the S.S. had had unlimited permission to use the gas for the destruction of vermin and the prevention of epidemics. He submitted that even in the concentration camps the gas was, at least at the beginning, used only for its legitimate purpose.

(2) The English translation of Dr. Zippel's speech subsequently contains the following passage : " I have two duties to perform. The first would be to try to prove that Tesch supplied this gas not knowing for what purposes it might be used. My second duty is that, even if he knew something about it, still the laws of this procedure would not suffice to find him guilty."

Counsel then questioned whether the Zyklon B used at Auschwitz for killing human beings had been supplied by Tesch and Stabenow. The fact that Auschwitz was situated in the district for which the firm were the agents could not be decisive, for other firms were able to supply that district, especially since during the war the boundaries of the districts were not so much respected as before. Further, the S.S. had been active all over the occupied territories during the war and had had various means of securing the gas. So many people were killed by gassing in Auschwitz that the S.S. must necessarily have used sources other than Tesch and Stabenow.

Counsel observed that the witnesses who were called to prove that Dr. Tesch knew about the unlawful use of his gas had given different versions as to how he must or should have known about such use. He proceeded also to throw doubts on the reliability of Sehm, for instance, in view of a statement of his, denied by many other witnesses, that the files of the firm in which he had found the travel report were kept under lock and key. Miss Biagini had denied that she saw anything in this report about a conference with the High Command of the Wehrmacht or any propositions made by Dr. Tesch to this authority. None of the typists who could have typed the travel report in question knew of it or of any rumour in the office regarding it. Under the existing war-time regulations of secrecy, it seemed impossible that a man as careful as Tesch should have dictated a report on an interview with the High Command on such a secret matter, placed the report where anyone in the office could read it, as was the case with all travel reports, and then discussed the facts with his employees. Dr. Tesch had been shown to be a fair and honest man, and his concentration on his work explained why he had not heard any rumour which may have circulated Germany concerning the gassing of human beings. Regarding the large supplies of gas to Auschwitz in particular, Counsel submitted that Dr. Tesch was too busy to be expected to know what individual customers bought, and in any case the supply of Zyklon was not as important to the firm as were its gassing activities. Furthermore, Dr. Tesch had regarded Auschwitz as a transit camp needing therefore unusually frequent delousing. Counsel concluded that Dr. Tesch knew nothing of the gassing of human beings either in Auschwitz or Neuengamme.

(ii) *Counsel for Weinbacher*

In his closing address, Dr. Stumme submitted that it had become clear during the trial that Weinbacher did not know that Zyklon B had been used for the killing of human beings. Not one of the witnesses could say really that Weinbacher had any knowledge of a travel report or any observation of Dr. Tesch that human beings had been killed by Zyklon B, or that Dr. Tesch had conversations with Weinbacher on such a subject. Nor had the trial shown that Weinbacher should have had reasonable suspicion, or grounds for suspicion, that Zyklon B had been used for the killing of human beings. Even if Dr. Tesch had written such a travel report as the one alleged, Weinbacher need not have read it, because he was a busy man, and witnesses had shown that many of the travel reports were filed and read by no one. Even Sehm claimed to have come across the particular report by accident, and Miss Biagini because she had to file it. He repeated Dr. Zippel's argument that Dr. Tesch would not write a State secret in a

document which all the staff could read. If Sehm had found any other document, it must have been purely by accident ; and no such accident had happened to Weinbacher. In connection with the large supplies of gas which were sent to Auschwitz, Counsel pointed out that Weinbacher had stated on oath that he had never had a summary of supplies to a single customer because this was left to the accountants. In any case, it had been shown that the quantity of Zyklon B needed for the killing of human beings was much smaller than that required for the killing of insects. The quantities of Zyklon B needed for killing half a million or even a million human beings stood in such small proportion to the quantities needed for the killing of insects that it would not have been noticed at all. Therefore, there had been no need for Weinbacher to have grown suspicious, since, claimed Counsel, he knew that Auschwitz was one of the biggest camps and a sort of transit camp. Counsel did not think, therefore, that it was correct to assume that the large quantity of Zyklon going to Auschwitz was any indication of the fact that human beings were being killed there. Supplies for Neuengamme were much lower than those for Auschwitz.

Dr. Stumme did not deal with the law involved, except for stating that Weinbacher, although a procurist, was still only an employee like Sehm and Miss Biagini, against whom no action was being taken, despite the knowledge which they were said to have had.

(iii) *Counsel for Drosihn*

Dr. Stegemann, in his closing address, confined his remarks to what concerned his client exclusively, while claiming the benefit of everything favourable to him which had already been said by the other Counsel. Every witness who was asked had said that the accused had had nothing whatever to do with the firm's business activities. He could not, therefore, for instance, have known of the size of the consignments to Auschwitz. His relatively small salary showed his subordinate position. He was a zoologist, and first technical gassing master to the firm, and spent more than half the year in travelling. When both Tesch and Weinbacher were away, Mr. Zaun had had the power of attorney, not Drosihn.

Both Dr. Tesch and Dr. Drosihn had said that the latter had never instructed S.S. men in the use of Zyklon B, and not even Sehm claimed that he knew anything about the alleged travel report. Drosihn had been away from the office for irregular periods, and was in no position to read Dr. Tesch's travel reports, which were in any case of no interest to him. Counsel denied that there had been general knowledge in Germany before the end of of the war about the gassing of Jews ; his client could not therefore have acquired such knowledge from rumours.

8. THE PROSECUTOR'S CLOSING ADDRESS

In his closing address, the prosecuting Counsel said that the possibility that some firm other than Tesch and Stabenow could have supplied Zyklon B to Auschwitz could be ruled out, as the latter had the monopoly in that area. The essential question was whether the accused knew of the purpose to which their gas was being put. Counsel admitted that the S.S. were under no restrictions as to the use they made of the gas, and that the direct knowledge which was available to Tesch as to that use was of the scantiest,

due to the fear and secrecy in which the S.S. worked. He relied for his case on the evidence of Sehm, Miss Biagini and Miss Uenzelmann.

Counsel said that it was unbelievable that Dr. Tesch did not know that anything wrong went on in the concentration camps. Dr. Drosihn had said without hesitation that he saw things there which were not worthy of human dignity, and that he had said so to Tesch. It was also unbelievable that Dr. Tesch had no knowledge of the amounts of gas being supplied to the S.S. and to Auschwitz in particular, by a firm which was wholly his property. In 1942 and 1943 Auschwitz had been the firm's second largest customer. Dr. Tesch had no reason to believe that Auschwitz was a transit camp, and moreover he was too efficient a man to be duped by the S.S. Counsel completed his case against Tesch by casting doubt on his veracity by showing how contradictions existed between his statements and those of other witnesses on certain details unrelated to the main issue.

Dealing very shortly with Weinbacher's position, Counsel contended that all that Tesch knew must, from the nature of the inner organisation of the business, have also been known by Weinbacher. For 200 days in the year he was in sole control of the firm, with access to all the books, able to read the travel reports, indeed compelled to read the travel reports if he was to carry on the business properly during the periods when his principal was away.

Prosecuting Counsel claimed that Drosihn must to some extent have shared the confidence of Tesch and Weinbacher, even although his activities were confined to the technical side of the firm as opposed to the sales and bookkeeping side.

He concluded that, by supplying gas, knowing that it was to be used for murder, the three accused had made themselves accessories before the fact to that murder.

9. THE SUMMING UP OF THE JUDGE ADVOCATE

The Judge Advocate, in summing up the evidence before the Court, pointed out that the latter must be sure of three facts, first, that Allied nationals had been gassed by means of Zyklon B ; secondly, that this gas had been supplied by Tesch and Stabenow ; and thirdly, that the accused knew that the gas was to be used for the purpose of killing human beings. On points of law he did not think that the Court needed any direction.

After summarising the evidence of the Prosecution witnesses, the Judge Advocate said : " To my mind, although it is entirely a question for you, the real strength of the Prosecution in this case rests rather upon the general proposition that, when you realise what kind of a man Dr. Tesch was, it inevitably follows that he must have known every little thing about his business. The Prosecution ask you to say that the accused and his second-in-command Weinbacher, both competent business men, were sensitive about admitting that they knew at the relevant time of the size of the deliveries of poison gas to Auschwitz. The Prosecution then ask : " Why is it that these competent business men are so sensitive about these particular deliveries ? Is it because they themselves knew that such large deliveries could not possibly be going there for the purpose of delousing clothing or for the purpose of disinfecting buildings ? "

In Weinbacher's case, there was no direct evidence, either by way of conversation or of anything that he had written among the documents of the firm produced during the trial, which formed any kind of evidence specifically imputing knowledge to Weinbacher as to how Zyklon B was being used at Auschwitz. " But the Prosecution," said the Judge Advocate, " ask you to say that, in his case as in Tesch's case, the real strength of their case is not the individual direct evidence, but the general atmosphere and conditions of the firm itself." The Judge Advocate asked the Court whether or not it was probable that Weinbacher would constantly watch the figures relating to a less profitable activity of the firm, particularly since he received a commission on profits as well as his salary.

The Judge Advocate emphasised Drosihn's subordinate position in the firm, and asked whether there was any evidence that he was in a position either to influence the transfer of gas to Auschwitz or to prevent it. If he were not in such a position, no knowledge of the use to which the gas was being put could make him guilty.

10. THE VERDICT

Tesch and Weinbacher were found guilty.
Drosihn was acquitted.

11. THE SENTENCE

Counsel for Tesch, pleading in mitigation of sentence, said that if Tesch did know the use to which the gas was being put, and had consented to it, this happened only under enormous pressure from the S.S. Furthermore, had Tesch not co-operated, the S.S. would certainly have achieved their aims by other means. Tesch was merely an accessory before the fact, and even so, an unimportant one.

Counsel for Weinbacher pleaded that the Court should consider the latter's wife and three children ; that he as a business employee might have thought that the ultimate use of the gas was Tesch's responsibility ; and that if he had refused to supply Zyklon B the S.S. would immediately have handed him over to the Gestapo.

Nevertheless, subject to confirmation, the two were sentenced to death by hanging.

The sentences were confirmed and carried into effect.

B. NOTES ON THE CASE

1. A QUESTION OF JURISDICTION : THE NATIONALITY OF THE VICTIMS

The Prosecutor specified a number of Allied countries from which, he claimed, many of the persons gassed had originated. Wilhelm Bahr told how he himself had gassed two hundred Russians. Perry Broad mentioned Jews from Belgium, Holland, France, Czechoslovakia and Poland, among those gassed at Auschwitz. The Judge Advocate, in his summing up, stated that " among those unfortunate creatures undoubtedly there were many Allied nationals."

It was not alleged that British citizens were among the victims.

The British claim to jurisdiction over the case could be based primarily on the fact that by the Declaration regarding the defeat of Germany and the assumption of supreme authority with respect to Germany, made in Berlin on the 5th June, 1945, the four Allied Powers occupying Germany have assumed supreme authority therein. They have, therefore, become the local sovereigns in Germany. There is vested, then, in the United Kingdom authorities, administering the British Zone of Germany, the right to try German nationals for crimes of any kind wherever committed. The claim to jurisdiction is the stronger if, as in the present case, the criminal activities of the accused have been committed in the British Zone of Germany, by German residents of this Zone, although, of course, the crimes to which the accused were alleged to be accessories had their effect outside Germany, in Auschwitz, Poland.

British jurisdiction could further be based on either

(*a*) the general doctrine called Universality of Jurisdiction over War Crimes, under which every independent State has in International Law jurisdiction to punish pirates and war criminals in its custody regardless of the nationality of the victim or the place where the offence was committed ; or

(*b*) the doctrine that the United Kingdom has a direct interest in punishing the perpetrators of crimes if the victim was a national of an ally engaged in a common struggle against a common enemy.

2. QUESTIONS OF SUBSTANTIVE LAW

(i) *The Crime Alleged*

Article 46 of the Hague Convention of 1907, concerning the Laws and Customs of War on Land, on which the case for the Prosecution was based, provides that " Family honour and rights, individual life and private property, as well as religious convictions and worship must be respected." This Article falls under the section heading, *Military Authority over the Territory of the Hostile State*, and was intended to refer to acts committed by the occupying authorities in occupied territory. In the trial of Tesch, the acts to which the accused were allegedly accessories before the fact were committed mainly at Auschwitz, in occupied Poland.

(ii) *Civilians as war criminals*

The decision of the Military Court in the present case is a clear example of the application of the rule that the provisions of the laws and customs of war are addressed not only to combatants and to members of state and other public authorities, but to anybody who is in a position to assist in their violation.

The activities with which the accused in the present case were charged were commercial transactions conducted by civilians. The Military Court acted on the principle that any civilian who is an accessory to a violation of the laws and customs of war is himself also liable as a war criminal.

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Joseph Vetrovec *Appellant*;

and

Her Majesty The Queen *Respondent*.

and

Joseph Gaja *Appellant*;

and

Her Majesty The Queen *Respondent*.

File Nos.: 16348 and 16349.

1981: May 20; 1982: May 31.

Present: Laskin C.J. and Martland, Ritchie, Dickson, Beetz, Estey, McIntyre, Chouinard and Lamer JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

Evidence — Corroboration — Accomplices — Charge to jury — Whether or not trial judge required by law to instruct jury as to danger of unconfirmed testimony of an accomplice — Whether or not trial judge to define corroboration and analyse evidence in that regard.

The appellants were convicted with conspiracy to traffic in heroin. The only question before this Court relates to the rule of law, long recognized in this Court, requiring a trial judge to warn the jury that it is dangerous to find a conviction on the evidence of an accomplice unless that evidence is corroborated in a material particular implicating the accused. The trial judge so instructed the jury, but the appellants object to the judge's comments on those pieces of evidence which were capable of corroborative effect.

Held: These appeals should be dismissed.

This Court has in the past declared its willingness to depart from its own prior decisions as well as decisions of the Privy Council and House of Lords. The present case is an appropriate occasion to exercise this direction. The law of corroboration is unnecessarily complex and technical.

There is no special category for "accomplices". The testimony of some accomplices may be untrustworthy, but this can also be said of many other categories of witnesses. There is nothing inherent in the evidence of an accomplice which automatically renders it untrustworthy. To construct a universal rule singling out accomplices is to fasten upon this branch of the law a

Joseph Vetrovec *Appelant*;

et

Sa Majesté La Reine *Intimée*.

et

Joseph Gaja *Appelant*;

et

Sa Majesté La Reine *Intimée*.

N^os^ du greffe: 16348 et 16349.

1981: le 20 mai; 1982: le 31 mai.

Présents: Le juge en chef Laskin et les juges Martland, Ritchie, Dickson, Beetz, Estey, McIntyre, Chouinard et Lamer.

EN APPEL DE LA COUR D'APPEL DE LA COLOMBIE-BRITANNIQUE

Preuve — Corroboration — Complices — Exposé au jury — Le juge du procès est-il tenu, en droit, de signaler au jury le danger que représente le témoignage non corroboré d'un complice? — Le juge du procès doit-il définir ce qu'est la corroboration et analyser les dépositions à cet égard?

Les appelants ont été déclarés coupables de complot en vue de faire le trafic d'héroïne. La seule question posée par le pourvoi a trait à la règle de droit, confirmée depuis longtemps par cette Cour, qui exige que le juge du procès signale au jury qu'il est dangereux de déclarer quelqu'un coupable sur la foi d'un témoignage d'un complice à moins que ce témoignage ne soit corroboré sur un détail essentiel qui incrimine l'accusé. Le juge du procès a donné ces directives au jury, mais les appelants contestent les remarques du juge à propos des éléments de preuve susceptibles de constituer une corroboration.

Arrêt: Les pourvois sont rejetés.

Cette Cour a déjà indiqué qu'elle était prête à s'écarter de ses propres décisions antérieures et de celles du Conseil privé et de la Chambre des lords. Le présent pourvoi constitue une occasion appropriée d'exercer ce pouvoir discrétionnaire. Le droit relatif à la corroboration est inutilement complexe et formaliste.

Il n'y a pas de catégorie spéciale réservée aux «complices». Le témoignage d'un complice peut ne pas être digne de foi, mais on peut en dire autant de celui de bien d'autres catégories de témoins. Il n'y a rien d'inhérent au témoignage d'un complice qui le rende nécessairement indigne de foi. Imposer une règle universelle singularisant les complices revient à attacher à ce domaine du

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accomplices: where the testimony of an accomplice was admissible, it could justify a verdict of guilty. But while the common law (after some initial doubts) recognized an accomplice as a competent witness, it continued to harbour some suspicions as to the trustworthiness of his testimony. There appeared to be something unsavoury about a self-confessed knave, often for reward, accusing his companions in crime. Thus the practice arose in the 18th century of warning the jury that, while they might legally convict on the basis of the testimony of an accomplice, it would be dangerous to do so unless the testimony were supported or 'corroborated' by other unimpeachable evidence. This warning was for many years a matter for the discretion of the trial judge but in 1916, the English Court of Criminal Appeal declared that the practice had become "virtually equivalent to a rule of law" (*R. v. Baskerville*, *supra*, at p. 663). The Court also took the opportunity, at p. 667, to state that 'corroboration' had a precise legal meaning:

> We hold that evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime. In other words, it must be evidence which implicates him, that is, which confirms in some material particular not only the evidence that the crime has been committed, but also that the prisoner committed it.

As Lord Diplock observed in *Director of Public Prosecutions v. Hester*, *supra*, at p. 1075, there are several formulae in the *Baskerville* judgment, of which the above is one.

Since *Baskerville*, a failure to instruct the jury in accordance with Lord Reading's exegesis will usually result in a conviction being overturned. (See *Davies v. Director of Public Prosecutions*, [1954] 1 All E.R. 507 (H.L.))

In evaluating the adequacy of the law in this area, the first question which must be answered is a basic one: why have a special rule for accomplices at all? Credibility of witnesses and the weight of the evidence is, in general, a matter for the trier of fact. Identification evidence, for example, is notoriously weak, and yet the trial judge is not automatically required, as a matter of law, to

d'un complice: lorsque ce témoignage était recevable, il pouvait entraîner un verdict de culpabilité. Tout en reconnaissant, malgré certaines hésitations au début, qu'un complice est un témoin compétent, la *common law* a continué à entretenir des doutes sur la fiabilité de son témoignage. Il semblait être passablement louche de voir un filou repenti accuser, souvent moyennant récompense, ses compagnons de crime. Il devint donc d'usage, au 18e siècle, de prévenir le jury que même s'il pouvait juridiquement trouver l'accusé coupable sur la foi du témoignage d'un complice, il était dangereux de le faire si ce témoignage n'était pas étayé ou «corroboré» par une preuve irréfutable. Pendant longtemps, le juge du procès a eu l'entière liberté de faire ou non la mise en garde, mais en 1916, la Court of Criminal Appeal anglaise a statué que l'usage [TRADUCTION] «était presque devenu une règle de droit» (*R. v. Baskerville*, précité, à la p. 663). La cour a aussi, à cette occasion, affirmé que le mot «corroboration» avait un sens juridique précis (à la p. 667):

> [TRADUCTION] Nous décidons que la preuve apportée en corroboration doit être un témoignage indépendant qui vise l'accusé et l'associe ou tend à l'associer à l'infraction. En d'autres termes, il faut que ce soit une preuve qui l'implique, c'est-à-dire qui confirme, sous un aspect important, non seulement la preuve que l'infraction a été commise, mais également que c'est l'accusé qui l'a commise.

Comme lord Diplock le signale dans l'arrêt *Director of Public Prosecutions v. Hester*, précité, à la p. 1075, il y a plusieurs formules dans l'arrêt *Baskerville*, dont celle-ci.

Depuis l'arrêt *Baskerville*, l'omission d'instruire le jury selon l'exégèse de lord Reading entraîne ordinairement l'annulation du verdict de culpabilité. (Voir: *Davies v. Director of Public Prosecutions*, [1954] 1 All E.R. 507 (H.L.))

Dans le but d'évaluer la pertinence des principes juridiques dans ce domaine, la première question à se poser en est une fondamentale: pourquoi faut-il une règle spéciale pour les complices? La crédibilité des témoins et la valeur de la preuve sont ordinairement laissés à l'appréciation du juge des faits. La preuve d'identification, par exemple, est notoirement faible et pourtant on n'exige pas auto-

variations, inconsistencies, and great complexities" (Study Paper 11, *supra*, at p. 7). The result is that what was originally a simple, common sense proposition — an accomplice's testimony should be viewed with caution — becomes transformed into a difficult and highly technical area of law. Whether this "enormous superstructure" (to use the description of the Law Reform Commission) has any meaningful relationship with the task performed by the jury is unknown.

The third and perhaps most serious difficulty associated with the *Baskerville* definition is that the definition itself seems unsound in principle. Prior to the judgment of Lord Reading, there had been controversy over whether corroborative evidence must implicate the accused, or whether it was sufficient if it simply strengthened the credibility of the accomplice. Lord Reading settled the controversy in favour of the former view.

With great respect, on principle Lord Reading's approach seems perhaps over-cautious. The reason for requiring corroboration is that we believe the witness has good reason to lie. We therefore want some other piece of evidence which tends to convince us that he is telling the truth. Evidence which implicates the accused does indeed serve to accomplish that purpose but it cannot be said that this is the only sort of evidence which will accredit the accomplice. This is because, as Wigmore said, the matter of credibility is an entire thing, not a separable one:

> . . . whatever restores our trust in him personally restores it as a whole; if we find that he is desiring and intending to tell a true story, we shall believe one part of his story as well as another; whenever, then, by any means, that trust is restored, our object is accomplished, and it cannot matter whether the efficient circumstance related to the accused's identity or to any other matter. The important thing is, not *how* our trust is restored, but whether it *is* restored at all [Vol. VII, para. 2059, at p. 424].

The point can be illustrated with the following simple example. The accomplice, "A", testifies against the accused "B" and "C". There is evidence implicating "B" in the crime, but no evidence implicating "C". Nevertheless, since the

dence sur le sujet qu'elle est d'une complexité inouïe et qu'elle abonde en subtilités et en incohérences (Étude n° 11, précitée, à la p. 8). Il en résulte que ce qui à l'origine était une proposition simple et conforme au bon sens — il faut se méfier du témoignage d'un complice — est devenu un domaine du droit difficile et extrêmement formaliste. Nul ne sait cependant si cet «édifice juridique» (selon l'expression utilisée par la Commission de réforme du droit) a un rapport réel avec la fonction remplie par le jury.

La troisième difficulté, et probablement la plus grave, liée à la définition de l'arrêt *Baskerville* tient à ce que la définition elle-même semble mal fondée en principe. Avant l'arrêt de lord Reading, la question de savoir si la preuve corroborante devait impliquer l'accusé ou s'il suffisait qu'elle renforce la crédibilité du complice faisait l'objet d'une controverse. Lord Reading y a mis fin en adoptant la première solution.

Avec égards, le point de vue de lord Reading semble en principe peut-être trop prudent. On exige la corroboration parce qu'on croit que le témoin a de bons motifs de mentir. On cherche donc d'autres éléments de preuve qui tendent à nous convaincre qu'il dit la vérité. Des éléments de preuve qui impliquent l'accusé servent effectivement à atteindre ce but, mais on ne peut pas dire que ce soit le seul genre de preuve qui puisse accorder du crédit au complice. Il en est ainsi parce que, comme le dit Wigmore, la crédibilité est une chose globale, non divisible:

> [TRADUCTION] . . . ce qui rétablit notre confiance en lui personnellement la rétablit complètement; si nous concluons qu'il veut dire la vérité, nous allons ajouter foi à l'ensemble de sa version des événements; chaque fois que par quelque moyen, notre confiance est rétablie, notre fin est atteinte et il importe peu que ce qui produit ce résultat ait un lien avec l'identité de l'accusé ou tout autre sujet. L'important, ce n'est pas *comment* notre confiance est rétablie mais qu'elle le *soit* [Vol. VII, par. 2059, à la p. 424].

L'exemple suivant peut facilement illustrer ce point. Un complice «A» dépose contre les accusés «B» et «C». Des éléments de preuve impliquent «B» dans le crime, mais aucun n'implique «C». Cependant comme la preuve complémentaire a trait à un

supporting evidence relates to a vital issue in the case (the guilt of one of the accused) it bolsters the credibility of "A" and increases the probability that he is telling the truth. We therefore believe his story and convict both "B" and "C".

Such a situation arose in *Murphy and Butt v. The Queen, supra.* The complainant alleged that she had been raped by the two appellants. Murphy admitted intercourse but alleged that it was with the complainant's consent, while Butt denied intercourse altogether. The principal issue was whether the complainant's distraught condition was corroboration of her testimony against Butt as well as against Murphy. The difficulty was that in and of itself, the hysterical condition merely tended to rebut the suggestion of intercourse with consent. This implicated the accused Murphy, who had admitted intercourse but alleged consent. But considered in isolation, the hysterical condition did not directly implicate the accused Butt, who denied intercourse altogether. How then, could the hysterical condition corroborate the complainant's testimony as against Butt?

The majority of the Court emphasized that what was required was confirmation of a material particular of the evidence of the complainant. Once such confirmation was supplied, her testimony was rendered credible as a whole. Mr. Justice Spence, speaking for the majority, put the matter in this way at p. 615:

> It is a material particular of that evidence which must be corroborated. There is no requirement that the whole of her evidence be corroborated. Were that the requirement, there would be no need for even the evidence of the complainant. The so-called corroborative evidence would be sufficient for a conviction.

Mr. Justice Spence did not contend that the corroborative evidence implicated the accused Butt. Rather, in a carefully worded conclusion, Spence J. noted at p. 616 that the corroborative evidence confirmed the complainant's story implicating each of the accused:

> It is all of that evidence plus the complainant's distraught condition upon which the Crown relies as corroboration of not only Murphy's but Butt's rape of the

aspect essentiel de l'affaire (la culpabilité d'un des accusés), elle augmente la crédibilité de «A» et la probabilité qu'il dise la vérité. En conséquence, nous ajoutons foi à sa déposition et déclarons «B» et «C» coupables.

Une situation analogue s'est présentée dans l'affaire *Murphy et Butt c. La Reine*, précitée. La plaignante affirmait que les deux accusés l'avaient violée. Murphy a admis avoir eu des rapports sexuels avec la victime, mais a soutenu que c'était avec le consentement de celle-ci, tandis que Butt a nié tous rapports sexuels. Il s'agissait de déterminer si l'état de désarroi de la victime corroborait son témoignage contre Butt aussi bien que contre Murphy. La difficulté tenait à ce qu'en soi, l'état d'hystérie de la victime ne tendait qu'à réfuter la prétention de rapports sexuels de plein gré. Cela impliquait l'accusé Murphy qui admettait avoir eu des rapports sexuels, mais prétendait que la victime y avait consenti. Mais, considéré seul, l'état d'hystérie de la victime ne mettait pas directement en cause l'accusé Butt qui niait même avoir eu des rapports sexuels. Comment alors l'état d'hystérie pouvait-il corroborer le témoignage de la victime à l'égard de Butt?

La Cour, à la majorité, a souligné que ce qu'il fallait, c'était une confirmation d'un élément important de la déposition de la plaignante. Une fois cette confirmation fournie, son témoignage entier devenait crédible. Le juge Spence, qui a rédigé les motifs de la majorité, s'exprime ainsi (à la p. 615):

> C'est un détail important de ce témoignage qui doit être corroboré. Rien n'exige que tout son témoignage soit corroboré. Si tel n'était pas le cas, le témoignage de la plaignante serait en fait inutile puisque la preuve corroborante suffirait alors pour prononcer une déclaration de culpabilité.

Le juge Spence n'affirme pas que la preuve corroborante implique l'accusé Butt. Le juge Spence souligne plutôt, dans une conclusion soigneusement formulée, que cette preuve confirme la version de la plaignante impliquant chacun des accusés (à la p. 616):

> C'est sur tous ces éléments de preuve ainsi que sur l'état de désarroi de la plaignante que se fonde le ministère public pour corroborer la version de la plai-

complainant. The jury were entitled to consider all of that evidence and to come to the conclusion that that evidence with its rather unusual outline of events does corroborate the evidence of the complainant. It was that evidence which the learned trial judge left to the jury as evidence which they might find corroborative of the complainant's testimony.

In my view, the learned trial judge was correct in his conclusion that that evidence was capable of corroborating the complainant's story implicating each of the accused. [Emphasis added.]

Mr. Justice Spence's approach was to look for evidence which confirmed the story of the complainant. Once the story was confirmed, the complainant could be believed and the accused convicted. Implicit in this approach, it seems to me, is a recognition of the inadequacy of the *Baskerville* definition of corroboration. Evidence implicating the accused is a possible but not a necessary element for corroboration. Here, even though there was no evidence implicating Butt, there was evidence confirming the story of the complainant and thus it was safe to convict. The important question, as Wigmore pointed out, is not how our trust is restored, but whether it is restored at all.

In my view, a return to the earlier common law approach, to the earlier "common sense" approach has already been foreshadowed in our law. In *Warkentin et al. v. The Queen, supra*, Mr. Justice de Grandpré spoke of corroboration in these terms, at p. 374:

Corroboration is not a word of art. It is a matter of common sense. In recent years, this Court has repeatedly refused to give a narrow legalistic reading of that word and to impose upon trial judges artificial restraints in their instructions to juries or to themselves.

Later, he observed at p. 377:

This treatment of corroboration as a matter of common sense, the purpose of which is to ensure that no conviction will be entered if there is a reasonable doubt as to the guilt, is not restricted to Canada. It is sufficient for my purpose to refer to two recent decisions of the

gnante selon laquelle non seulement Murphy mais Butt l'ont violée. Le jury était fondé à considérer tous ces témoignages et à conclure que la preuve, qui révélait des événements plutôt inhabituels, corroborait la version de la plaignante. C'est cette preuve que le savant juge de première instance a retenue lorsqu'il a indiqué au jury qu'elle pouvait corroborer le témoignage de la plaignante.

A mon avis, le savant juge de première instance a eu raison de conclure que cette preuve pouvait corroborer la version de la plaignante impliquant chacun des accusés. [C'est moi qui souligne.]

La démarche du juge Spence a consisté à rechercher des éléments de preuve qui confirmaient la version de la plaignante. Une fois la version de la plaignante confirmée, on pouvait la croire et déclarer les accusés coupables. Selon moi, cette démarche reconnaît implicitement le caractère inadéquat de la définition de la corroboration donnée dans l'arrêt *Baskerville*. Une preuve qui implique l'accusé constitue un élément possible mais non essentiel de la corroboration. Dans cette affaire-là, aucun élément de preuve n'impliquait Butt, mais certains éléments confirmaient la version de la plaignante et, en conséquence, on pouvait sans danger rendre un verdict de culpabilité. La question importante, comme l'a souligné Wigmore, n'est pas de savoir comment notre confiance est rétablie mais qu'elle le soit.

A mon avis, on trouve déjà un présage du retour à la solution antérieure de la *common law*, à la solution de «bon sens» dans notre droit. Dans l'arrêt *Warkentin et autres c. La Reine*, précité, le juge de Grandpré dit à propos de la corroboration (à la p. 374):

La corroboration n'est pas une notion technique. C'est une simple question de bon sens. Ces dernières années, cette Cour a refusé à plusieurs reprises de donner une interprétation légaliste et étroite à ce terme et d'imposer aux juges du procès des restrictions artificielles aux directives qu'ils adressent au jury ou qu'eux-mêmes doivent suivre.

Plus loin, il souligne (à la p. 377):

Cette manière d'envisager la corroboration comme une question de bon sens vise à garantir qu'aucune condamnation ne sera prononcée s'il existe un doute raisonnable sur la culpabilité et cette pratique ne se limite pas au Canada. Il suffit à ce sujet de citer deux

C. *Taylor* Trial Record
(Trial Transcripts, Exhibits, Pleadings)

C. (1)

i. Trial Transcripts 2007



Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

Monday, 4 June 2007
10:30 a.m.
PROSECUTION OPENING STATEMENT

TRIAL CHAMBER II

Before the Judges:	Julia Sebutinde, Presiding Judge Richard Lussick Teresa Doherty El Hadji Malick Sow
For the Registry:	Mr Herman von Hebel
For the Prosecution:	Mr Stephen Rapp Ms Wendy van Tongeren Ms Ann Sutherland Mr Alain Werner Ms Leigh Lawrie
For the accused Charles Ghankay Taylor:	Mr Karim Khan
For the Office of the Principal Defender:	Mr Charles Jalloh

and instigating and planning these crimes, but I would like to focus in a little more depth with the aiding and abetting aspect of the case, because it is on this that the evidence is absolutely overwhelming.

14:36:56 Throughout the relevant period, the accused provided vital and substantial assistance, encouragement or support to the RUF, then to the Junta, and finally to the AFRC/RUF alliance in the bush which enabled these forces to conduct this widespread and systematic attack against the civilian population of Sierra

14:37:21 Leone.

To support this indictment, during the course of this trial we will, of course, present many witnesses who will testify and be examined and cross-examined, and we will also present many documents. I'd like just to mention two of those documents, two

14:37:43 of those documents which were found in the Sankoh home/residence in Freetown after his arrest in May of 2000.

One was a narrative report provided by one of his followers, prepared almost like a diary during the periods of 1997 and 1998 and early 1999 in order that the leader, when and

14:38:10 if he were released, could have an account of what happened while he was sitting in prison in Nigeria.

In that ten-page letter, a report, which is signed by a Black Guard Commander and addressed to his commander Foday Sankoh, there are many very interesting passages, but I'd just

14:38:35 like to quote from one, describing events in 1998 between the fall of the Junta, the intervention in February of 1998 of ECOMOG that caused the defeat of the group that had controlled the country for nine months and its withdrawal into the countryside, and the attack on Freetown by some of the same forces some ten

will be issues over which Mr Taylor, for one reason or another, would rather speak to the Principal Defender than Mr Jalloh and I think that is perfectly reasonable. It's a reasonable request and falls within his rights to do so. The Office of the
15:31:57 Principal Defender was set up precisely for reasons like that.

Now, we've not heard a convincing reason why the Principal Defender has repeatedly been denied the opportunity to come to Freetown and perform his -- to come to The Hague and perform his duties. On the contrary, what we have seen is that the trial --
15:32:18 the smooth running of the trial is being hampered by this kind of development and it's not good.

I'm therefore going to issue certain directives addressed -- directed at the Office of the Registrar, the Acting Registrar, and the order or the directive is in these terms:

15:32:43 The Registrar is directed to immediately facilitate the Principal Defender to travel to The Hague for the purpose of speaking with Mr Taylor and sorting out his defence problems. The Registrar is further directed to ensure that logistically the accused has adequate facilities, in accordance with Article 17 of
15:33:11 the Statute, without further delay.

I think with those directives that should bring us to the close of today's proceedings. The trial will adjourn to Monday, the 25th of June, at 9:00.

Please adjourn the court.

15:33:47 COURT OFFICER: All rise.

[Whereupon the hearing adjourned at 3:33 p.m.]

C. (1)

ii. Trial Transcripts 2008

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

TUESDAY, 8 JANUARY 2008
9.00 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Julia Sebutinde, Presiding Justice Teresa Doherty Justice Richard Lussick Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr William Romans Mr Simon Meisenberg
For the Registry:	Ms Rosette Muzigo-Morrison Ms Rachel Irura Mr Vincent Tishekwa
For the Prosecution:	Ms Brenda Hollis Mr Mohamed A Bangura Mr Alain Werner Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Mr Terry Munyard Mr Andrew Cayley

questions.

PRESIDING JUDGE: Please proceed.

MR CAYLEY: Your Honours, the bundle is tabulated and I will refer to the numbers as I go through so we can all follow.

15:39:48 Q. Sir, first of all, can I express to you on behalf of the Defence our sympathy and understanding at the violence that you have seen in your life and we can certainly inform you now that it's not because of us that you have been brought here to speak about these events that you observed nearly 10 years ago. Can

15:40:17 you hear me?

A. Yes, sir.

Q. Nevertheless there are a number of questions that I would like to ask you and in particular about your evidence today and the statements that you have previously made to the OTP over the

15:40:37 last five years. Do you understand?

A. Yes, sir.

Q. Now one thing I want to clarify with you at the beginning of your cross-examination is the following: You say that you are a pastor?

15:40:57 A. Yes, sir.

Q. Do you have a church in Sierra Leone?

A. Yes, sir.

Q. Whereabouts is that?

A. It is in Kono.

15:41:12 Q. And you have a congregation?

A. Yes.

Q. How many people are there in your congregation?

A. Well, it rises sometimes and sometimes it falls. Sometimes I get hundred, sometimes 120, sometimes 60.

I N D E X

WITNESSES FOR THE PROSECUTION:

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Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

WEDNESDAY, 9 JANUARY 2008
9.00 A.M
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Julia Sebutinde, Presiding Justice Teresa Doherty Justice Richard Lussick Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr Simon Meisenberg Ms Doreen Kiggundu
For the Registry:	Ms Rosette Muzigo-Morrison Ms Rachel Irura Mr Vincent Tishekwa
For the Prosecution:	Ms Brenda J Hollis Mr Mohamed A Bangura Mr Alain Werner Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Mr Terry Munyard Mr Andrew Cayley
For the Office of the Principal Defender:	Mr Vincent Nmehielle Mr Silas Chekera

Q. So you were the deputy chief of security for the army division?
A. Deputy chief of staff. Deputy chief of staff for the army division.
11:40:25 Q. And during what years did you hold this position?
A. I had the position from 2001 to 2002, the end of 2002.
Q. Now I'd like to go back to your job as assistant deputy of operations for the --
A. Assistant. Assistant, yeah. Assistant director, yeah.
11:41:06 Q. So this job that you held from about the time President Taylor became the President until, you said, the end of 1999 or 2000, I would like to ask you some questions about your activities during that period of time. Now first of all as the assistant director of operations for the SSS what were your
11:41:33 duties?
A. I was responsible for the security of the President, his family, the immediate family, his properties, the movement of the President, et cetera.
Q. Now during this time where were you based?
11:41:56 A. Based in Monrovia, Executive Mansion was my office.
Q. Now you have mentioned earlier in your testimony the Executive Mansion. Is this the same Executive Mansion you're talking about, the Executive Mansion located in Monrovia?
A. Yes.
11:42:18 Q. And as the assistant director of operations what would you wear when you were working?
A. Blue and navy blue.
Q. What was that?
A. That was a uniform.

Q. Now, let us talk about that. How did it happen that you saw him at Robert international airport?
A. We were instructed by Mr Taylor that that there are arms and ammunitions coming. Paul Molrbah was with us and he was the police director and he was responsible to go and receive these arms and ammunitions. So, we all travelled together to the airport when I saw --
Q. If I could stop you there for just a moment. So, Paul Molrbah, is that what you said? Molrbah?
A. Paul Molrbah.
Q. Do you know how to spell his last name?
A. M-o-l-r-b-a-h.
Q. So, you travelled to the airport?
A. Yes.
Q. You travelled together to the airport?
A. Yes.
Q. And when you got to the airport, what happened?
A. I saw Joe Tuah, Musa Sesay and Sam Bockarie. Martina Johnson had a restaurant at the back of the airport, so they were all seated there together discussing what the quantities were that they will receive each and I heard it myself. When Paul Molrbah said, "Look, I have just received this thing. I have to take it first to White Flower before anybody gets any supply. Nobody is going to get any supply right from here". So that happened at Robert international airport, and these ammunitions were received and they were taken to White Flower and the ammunition was distributed to the various front lines.
Q. Now, let me ask you. You said that the ammunition was going to be taken to White Flower. Now, were you involved in

taking the ammunition to White Flower?
A. No, we just drove behind the police director because he said that he was not going to give anything to anybody and nobody was going to be involved in it unless when they reached to the
15:32:53 owner, who was Mr Taylor, he would in turn distribute arms and ammunition to who he wants to give them to.
Q. Now, did you - at that time were you able to have any idea of what quantity of arms and ammunition were brought into Roberts international airfield at that time?
15:33:16 A. No.
Q. Now, you said that they were taken to White Flower. Do you know what happened to them once they arrived at White Flower?
A. The ammunition reached at White Flower. It was after everyone - Paul Molrbah always received ammunition. Sometimes
15:33:39 Musa Sesay say to me that he personally also went to Burkina Faso and got arms and ammunition and bring them to White Flower.
Q. Now, do you know who if anyone at White Flower was in charge of taking care of these arms and ammunition?
A. It was Mr Taylor who had total control over that White
15:34:11 Flower and he had his attendants who worked with him. Sometimes he will tell them to give this amount to such a person and that would be the only time when they will open the warehouse and give the stated amount to that person. That area was controlled by himself.
15:34:29 Q. And do you recall the names of any of these attendants who worked with him?
A. This has taken a very long time. I cannot recall their names, but I know all of them in person.
Q. Now this meeting that you had with Sam Bockarie at Robert

I N D E X

WITNESSES FOR THE PROSECUTION:

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Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

THURSDAY, 10 JANUARY 2008
9.00 A.M
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Julia Sebutinde, Presiding Justice Teresa Doherty Justice Richard Lussick Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr Simon Meisenberg Ms Doreen Kiggundu
For the Registry:	Ms Rosette Muzigo-Morrison Ms Rachel Irura Mr Vincent Tishekwa
For the Prosecution:	Ms Brenda J Hollis Mr Stephen Rapp Mr Alain Werner Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Mr Terry Munyard Mr Andrew Cayley

three cars or four cars. Those were Toyota Land Cruiser jeeps, open back sleeper jeeps and some even had trucks where they can transport their ammunition.

Q. So one of the ways they would take it it would be to drive it to Lofa County, is that correct, in their vehicles?

A. Yes, in the vehicles. Sometimes they will use the anti-terrorist helicopter to drop it to you and sometimes they may make another plane at Spring field that will transport - Roland Duoh himself would transport the ammunition from James Spring field to Foya.

Q. Okay, now let's stop for a moment. Now you said that they would use the anti-terrorist helicopter to drop it to you. Now you testified earlier that the anti-terrorist unit had two helicopters, is that correct?

A. Yes, they had two helicopters, camouflage and fatigue colour.

Q. When you say camouflage, can you tell the Court what you mean by camouflage?

A. That is army colour.

Q. Is camouflage a solid colour or broken colour?

A. A green colour and a mixed up colour. That is the green, black and grey.

Q. And then also I believe you said army colour. What is that? Or fatigue colour, what is that?

A. Fatigue colour is the green.

Q. And that is a solid uniform?

A. Yes.

Q. Now these helicopters, who flew these helicopters?

A. They had the Ukraine and South Africans.

I N D E X

WITNESSES FOR THE PROSECUTION:

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Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

TUESDAY, 15 JANUARY 2008
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Julia Sebutinde, Presiding Justice Teresa Doherty Justice Richard Lussick Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr William Romans Ms Sidney Thompson
For the Registry:	Ms Rosette Muzigo-Morrison Ms Rachel Irura Mr Vincent Tishekwa
For the Prosecution:	Ms Brenda J Hollis Mr Christoper Santora Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Terry Munyard Mr Morris Anyah

M-O-R-L-A-I.

Q. Now you said Issa was present in Koidu. Where exactly did you see him in Koidu?

A. At that time when we arrived at Five-Five I met Ovaltine tins, they were all on the floor and I gathered all of them because at that time food was difficult to come by because Issa was in a jeep and he came and those things that we put together, he said we should hand over some to him. At that time I saw him standing with a set in his hand, a hand set.

10:19:06 Q. First of all before I ask you about that, you mentioned a reference to Five-Five. What are you referring to when you say Five-Five in Koidu?

A. Five-Five, it's a place they called Five-Five in the centre of the town where the mosque is.

10:19:31 Q. So Five-Five refers to a specific location in Koidu Town. Is that correct?

A. Yes.

Q. And you said you saw Issa and he had a handset?

A. Yes.

10:19:51 Q. What do you mean?

A. He came and met us there. He was in a Suzuki jeep, those short jeeps, green in colour, together with his bodyguards, and he alighted. Those things that we had gathered, he took some from us.

10:20:15 Q. Okay, and you said he had a handset. What do you mean?

A. A satellite phone.

Q. Describe what you saw in terms of the satellite phone?

A. Well, I myself, I am an engineer, electrical engineer, whatever electrical device I see I could identify. When I say it

was a satellite phone. A satellite phone, he was having the Ericsson type.

Q. Can you describe what it looked like?

A. The one that had a long antenna.

10:21:22 Q. So let me ask you did you see - what was he doing with it?

A. He was having it in his hand and he was talking.

Q. From your vantage point did you have the opportunity to hear what he was saying?

A. Yes, I heard what he was saying. He was standing by me and

10:22:04 I went close to him and what he was saying I heard. He was saying - he was telling Mosquito that Kono was now under their control.

Q. How did you know it was Mosquito that he was talking with?

A. At that time he wouldn't be able to talk to Mr Kabbah. He

10:22:41 would only talk to Mosquito.

Q. How exactly did he address him?

A. He said, "Master, Kono is under our full fledged control."

Q. So he used the word "master"?

A. Yes, and Master - Mosquito, even when they went to Freetown

10:23:19 that's what they called him, Master.

Q. So did you recognise he was speaking with Mosquito because he was using the term Master?

A. Yes.

Q. And what is Mosquito's full name?

10:23:41 A. His name is Samuel Bockarie, but they cut it short to say Sam Bockarie, but his nickname is Master. Even kids knew that.

Q. Now you said that you, when you saw him you stated, "Those things we had gathered he took some." Describe what you mean?

A. The food stuff that was thrown all over the place, because

I N D E X

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Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

WEDNESDAY, 23 JANUARY 2008
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Julia Sebutinde Justice Richard Lussick Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr William Romans Ms Doreen Kiggundu
For the Registry:	Ms Rachel Irura Mr Vincent Tishekwa
For the Prosecution:	Ms Brenda J Hollis Ms Leigh Lawrie Mr Alain Werner Mr Nicholas Koumjian
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Mr Terry Munyard Mr Morris Anyah

Q. Is it correct that you spent a couple of years with the RUF, is that right, in Sierra Leone?
A. Yes.
Q. During your time with the RUF would you see these men often: Mazhar and Jungle?
A. Yes.
Q. Taking them one at a time, do you know why Mazhar was coming to Sierra Leone?
A. If there was any problem where they needed Mazhar, they would send him to Sierra Leone.
Q. How often do you think he would come to Sierra Leone, based upon when you saw him?
A. If there was any problem, that was the time he would come. He wouldn't just come on his own. They would send him.
Q. What about Jungle -
JUDGE SEBUTINDE: Mr Koumjian, who is "they"? We don't know who they are.
MR KOUMJIAN:
Q. Sir, who would send Mazhar?
A. Mazhar, Jungle and Sampson, they only came to Sierra Leone when Benjamin Yeaten sent them.
Q. Do you know if Jungle had a particular job in Sierra Leone when he came to Sierra Leone?
A. I didn't know that he had any other job. They would only send him.
Q. Can you tell us what tribe or ethnicity Jungle is?
A. Jungle belonged to the Kissy tribe in Liberia.
Q. I should say was. Do you know what happened to Jungle?
A. I don't know what happened to him. They said he was

did you have any discussion about your bodyguards?
A. The bodyguards, they later changed. He gave me his own bodyguards and then the bodyguards who came with me, he took them over.
Q. How many bodyguards did Sam Bockarie give you?
A. He gave me three bodyguards.
Q. Did you have anything else with you that Sam Bockarie took?
A. He requested for the Yaesu radio that I brought with me and then he took the Yaesu radio that I brought, the one that was assigned to me by Benjamin Yeaten. He requested that I turn it over to him.
Q. Did you do that?
A. Yes.
Q. Can you tell us, when Sam Bockarie came to Buedu with the 300 boxes of ammunition, what was the atmosphere among the RUF present in Buedu?
A. They were very happy and then he called a muster, he called a meeting, and then those of us who were vanguards, he invited us into his house to discuss about the ammunition and then the plan that we should take towards the ammunitions.
Q. Okay. Let us take these slowly. You mentioned several meetings with Sam Bockarie. On that day when Sam Bockarie came back, what was the first meeting he had that you recall?
A. The first meeting, you know it was not with me in particular, but it was the whole RUF. He called Issa Sesay who was in that meeting, Lawrence Wohmandia was there, SB Rogers, Lawrence Wohmandia, Akim, Leatherboot and he said, "That is the material, that is the ammunition, and the operation is that we should take over Kono and Makeni and to terrorise the highway",

he said, because Kono was a strategic area for us to get arms so that the mining will continue.

Q. Okay, where it did this meeting with these commanders take place?

A. The meeting took place at his house and then from there they had a vanguard meeting which was in closed doors in his bedroom. The people who they called vanguards, those were the people who brought the war into Sierra Leone. Those were the ones they called the vanguards.

Q. Okay, thank you. I was going to ask you to clarify that, but let me make sure we understand. When you say the vanguards are the people that brought the war into Sierra Leone, what do you mean?

A. I mean the first people who entered into Sierra Leone with the war, with the RUF. Those were the ones who were called vanguards.

Q. Were vanguards Sierra Leoneans, Liberians, or both?

A. They were a mixture. There were Liberians, there were Sierra Leoneans.

Q. Now, you have explained to us what vanguards are. Perhaps I will take this opportunity, you mentioned earlier the word "honourable", can you explain who were the honourables?

THE INTERPRETER: Your Honours, could counsel go over his question please.

A. Vanguard means -

MR KOUMJIAN: Wait, the interpreter asked me to restate the question.

Q. Can you tell us what the term "honourbles" means?

A. Of the vanguard, or the honourables, or the ones who were

the honourbles, who were honourable, Adams, Suleh. They were the form of people who did the overthrow of the AFRC. Those were the people. But the vanguards were the special forces, the first group that crossed into Sierra Leone with the RUF. Those were the ones that were called the vanguards.

Q. Thank you. This first meeting that Bockarie had at the house after bringing the ammunition, you mentioned some commanders and in your answer you also mentioned - you said it was an RUF meeting and you mentioned Akim and Leatherboot. Akim and Leatherboot were AFRC, they were SLAs, is that right?

A. Yes, but they all worked with the RUF.

Q. Can you explain to us, you said Bockarie said Kono was strategic, did he explain why?

A. He said because we needed to generate funds for the RUF and then the only place where we can get more resources to generate funds was Kono, so we could be able to do mining.

Q. Okay, so after the meeting at the house you said there was a meeting in Bockarie's bedroom of the vanguards, is that correct?

A. Yes.

Q. So were you allowed into that meeting? Were you present for that?

A. No, they never allowed me to attend the meeting, sir. It was only for vanguards and I was not a vanguard.

Q. After the closed door vanguard meeting, was there another meeting?

A. That was a muster parade it was not a meeting, where all the soldiers assembled at the military grounds before Kaisoko's office. That was the time he instructed Issa Sesay that this

mission, that the mission is that there should be no retreat, no surrender, "You should make sure you take over Kono and Makeni", and then he said President Taylor said they should be very vigilant and maintain the ground of the RUF, during that muster parade.

Q. You said it was in front of Kaisoko's office?

A. Not Kasava [phon], it is Kaisoko, the military police commander in Buedu.

MR KOUMJIAN: Thank you, I believe that is K-A-I-S-O-K-O.

Q. Sir, after this meeting was there an offensive?

A. Yes, that was the time we took the offensive against Kono and Makeni, and then myself there was an operation from Segwema, from Bunumbu to Segwema, to Jumo Kafebu, Gbava and Bendu junction.

MR KOUMJIAN: Okay, thank you. It is going to take me a few moments to spell some of these. Jumo Kafebu, J-U-M-O and second word K-A-F-E-B-U. Segwema, S-E-G-W-E-M-A. Bunumbu, B-U-N-U-M-B-U. B-U-N-U-M-B-U.

Q. I believe, sir, did you say Gbava?

A. Gbava, Gbava.

Q. That is G-B-A-V-A. In that offensive do you know if the main town in Kono, Kono Town, or Koindu Town as it is sometimes called, was taken?

A. Officially Kono Town was announced on Christmas day that Koindu has been taken over by the RUF.

Q. So that was Christmas day 1998?

A. Yes.

Q. Just so we have an idea, about how long before Kono Town fell did Sam Bockarie come back with the 300 boxes of ammunition?

Sir, where were you when the attack on Freetown happened?
A. When the attack on Freetown happened I was in Buedu.
Q. Where was Sam Bockarie?
A. Sam Bockarie was in Buedu. That was the time I told you that he came with these jean trousers and T'shirts and the car.
Q. How did you become aware of what was happening in Freetown?
A. At 3 o'clock we listened to BBC Focus on Africa and one commander spoke from Freetown saying that they were in control of the State House. Sam Bockarie became angry. He called up Issa Sesay and Morris Kallon asking them why they should allow someone to call the BBC while he, the commander, has not called the BBC. Then from there he himself called the BBC when they were in Buedu. He was speaking to Robin White over the satellite phone. He shot and said we were coming around the State House, but we were in Buedu.

JUDGE SEBUTINDE: Mr Koumjian, who is this "he himself called the BBC", is that Issa Sesay?
A. Sam Bockarie, General Sam Bockarie [indiscernible]. He called the BBC from Buedu over his satellite phone.

MR KOUMJIAN:
Q. Did Sam Bockarie maintain any communications with people in Freetown?
A. In Freetown?
Q. In and around Freetown?
A. He was talking to the various commanders over the Yaesu radios. He also communicated with Benjamin Yeaten and Joe Tuah over his satellite phone at night.
Q. Starting with the commanders you mentioned over the Yaesu radios, do you know the names of the commanders he was

communicating with?
A. He was communicating with Issa and Morris Kallon.
Q. Anyone else that you recall him communicating with?
A. Those were the names - those are the names I can remember.
Q. On the Yaesu radios, can you tell us, are all of the commanders normally communicating on the same channel?
A. Yes.
Q. Was there someone in Buedu monitoring those channels?
A. There was a chief signal operator called Zedman. He monitored all the radio channels.
Q. You mentioned that Bockarie was on the satellite phone with Benjamin Yeaten, Joe Tuah - those are the names I recall. Did you hear him talking to Benjamin Yeaten and Joe Tuah during the Freetown fighting?
A. Yes.
Q. Do you know when the Freetown fighting occurred?
A. It started in January. It was on 6 January that they called from the State House saying they were in control of the State House.
Q. What year?
A. That was in 1999, sir.
Q. When Bockarie called Yeaten did you hear any of the conversation?
A. Yes.
Q. After the calls, would Bockarie ever discuss with you what he had talked to Yeaten about?
A. He said he just explained about the operation, how the men were progressing.
Q. Did Bockarie ever indicate whether he got any instruction

from Yeaten, or anyone else in Liberia, during that offensive?

A. Coordinating in which way? I want you to explain, sir.

Q. Let me try the question again because I didn't say coordinating. Did Bockarie ever indicate whether he got any instruction from Liberia during the Freetown fighting?

MR ANYAH: Madam President -

A. He only communicated to Benjamin Yeaten.

PRESIDING JUDGE: Just pause, Mr Witness.

MR ANYAH: I object to the form of the question. Counsel is tacitly, or indirectly, leading the witness with phrases like "instructions" and this has been going on for a while. He could easily just ask the witness what Bockarie told the witness was the nature of these calls.

PRESIDING JUDGE: Mr Koumjian, there have been a few objections to leading. There are implications in some of the wordings you use. Please reword these questions to avoid any form of leading.

MR KOUMJIAN:

Q. What did Bockarie tell you, or what did you hear him say to Benjamin Yeaten?

A. I heard Bockarie and Benjamin Yeaten conversing about the progressive move that RUF has made. I didn't hear any instruction from Benjamin Yeaten to Bockarie to say do this, or do that, at that time.

Q. Thank you. During the fighting in Freetown, in the January offensive, did you play any part in that? What was your assignment?

A. I told you that I was assigned to Segbwema, Bunumbu, just in case any wounded soldier comes, I will take that wounded

should maintain the RUF and to maintain the controlled areas of the RUF.

Q. Who said, just to be clear, who said that the message had come from President Taylor?

A. Sam Bockarie, Sam Bockarie, sir, Sam Bockarie.

Q. Thank you, now it is clear. Did Sam Bockarie pass that message to anyone?

A. Yes. He talked to Issa, Morris Kallon.

Q. Sir, when you were with the RUF did you become aware of any strategies to deal with attacks from jets?

A. Yes.

Q. Can you tell us about those RUF strategies?

A. The strategy was you should not cook during the day time. You should not set fire during the day. You do not launder and hang the clothes on a line. You are not entitled to rear chicken in the town. You are not entitled to keep a dog, because those things, when the jet discovers them they can operate.

Q. Was there any strategy involving radios?

A. The strategy was the monitor - Zedman monitored the radio stations from the Nigerian ECOMOG who were based in Lungi. Also Memunatu and Sita, they monitored from Monrovia. If a jet takes off from Monrovia on the RIA - because Victor Malu, who was the first commander, was staying in Monrovia - so they will call "448", so the radio operator would ring a bell and everybody would escape. That was the only strategy that I knew about.

MR KOUMJIAN: Some of these names we have spelt before. Situ, S-I-T-U, Memunatu, M-A-M-A-N-T-U:

Q. Sir, you said RIA, what do you mean by RIA?

A. The international airport of Liberia.

Q. You mentioned a Victor Malu. Who is Victor Malu, M-A-L-O?
A. He was the ECOMOG force commander in Liberia.
Q. Excuse me, it is M-A-L-U I understand.
JUDGE SEBUTINDE: Mr Koumjian, there was a word the witness mentioned before the letters "448", a word or a name.
A. It is a radio code. It is a radio code the radio operator used for the jet, called "448".
MR KOUMJIAN:
Q. So what does that mean when you hear over the radio "448"?
A. If the radio communication says "448" it means the jet is up.
Q. You talked about some men coming with Bockarie when he first arrived in Buedu after your arrival. Did you ever see any other arrivals of manpower into Sierra Leone?
A. Yes, later some more men followed.
Q. Do you recall when that was approximately?
A. That was after the Freetown and Kono invasions. Another 150 men came with Mazhar and Sampson.
Q. What happened to those men?
A. The men were dispatched into another group of the RUF.
Q. Sir, you mentioned, when we were back and talking about the meetings before you left Liberia, that you had met an Ibrahim Bah. Did you ever see Mr Ibrahim Bah in Sierra Leone?
A. Yes.
Q. Where was it that you saw Mr Bah?
A. I saw Mr Bah in Kono with Eddie Kanneh and CR.
Q. Do you remember which year that was?
A. That was during Issa Sesay's administration, sir.
Q. Well, can you estimate which year, or years, it might have

A. That happened in May.
Q. What happened then with the peacekeepers after the attack on Sankoh's house?
A. We got Dennis Mingo, who was called Superman, and Gibril Massaquoi and one bodyguard to Foday Saybana Sankoh who was called Ray. He was the Black Guard commander. They retreated from Freetown and then we got them. We met with them Gbere Junction. That was the time they reached amongst us, they entered our midst, and I drove them to Makeni and then they said Foday Saybana Sankoh gave them message that Issa Sesay should take charge of the RUF.
MR KOUMJIAN: Just a spelling, Gbere Junction, Gbere is G-B-E-R-E:
Q. After the message came from Sankoh that Issa Sesay should be in charge, what happened with the peacekeepers?
A. The peacekeepers were still under their control and we saw Mazhar and Jungle, they came for Issa Sesay in Makeni. We drove to the border. They crossed into Liberia. When Issa Sesay came back he brought a satellite phone. He called a meeting in Makeni at the military police headquarters at the roundabout because we were using the old bank in Makeni. So he spoke to all the commanders. He said, "Charles Taylor said we should release the peacekeepers over to him in Liberia", and then now he never had any alternative but for us to release the peacekeepers. So we took the peacekeepers, we drove them to the border and then they were handed over to Benjamin Yeaten and then Joe Tuah again in Foya.
Q. When Issa Sesay came back from Liberia you said he brought a satellite phone. Did he indicate where he got the satellite

phone?
A. He said the satellite phone was issued to him by Charles Taylor and then with the satellite phone he came with 50 boxes of ammunition again.
Q. Okay, thank you, Mr Witness. I now want to move to a different topic and that is your knowledge of diamond mining during the time you were with the RUF. You mentioned seeing diamonds with Sam Bockarie in the Boulevard Hotel. Did you ever see Sam Bockarie with diamonds once you were in Sierra Leone?
A. Yes.
Q. When was that?
A. That was in Buedu. I saw Kennedy, the mining commander, giving diamonds to Sam Bockarie in Buedu.
Q. What were the diamonds contained in?
A. The diamonds were in the plastic, in papers, and it was sealed up.
Q. When you were with the RUF in Sierra Leone did you see any mining operations?
A. Yes.
Q. Where did you see mining operations?
A. In Kono.
Q. When you say Kono, you mean the whole district of Kono?
A. Yes, I mean Kono District, sir.
Q. Can you tell me the names of any places where you saw mining going on and, please, very slowly because I will spell each one as you say it.
A. One was that Number 11 Plant.
Q. Okay, next one?
A. Number 11 was -

then what did he do?
A. And then they will travel, but if you don't have the pass you will not pass through the check point. That means you are trying to escape.
Q. Now, this pass that was issued by the RUF G2 or G5, would the border guards in Sierra Leone, the men at the border, would they recognise it and let the civilian through?
A. Yes.
Q. How about when you got to the Liberian check points, the three you mentioned on the way the Foya?
A. You will still show the same pass and then they will know that you have not escaped from the RUF controlled area.
Q. The people that were manning these check points in Liberia were who again?
A. They were Liberians.
Q. From which units?
A. The AFL and the Liberian national police and the customs.
Q. Thank you. I now want to move to a different area and ask you, Mr Witness, about any RUF operations you were involved in outside of Sierra Leone. Can you tell us were you involved in operations by the RUF outside the borders of Sierra Leone?
A. Yes.
Q. Let's talk about the first one. Can you tell us the first operation you were involved in?
A. The first operation was Mosquito Spray, 1999, August, when they attacked Liberia from Voinjama and Kolahun. That was the first operation that I took part in.
Q. When you used the words Mosquito Spray, can you explain to those not familiar with it, what is Mosquito Spray?

A. Mosquito Spray was one commander of the LURD rebels who entered into Liberia. That was the name that he called himself, he said Mosquito spray. He said he was in Liberia to spray the AFL and the national police and to remove Charles Taylor from power.

Q. Okay. Now, you mentioned Mosquito - excuse me, but the name Mosquito, was there more than one Mosquito?

A. The name Mosquito Spray of LURD rebels.

Q. Thank you. But you mentioned before Sam Bockarie being called Mosquito, is that right?

A. Sam Bockarie was Mosquito, but this one is Mosquito Spray of LURD rebels.

Q. I understand that. Was there another Mosquito on the Liberian side of the border?

A. Yes, that was Liberian Mosquito. They call him Christopher Varmoh of the NPFL.

Q. Okay. Varmoh is V-A-R-M-O-H. Mr Witness, do you know the real name of the LURD rebel who called himself Mosquito Spray?

A. No.

Q. Thank you. Can you tell us how did the RUF get involved in that operation against Mosquito Spray?

A. Sam Bockarie contacted us in the morning to prepare ourselves to move to Foya. He said because LURD rebel Mosquito Spray had already attacked Voinjama and Kolahun. So Benjamin Yeaten said we should move. So he got the instructions from Benjamin Yeaten. So he called Issa Sesay and Morris Kallon for us to move and implement this operation in Liberia. And then he, Sam Bockarie, said - and he was busy in Foya and then the Liberian commander that we based in Foya he was called Stanley,

Colonel Stanley of the AFL. He was the commander in charge of Foya.

Q. Okay, thank you. Mr Witness, a few questions about this. First, can you help us by letting us know when this happened, when the RUF was involved in the operation against Mosquito Spray?

A. That was what I said. I said August 1999, sir.

Q. Thank you. Now you said Sam Bockarie indicated he had gotten this information - instructions, you said - from Benjamin Yeaten. Do you know who Benjamin Yeaten reported to?

A. Benjamin Yeaten reported to Taylor, sir.

Q. Did you go and fight then in Liberia?

A. Yes, we fought against the LURD rebels against Mosquito Spray and we took over Kolahun and then we took over Voinjama. That was a successful mission for us. And then Benjamin Yeaten, Sam Bockarie and the defence minister Daniel Chea, they arrived on helicopter in Voinjama and then they were flown to Monrovia, sir.

Q. In that operation in Liberia which RUF commanders were involved?

A. That is what I am saying. It was Issa Sesay, Morris Kallon and then the overall commander was Sam Bockarie who was based at Foya.

Q. Were there other units besides RUF that were fighting together against Mosquito Spray?

A. Yes, they were the AFL whom I told you that there their commander was Colonel Stanley, the battalion commander in Foya, and the police and the ATU. We all did the operation to clear off Mosquito Spray from Kolahun and Voinjama.

Q. I don't believe we have discussed the ATU before. Can you tell the judges what the ATU unit is?
A. From the SSU, when the SSU was dissolved they formed the ATU which were the special mansion guards assigned to Charles Taylor at the mansion.
Q. So it's the same as the SSU, but just the name changed. Is that correct?
A. Yes, to ATU.
Q. So of all these units that were involved, the AFL, the ATU, the RUF, was there any overall commander?
A. The overall commander we had was Benjamin Yeaten. He was the field supervisor for us.
Q. Okay, thank you. Now I would like to move to the second operation that you were involved in. Were you involved in a second operation outside of the borders of Sierra Leone with RUF?
A. What? Come back. Please repeat.
Q. Certainly. I have now finished asked you about the Mosquito Spray operation - sorry, but we're getting the interpretation on the channel.

Okay, let me start again, Mr Witness. I apologise. So I am finished now asking you about Mosquito Spray and I am asking you were you involved in any other operations outside of the borders of Sierra Leone with the RUF?
A. Yes.
Q. What was the next one?
A. The next one, after releasing the peacekeepers which were the Zambians and the Kenyans, when Issa Sesay came with the 50 boxes of ammunition we moved from Makeni to Kamakwie and then the commander who was in Kokuima, who was called Colonel Komba

Gbundema, he was the commander in Kamakwie and then we used the Kabbah ferry, we went to Madina Wola, we attacked Madina Wola in Guinea and then in that attack we incurred more casualties.

Q. Okay. What year did this occur then? You said it was the time of the peacekeepers in Makeni that were taken captive?

A. That was 2000.

MR KOUMJIAN: Just a few spellings. The witness mentioned Kamakwie, K-A-M-A-K-U-I-E and he mentioned a name Komba Gbundema, fist name K-O-M-B-A, second name G-B-U-N-D-E-M-A.

Q. In that operation after you crossed the river were you inside then Guinea?

A. Yes, we attacked Madina Wola on a Sunday.

MR KOUMJIAN: Madina Wola is M-A-D-I-N-A and the second part W-O-L-A. Two words.

Q. Who were you fighting against in that operation?

A. In that operation we were fighting against the Guinean army.

Q. Who was commanding the RUF forces?

A. It was Short Bai Bureh.

MR KOUMJIAN: Short is spelt S-H-O-R-T, Bai B-A-I, Bureh B-U-R-E-H.

Q. Can you tell me if any other commanders - if you recall the names of any other commanders involved in that operation?

A. The commanders were many. We had Kennedy who also incurred serious injury. They had this guy that I called Komba Gbundema because we passed through his own territory and then we even lost another commander who was called Olu.

MR KOUMJIAN: I believe Olu is O-L-U.

Q. Sir, did you receive any information - were you told why

RUF was going to Guinea, attacking Guinea at that time?
A. Issa Sesay said Charles Taylor informed him that we should give him grounds in Guinea so that the time for the disarmament into Sierra Leone, some of arms we had would be crossed over into Guinea for safekeeping.
Q. What were the results of that operation?
A. In the operation we attacked Madina Wola, we fought over Madina Wola and then we even killed one of the Guinean commanders who was called Colonel Kanigba Bangura. We captured his car, one Nissan Patrol jeep, and the commander of the mission himself, we used him and we captured two millimetre weapons that used electronics current batteries.
Q. Did you suffer many casualties among the RUF?
A. We had more casualties. That was the reason why we didn't make it up in the operations, we decided to move back, because the Guineans were using the military helicopter and the jets to bombard the borderline.
Q. After you returned to Sierra Leone. Is that correct?
A. Yes.
Q. What was the next operation you took part in with RUF outside the borders of Sierra Leone?
A. The next operation was Dennis Mingo, alias Superman. When we moved from Kono we attacked Guinea closer to Kissidou. We went in between Kissidou and Gueckedou and then they had a refugee camp there where both Liberians and Sierra Leoneans were based. They call it Toma refugee camp and Yende refugee camp.
Q. Thank you. Mr Witness, I am going to spell a few words. Fist you mentioned Kissidou. That is we believe K-I-S-S-I-D-O-U-G-O-U. And then Gueckedou, again it is

G-U-E-C-K-E-D-O-U with accents over the Es. You mentioned Dennis Mingo. Was he the - what was his role in that attack?

A. He was the commander that led the troops from Kono to cross into Guinea.

Q. In that --

JUDGE SEBUTINDE: Sorry, Mr Koumjian, there was a name of a refugee camp that you did not spell.

THE WITNESS: Yes, Toma and Yende refugee camps in Guinea.

MR KOUMJIAN: Toma I believe is T-O-M-A and the second word I believe the witness said was Yende, Y-E-N-D-E.

Q. What kind of people were in those refugee camps?

A. They were both Liberians and Sierra Leoneans.

Q. Who were you fighting against in that operation?

A. We were fighting against the Guinea government.

Q. And how long do you think you were in Guinea that time?

A. We spent a month.

Q. Did you return to Sierra Leone?

A. We retreated to Sierra Leone.

Q. What was the next operation that you were involved in with RUF outside the borders of Sierra Leone?

A. We moved to Kono. From there Issa provided transport for every one of us and we moved to Liberia and we were in Foya where we met Colonel Benjamin Yeaten and he said, "Guys, everybody should get ready for the operation." He said, "This time around we have to take Gueckedou." so we used the Solomon crossing point. That is the crossing point between Liberia and Gueckedou they call Solomon.

Q. So you were crossing into Guinea from Liberia, is that correct?

I N D E X

WITNESSES FOR THE PROSECUTION:

ABU KEITA	1956
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Case No. SCSL-2003-01-T

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TRIAL

TRIAL CHAMBER II

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For the accused Charles Ghankay Taylor:	Mr Terry Munyard Mr Andrew Cayley

operators allowed to use the satellite phone to communicate at all?

A. No, that was not allowed, but it was their responsibility because this satellite phone was in the radio room. Any time there was an incoming call they would go and call Mr Sam Bockarie to come and receive the call. When he himself would receive that call, whatever he discussed, you would be there and prepare a message and transmit it to all RUF communications to inform all RUF authorities.

10:15:30 Q. Now you have mentioned Sankoh and Mosquito. Did any other person or any other leader of the organisation get a satellite phone at some stage?

A. Yes, the times Sam Bockarie left and went to Liberia to Mr Taylor and again when Foday Sankoh was arrested in Freetown

10:16:07 during the May incident 2000 Issa took over as a leader, as acting leader of the RUF. During that time again Issa had a satellite phone through Liberia. So he himself was talking to Mr Taylor. So whatever they discussed, he would do the same thing by sending messages to all commanders through field radio

10:16:40 communications. And even if the RUF spokesman or whomsoever was representing BBC Focus on Africa or the VOA, they would use the same satellite phone to talk.

Q. Mr Witness, you mentioned - in your testimony yesterday we discussed the various bases that the RUF had and you mentioned

10:17:18 some new locations that you were able to take at a certain point and one of them I remind you was Zogoda. Now how long were you able to hold Zogoda?

A. Zogoda, what I can recall from early 1995, '96, those were the times we spent at Zogoda, our leadership spent at Zogoda.

you have mentioned is the Bumpe mission. Is that correct?
A. Yes.
Q. When did this mission take place?
A. Well, Bumpe mission was the first mission among all the
15:06:16 missions that took place in 1998.
Q. Can you give an indication when in 1998 roughly?
A. Well I cannot say this now, the month that the mission took
place, but --
Q. From where was the Bumpe mission planned?
15:06:48 A. It was at Superman Ground, where the mission was planned,
and before we planned it Sam Bockarie sent a message. He said we
should try and be - he sent a message with ammunition. The
message was we should try and make Kono District fearful to
ECOMOG so that they could not base there.
15:07:28 Q. Now, I would like to just take you back briefly to your
testimony earlier today and I believe you used the same
expressions to make the area fearful. What is the meaning, or
what was the meaning, of this expression in this situation?
A. When we talk about an area being fearful, it was the
15:08:05 destruction of life and property, where there will be killings,
am putations, burning of houses, destruction of bridges, setting
up road blocks. All of those things would happen and that will
have made the area fearful.
Q. Now, in this case the order was to make Koidu or Kono
15:08:36 fearful for ECOMOG. Is that correct?
A. Yes.
Q. Who undertook the operation? Which commander?
A. The commander who was given this Bumpe mission was CO
Rocky, then I was there myself as a radio man. I was there

Ammunition were in the box and some had arms inside. The other carton that I have also spoken about had a commercial radio inside. That was an FM radio. The other thing also I have spoken about, they were now using it in fact. That was a satellite phone.

15:47:12

Q. Now did you have any idea what type of arms were in the boxes?

A. Yes, the arms that were in the boxes he showed us all on paper. He said, "This is AK-47". He said, "This is GPMG". He said, "This is RPG". Those were the weapons he showed to us and LMG.

15:47:50

Q. Did you actually see the list yourself or did he just explain a list that he had to you?

A. Well, I saw the list clearly during the meeting. He showed it to everybody and some of us went over the list.

15:48:19

Q. Now what else did he say after you had inspected these items that he showed you, after you had looked at them and gone back to the meeting what else did he say?

A. Sam Bockarie told us that he was just coming from Mr Taylor's sight with a very big plan so that we will be able to take over the country. So I saw them bring a map of Sierra Leone. He said this is how Taylor has planned and he told him to come and implement it. He showed us the areas we should attack. I can still recall the towns that he made mention of on the war plan.

15:48:49

15:49:27

Q. Please give us the names of those towns?

A. One of the towns was Kono, Sefadu itself, or you call it Koidu. The other town was Kabala. The other town was Makeni. Magburaka, Matotoka, 91, Masiaka and Waterloo. Waterloo.

Freetown. We will miss our targets. So that was the reason why we went through all those areas before we go to Freetown.

Q. Now just before we continue with this line of your evidence, you mentioned a herbalist was sent by Mr Taylor, is that correct?

15:53:33

A. Yes, one herbalist came. This herbalist - sorry. Sam Bockarie gave Superman in Buedu and we all travelled and came to Koidu Town. It was this herbalist that was going to inspire us so that we will have no fear of attacking Kono and the various areas I have named. This herbalist was - we were going to use this herbalist to go on a mission that we called Fitti-Fatta mission. This herbalist, after we had come to Kono before the Fitti-Fatta mission --

15:53:57

Q. Now before you get on to going back to Kono, how did you know this herbalist came from Mr Taylor?

15:54:25

A. Well, the herbalist himself was introduced to us during the meeting. It was from there that I was able to know that he came from Mr Taylor. And he said with all these plans these were the herbalists who were helping him in Liberia. Therefore he sent him to us also so that he will come and work for us.

15:54:49

Q. Now who introduced the herbalist to you?

A. It was Sam Bockarie. He did all the introductions I have spoken about.

Q. And did he explain how exactly the herbalist was going to help you?

15:55:11

A. Yes, I can explain the way he explained. This herbalist was brought. He said he was going to carve on our bodies and in that light if he rubs those concoctions on our bodies you will not be in fear of the guns and then you will not be able to be

to do. They will send messages and discuss what they wanted to do, what they planned to do. More especially when they had relationship between Superman, Mosquito and SAJ Musa, during that time they normally spoke on that and then SAJ Musa accepted that
16:05:01 Superman should go and meet him so that they do their military exercise together.

Q. This move, proposed move, for Superman to join SAJ Musa in Koinadugu, was it part of the plan that had been discussed in Buedu by Sam Bockarie?

16:05:27 A. Yes, I had said it earlier that it was a plan for - to let SAJ Musa and Superman join together and that they were responsible for Kabala and Makeni and that was part of the plan.

Q. Now how long were you in Buedu on this trip?

A. Well, we did not complete a week.

16:06:03 Q. Before you left Buedu, were you given anything?

A. Yes, before I left Buedu to return to Superman Ground, which was in the Kono District, we received plenty ammunition, food and drugs, there was something that we referred to as morale booster. Those were drinks for fighters.

16:06:35 Q. And what was the ammunition and arms intended for?

A. These particular arms that were given to us were for that Fitti-Fatta mission and also ammunition that Superman was supposed to carry to SAJ Musa.

Q. Did SAJ Musa - did Mosquito say anything about how arms and
16:07:03 ammunition would be provided for the big plan which he had discussed which was a long-term plan?

A. Yes, he told us that the ones that he had showed to us were not at for this - just this first mission plan. He said there are more ammunitions of ammunition coming for that big mission.

I N D E X

WITNESSES FOR THE PROSECUTION:

TF1-360 3066

EXAMINATION-IN-CHIEF BY MR BANGURA 3066

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

WEDNESDAY, 6 FEBRUARY 2008
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr Simon Meisenberg Ms Doreen Kiggundu
For the Registry:	Ms Rachel Irura
For the Prosecution:	Mr Mohamed A Bangura Mr Nicholas Koumjian Ms Kirsten Keith Ms Christopher Santora
For the accused Charles Ghankay Taylor:	Mr Terry Munyard Mr Andrew Cayley

to the transmission. That was the control station in Buedu and they would send it to all stations. That was their responsibility. That 448 information was coming from Buedu, Sam Bockarie's station.

12:04:51 Q. Now, let us come to Freetown. You have testified already that you entered Freetown on 6 January 1999, correct?

A. Yes, it is correct.

Q. Now, can you describe your entry into Freetown. From which end of Freetown did you get into the city?

12:05:22 A. Well, we used the main highway from Waterloo to Freetown, from Kossoh Town - from Hastings, Kossoh Town to Freetown. We entered from the eastern part of Freetown and we entered with heavy firing. We entered Freetown fighting, but before we got to Freetown we divided ourselves into groups.

12:05:52 Q. Hold on, Mr Witness. (Your Honours, Kossoh Town is K-O-S-S-O-H, Kossoh). Yes, you have said you divided yourselves into groups. Which groups did you divide yourselves into?

A. We divided ourselves into fighting groups. That means - you know, Freetown is not a small village. It is a very big city

12:06:23 if we didn't divide ourselves into groups. Every group had a commander, who will lead it. We appointed some areas where the commanders would go like Ferry Junction, that is one point, Ferry Junction covered Upgun, and also State House in Freetown, that was one target, the second target was Pademba Road, which is the

12:06:53 maximum prison in Freetown, and we had the National Stadium and these are the areas I can recall. We divided our groups according to these areas and appointed commanders to go to these areas.

As for me personally, I was in a group with my radio with

my men and we entered Pademba Road. Some other group went to State House, some other went to National Stadium and the others we left at Ferry Junction. That is from the back. That was how we divided ourselves and, as we entered, everybody would go his various ways.

12:07:32

Q. Now can you describe, you said you were with the group that went to Pademba Road. Is that correct?

A. Yes.

Q. And can you describe the activities that you engaged in when you entered Freetown, your group?

12:07:54

A. Please repeat.

Q. What did your group do on the day that you entered Freetown?

A. I said we divided ourselves into groups. I was among the group that went to Pademba Road. What we did at Pademba Road, our mission was to receive Foday Sankoh and to also release all the political detainees who were called collaborators of the juntas. That was our mission.

12:08:09

Q. Mr Witness, what was at Pademba Road?

A. Pademba Road, that is the maximum prison in Freetown. Those who were at Pademba Road were the RUF and the AFRC detainees detained by the government of Sierra Leone, and even the former leader, that is Foday Sankoh, he was jailed there. That is why we made it a target to go there and release all - to release him and all the fighters and members of the AFRC and RUF who were under detention there.

12:08:36

12:09:03

Q. Did you succeed in doing this?

A. Perfectly, yes. All the targets that I have been naming, everybody succeeded. We who were at Pademba Road we attacked and

drove away all the securities, we used force on the Prison Officers to open the gates and some of them - we beat some of them because they delayed us. We opened the gate and we asked them where was Foday Sankoh and they said that people they had taken Foday Sankoh. They didn't know where he had been taken to. We opened the gate, everybody went outside and we made sure all the rooms were open and everybody went out.

Pademba Road was congested. In fact, some prisoners were sleeping on cartons. All the rooms were occupied. Civilians, juntas, RUF rebels, all of those who were there were released, including former President JS Momoh and one of the journalists, Hilton Fyle, he was among them with some other important people. Because of time now I cannot name everybody, but these are the names I can remember now. And also Gibril Massaquoi, who was former spokesman for the RUF. These are the names that I can recall right now.

MR BANGURA: Thank you. Now, your Honours, I need to go over some spellings. Fyle I see the spelling here is different. It is F-Y-L-E. Hilton Fyle. Massaquoi, okay, that is correct:

Q. Now apart from Gibril Massaquoi who was a senior member of the RUF as you have said, was there any other member, senior person within the RUF that was released from prison that day?

A. The only person I can remember was a friend of RUF who was Steve Bio. He was a businessman, he was a friend to RUF, but I was not too sure whether he was a full member of RUF. But there were other men, because after the release of these people at Pademba Road our manpower in Freetown nobody could tell, because even ourselves we didn't know each other any more because those who came from Pademba Road had one slang. They said they were

been happening and the discussion by Gullit, that was going on through my radio communication set.

Q. Now on this first day that you entered Freetown, was there any communication between the forces - your forces - and Sam Bockarie?

12:17:10

A. Yes, as we entered Freetown we were based and settled, the authorities got settled at State House, they were able to communicate with Sam Bockarie about the situation. Gullit told Sam Bockarie that, "You said we should not enter, but however we have now entered and thanks to God we were able to get State House, Pademba Road and the National Stadium. Our men are still advancing, were still under fighting and we were able to release JS Momoh, Gibril Massaquoi, Hilton Fyle and some other prominent authorities. In response, Massaquoi - I am sorry, Mosquito told Gibril Massaquoi that, "Do as a military man".

12:17:38

12:18:11

Q. Can you just pause. Was Mosquito - you said, "Mosquito told Gibril Massaquoi". Who was Mosquito responding to? Who called Mosquito and who was he responding to?

A. I am sorry, Gullit called Mosquito and told him those whom we had released from Pademba Road. In response, Mosquito said Gullit should - Gullit and others should take great care of those people and Gullit told him that they were under safekeeping at State House. Mosquito said Gullit should provide security and take great care of those people, until he tried by all possible means and dispatch them to Kailahun. So, whatever activities that was going on Gullit used to transmit the message to Mosquito. At that time SAJ Musa was dead. And even myself as a radio man I had my personal radio, because it was my responsibility according to Mosquito to give him all detailed

12:18:44

12:19:10

information about the Freetown operation. That was what I was doing. Any conversation going on between Mosquito and Gullit I used to monitor that. At times I will be at the radio station and I will get information about that and --

12:19:52 THE INTERPRETER: Your Honours, can the witness go over the last bit?

PRESIDING JUDGE: Mr Witness, the interpreter needs you to repeat the last part of your answer.

THE WITNESS: Any information that was going around in
12:20:09 Freetown either by voice or by messages, that is written messages, I used to monitor that and write it down, and any information that Gullit failed to tell Mosquito that was my responsibility to tell him. And from there I was able to give him details, but when SAJ Musa entered Camp Rosos and what
12:20:37 happened around his death and after his death, what actions, why we didn't wait and we entered Freetown. I gave all of these pieces of information to Mosquito.

MR BANGURA:

Q. Mr Witness, apart from the prisoners from Pademba Road whom
12:21:00 you had taken to State House, were you holding any other persons there at State House?

A. Yes, as we were fighting so we were capturing ECOMOG troops, but for the SLA we didn't have much problems with them because some of them were running from the government and coming
12:21:21 to join us with their guns. And for the ECOMOG soldiers, when we captured the ECOMOG we killed them at the front line and those that we would bring to the State House we report them to Gullit and he himself would report to Sam Bockarie. Sam Bockarie would tell him that he had no prison for ECOMOG. No politicians. As a

situation changed and you said that as this happened you got messages from Sam Bockarie. Is that correct?
A. Yes, all what I am talking happened in 1999 under Sam Bockarie's administration. All what I am talking about we
12:30:18 used to get message from Sam Bockarie on a daily basis.
Q. When you say the military situation changed, what do you mean?
A. Well, at that time we were not that strong to fight ECOMOG. Their firing power was more than us and so we started to retreat.
12:30:41 Up to the time we got to Upgun turntable, we moved from that point and went to Shell Road and at that time the situation had changed against us. ECOMOG was chasing us. That is what I meant by the military situation had changed.
Q. What messages or orders did you get from Sam Bockarie in
12:31:05 this changed military situation?
A. After the military situation had changed, we received reinforcements of a message which says we should make Freetown more fearful than before. Also we received another message that we should come to Waterloo, we should send troops to meet at
12:31:36 Hastings because at that time the other troops that we had left behind us, which was Superman, Issa Sesay, Morris Kallon and some others, had come to Waterloo. So, for them to reinforce us we were to send a team so we should organise ourselves and attack Kossoh Town, together with Superman's group, so that we could
12:32:07 clear Kossoh Town where ECOMOG was based on the main road. The troops from Waterloo could join us after that. That was the message that we got.
Q. Mr Witness, you said that one of the messages ordered that you should make the area more fearful. At this point, what was -

what was this message intended, or what did you understand from this message?

A. Well, what I knew if before we entered Freetown if we had a message that we should make an area fearful it was to destroy, kill, amputate, destroy bridges, set road blocks. That was the meaning of making an area fearful. And in that message he talked about some areas as well and it was not just one message. I spoke about Kissy, Kissy Road, Kissy Terminal and the ferry and some other important areas. He said we should set up road blocks that should delay ECOMOG to clear and maybe that will lead them to reduced attention.

Q. Now, you mentioned Kissy Terminal. What was there?

A. Well, what I understand by Kissy Terminal it is a place where they will get oil, petrol, diesel, engine oil. That was where it was refined. That was a major area for Sierra Leone.

Q. Did you follow the orders about burning Kissy Terminal?

A. Yes, I went there myself and I saw fire. I saw thick smoke coming from the place and I made sure that the order was implemented.

Q. Now following these orders from Sam Bockarie, can you describe the scale of atrocities that occurred after he had passed his orders to make the order more fearful?

A. Please repeat.

Q. Now you said that - you already described some of the things that you were doing in Freetown, burning and killing and blocking roads, and because the military situation changed Sam Bockarie sent you a message, or messages, one of which was to make the area more fearful. Did this - in carrying out this order, did it even change the situation regarding the acts that

clarify that? What exactly were you supposed to do from both sides?

A. Gullit's side, Gullit was to send fighters at a point where they will meet and attack Kossoh Town and Superman, Issa Sesay, 12:38:21 Morris Kallon were to also dispatch fighters to go and attack Kossoh Town so they will clear the route, so that the fighters could come and enter Freetown and join Gullit so we could re-attack and regain all the areas we had lost and even to take over - to take all over the city. That was the plan.

12:38:42 Q. Now, which forces were at Waterloo at this time?

A. The forces which were at Waterloo were Superman's group, including Morris Kallon and Issa Sesay. That was the group which was at Kono and Koinadugu which led - they all came and joined at Waterloo. According to the plan which we had at Buedu, they had 12:39:10 now come and merged. If they had met us there we would have entered Freetown together, we wouldn't have stopped getting Freetown, but our group did not wait.

Q. Now, did you send - did Gullit send troops to Kossoh Town as was ordered by Mosquito?

12:39:33 A. No.

Q. What about the troops waiting at Waterloo? Did they advance to Kossoh Town as was the plan?

A. Yes, those men organised themselves. They attacked Kossoh Town at night until daybreak, but they could not get the town. 12:40:00 But among that group they had one AFRC strong fighter who was Red Lion - sorry, Red Goat, Rambo Red Goat. He was the only man who could garner up to 15 manpower and they bypassed ECOMOG and came to Freetown and joined us.

Q. Now, this fighter who you have just mentioned, Rambo Red

Goat, you say he was an SLA and he had 15 manpower, I assume fighters, is that correct, with him?

A. Yes, he came to Freetown with 15 manpower.

Q. Now, at the time that he left, or up until the time that he left Waterloo and bypassed ECOMOG positions, who was he fighting under?

A. Well, he was with Superman's group.

Q. Now, when this group came into Freetown, did anything happen?

A. Those 15 men that I told you about, they came to Freetown and met us at Kissi Old Road. When they arrived they said from Waterloo they attacked Kossoh Town but they could not succeed, but Rambo, who was Red Lion - sorry, Red Goat, was able to take 15 men to come and join Gullit's group in Freetown, but at that time they met us now on our way going. The day they arrived Gullit passed an order that all those who had motorcycles and vehicles and what you could not - somebody could not carry, let us burn everything. So, everything was put at one place and they were burned. Vehicles and everything was burnt, those that we could not carry. So, when Red Goat Rambo came he said he had not come to return. He said he had come to stay in Freetown. Some men were happy to be with Rambo in Freetown and Gullit himself, who he met there, he gave him the okay to stay. In fact, at that moment only a few of us returned because we were more than 4,000 in Freetown. Most of the people hadn't guns, particularly those who were released from Pademba Road, so most of us, the armed men - a few armed men and a few unarmed men returned to Waterloo. Rambo stayed in Freetown with many other men.

Q. Now, amongst the men that stayed in Freetown with Rambo, do

you recall any of them that you now remember?
A. Yes, I can recall one name: Rambo Red Goat himself.
THE INTERPRETER: Your Honours, the witness has called a name that I need clarification on.
12:43:42 PRESIDING JUDGE: Could you please repeat the name for the interpreter.
MR BANGURA:
Q. Could you go back, Mr Witness?
A. Striker, who was the Red Lion's commander, Red Lion
12:43:55 Battalion Commander.
Q. And what was the size of the force that you said decided to stay in Freetown with Rambo Red Goat?
A. That number was too much. I cannot recall now.
Q. Now, were any orders given to Rambo Red Goat before you
12:44:23 pulled out of Freetown?
A. Yes, of course. Rambo was given an order by Gullit.
Q. Now, the decision to allow Rambo Red Goat to stay in Freetown, was it discussed at all in any communication with Mosquito?
12:44:44 A. Yes, Mosquito told him that as far as that man has said that he is living there and he is able to get manpower, they should leave and they should come back to Waterloo, reorganise themselves and re-attack Freetown. I want to ease myself.
MR BANGURA: Your Honours?
12:45:12 PRESIDING JUDGE: I see. Madam Court Attendant, if you would assist the witness to leave, please.
[In the absence of the witness]
MR KOUMJIAN: Your Honour, could I take advantage of the break and just bring to the Court's attention that we have

MR MUNYARD: You are absolutely correct, Madam President. I wanted to make it plain to the Court that as far as accommodating witnesses is concerned, we are happy with the accommodation of this particular witness and I wanted the Court
12:48:04 to know that we are in discussions with the Prosecution to try to accommodate other witnesses to whom the 42 day rule does apply and, as I have indicated at the moment, our offer to accommodate them has not borne fruit. I will say no more than that at the moment.

12:48:50 PRESIDING JUDGE: The Bench will accommodate this request for the Prosecution. We note the remarks of the Defence and any other applications will be dealt with on a case by case basis.

[In the presence of the witness]

PRESIDING JUDGE: Yes, Mr Bangura, please proceed.

12:49:51 MR BANGURA:

Q. Are you all right, Mr Witness?

A. I am all right, thank you.

Q. Now, you were at a point where orders had been given to Rambo Red Goat who was going to stay in Freetown, but before that
12:50:17 I think I asked you whether any communications were had with Mosquito about Rambo Red Goat staying in Freetown. Do you recall that?

A. Yes.

Q. What was the communication about and did - what was the
12:50:35 communication about?

A. One thing I would want to start with, it was when they were unable to attack Kossoh Town, or to capture Kossoh Town, Mosquito asked Gullit to try and pull out and, by doing so, when Gullit received Red Goat that was Rambo, Gullit told Mosquito that the

men said they are going to stay in Freetown. He said they should leave, but he told them that they should destroy to make the area fearful until they came back and reorganised themselves, but, "Since the time you got the former president and the other
12:51:28 prominent people, you try and pull out with them, you bring them to Waterloo so that you can dispatch them to me," Mosquito, "and then we will reorganise and regain Freetown." That was how the communications went on.

Q. Do you know what specific orders Gullit gave to Rambo Red
12:51:51 Goat before he left him in charge of Freetown?

A. Yes.

Q. What were the orders?

A. One - when our commanders said that we should make the area fearful, that means we should destroy most of the houses. We
12:52:13 should burn down houses, make road blockades, amputate and kill. That was the order that he gave. Also he gave him the order that any politician Rambo knew and saw, he should not spare them and he should not bring any prisoner of war to him, and he should not make any reports on that. That is what he told him. That was
12:52:43 what Gullit told Rambo.

Q. Now, how long had you been in Freetown before you left?

A. In Freetown, our own group, I can say we spent almost two weeks and then we also left the other groups.

Q. Now, you mentioned earlier that one of the men who decided
12:53:27 to stay with Rambo Red Goat was Striker, who was of the Red Lion battalion, is that correct?

A. Yes, he also had men who were fighters. They were many and he was the commander for this Red Lion battalion and since he said he should leave, that meant that the majority of his

fighters who were with him, when he was leaving they all left with him.

Q. Now, when you say leaving can you clarify what you mean?

A. What I mean, when he said he was leaving it meant that he was leaving with Red Lion, or I mean Red Lion would go from Freetown. It means all the fighters who were with him were going to stay in Freetown.

Q. Mr Witness, do you mean that Rambo Red Goat and Striker were leaving Freetown to go somewhere else?

A. No, what I am saying, Rambo, Striker and the manpower who was behind him they all stayed in Freetown. We left them in Freetown and then we came to Waterloo.

Q. Thank you. Now, following the orders which were given to Rambo Red Goat by Gullit, do you know what happened as you left Freetown?

A. Yes, some of the things that happened in Freetown, in the first place we never left them behind with radio communication sets, but anything that happened we used to listen to commercial radio and even the BBC media and they reported on activities, atrocities, that took place in Freetown. They used to talk on that.

Q. Were you able to gather what was happening in Freetown as you left?

A. Yes, most of the information, though not all, but we were able to gather them over the media that those were radios from Freetown. We got information from them that the rebels in Freetown were amputating civilians, they were raping, they were burning down houses, they were making road blockades, they were killing. Those were some of the things that were on the media

message Mr Taylor sent and Issa Sesay in Makeni, he called everybody and told all the authorities and fighters on the ground and they loaded these people from Makeni. In fact they were stripped naked, they travelled from Makeni to Yengema. Yengema
15:07:00 was one RUF strong training base. Yengema is a very short distance from Koidu Town which is in Kono. From Yengema he crossed with them to Liberia. He transferred all of them to Foya. It was a helicopter that came from Monrovia sent by Mr Taylor and when this helicopter came it brought a lot of
15:07:31 ammunition from Liberia and dropped them at Foya. In return it took the peacekeeping forces, loaded them into the helicopter and took them to Liberia to Mr Taylor. That was how we released those people.

Q. Now what happened to the equipment of the peacekeepers that
15:07:53 you also seized?

A. Those smaller weapons were with us, but the bigger ones like tanks - we arrested the UN from two locations, in Makeni Town they were based there and Makote. Makote is about 12 miles off Makeni.

15:08:29 Q. Can you pause, Mr Witness. Your Honours, Makote is M-A-K-O-T-E. Continue, please.

A. Those armoured tanks, I don't know but they were many. The UN commander who was in Sierra Leone at that time, he arranged with the RUF leadership who was Issa Sesay and they accepted to
15:09:00 come and collect their materials. That was where Morrison Kallon went. I was there myself and I saw one prominent reporter, a BBC reporter Mark Doyle. He came and interviewed all of us in the village where those armoured tanks were released. But the lowest weapons and the vehicles, trucks and Land Rover vans, we were

I N D E X

WITNESSES FOR THE PROSECUTION:

TF1-360	3178
EXAMINATION-IN-CHIEF BY MR BANGURA	3178
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Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

THURSDAY, 7 FEBRUARY 2008
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr William Romans Ms Sidney Thompson Ms Doreen Kiggundu
For the Registry:	Ms Rachel Irura
For the Prosecution:	Mr Mohamed A Bangura Mr Alain Werner Mr Nicholas Koumjian Mr Christopher Santora Ms Kirsten Keith
For the accused Charles Ghankay Taylor:	Mr Terry Munyard Mr Andrew Cayley Mr Morris Anyah

A. Repeat.
Q. Were you aware that Mr Taylor worked personally with ECOWAS in order to secure the release of these individuals?
A. No, I was not aware personally that Mr Taylor worked with
14:36:56 other authorities for the release of the UN. I didn't know about that.
Q. And you were not aware, were you, either that resulting from international requests Mr Taylor sent a former Foreign Minister, Mr Cooper, a former Foreign Minister of Liberia, to
14:37:22 Freetown to negotiate the release of these UN peacekeepers? You were not aware of that fact either, were you?
A. No.
Q. And I think finally on this point you were not aware either, were you, that the helicopter that was sent to pick up
14:37:32 these individuals in Foya was a UN helicopter? You were not aware of that fact, were you?
A. No, it was not a UN helicopter. I was not aware that it was a UN helicopter. It was Mr Taylor's helicopter that they used to collect those people.
14:37:50 Q. Witness, you are lying when you say that. It was a UN helicopter and it didn't contain ammunition, did it?
A. I am not telling lies. It was Charles Taylor's helicopter that came and received those people from Foya.
MR CAYLEY: Now, finally, if the witness could be shown the
14:38:12 bundle again:
Q. Just a final question on the UN peacekeepers. Can you tell the Court where you were when the men in Foya - the UN peacekeepers - were picked up by the helicopter? Where were you at the time?

I N D E X

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Case No. SCSL-2003-01-T

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9.30 A.M.
TRIAL

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Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr Simon Meisenberg Ms Sidney Thompson Ms Carolyn Buff
For the Registry:	Ms Rosette Muzigo-Morrison Ms Rachel Irura
For the Prosecution:	Ms Brenda J Hollis Mr Nicholas Koumjian Mr Alain Werner Ms Shyamala Alagendra Ms Leigh Lawrie Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Mr Terry Munyard Mr Morris Anyah Ms Elizabeth Duby

all you told them was that you returned in 2002?
A. It might be - I told you it might be a mistake. It is maybe a mistake.
Q. Can you think of any reason why they would have made that very specific mistake?
12:46:11
A. I can just tell you that it is a mistake, the rest I really don't know.
Q. The fact is you obviously told them that, didn't you?
A. No, I told them that I returned there in 2002.
12:46:44
Q. The only sensible explanation for that appearing on that page is that you gave that information to the investigators, would you agree?
A. Yes, I am the one who told them to write it.
Q. I am not sure, Madam President, if that "yes" was agreeing
12:47:11
with me or not, but I am going to move on from this.
PRESIDING JUDGE: Please do, Mr Munyard. I think we have explored it well.
MR MUNYARD: Sure. Can we move on to tab 8, please:
Q. Before we actually look at tab 8 can I ask you this,
12:47:38
Mr Camara: You told us, it seems like a long time ago now, but you told us when I was first asking you questions that when you were seen by investigators from this Court you received no benefits whatsoever except that your expenses were reimbursed. Do you remember saying that?
12:48:11
A. The benefits you are talking about, they didn't give me anything. You asked me if they had given me anything. I said that they paid my transport, but they didn't give me anything. They didn't give me any bribe. They didn't tell me that they were going to give me something if I accepted to testify.

Q. What you actually said was that you had never been given anything other than the reimbursement of your expenses.
A. Yes, that is the answer I gave you when you were talking about benefits I received. When you asked me if I had received
12:49:08 any benefits, or money, I told you that they didn't give me - they didn't promise me anything and they didn't tell me they were going to give me something. They just reimbursed my transport costs.
Q. In 2006 --
12:49:34 MR WERNER: Sorry, your Honours. He said something further.
THE INTERPRETER: And they gave him also some assistance.
THE WITNESS: They paid my transport, for my transport and then they gave me a little assistance.
12:49:59 MR MUNYARD:
Q. "They gave me a little assistance" is something new and different from what you told us last week. Do you remember, Mr Camara, saying to us last week, when I asked you the question, "They have reimbursed your expenses, but they have not given you
12:50:21 anything else in addition, is that right?", that your reply was, "Tell him that exactly that is what happens."
A. I am telling you, if my memory serves me right, the question you asked was that did the investigators promise anything to me for me to accept to testify. That was the
12:50:55 question you asked. I told you no. I told you that they paid for my transport and they gave me some assistance.
Q. You never told us that they gave you some assistance when I asked you these questions that first afternoon that I was questioning you.

A. Maybe it is the way you put the question to me, but it is normal that they pay for my transport and they gave me some assistance.

Q. What I asked you - and I am reading from the transcript - was, "Have you, in fact, ever received any benefit of any sort for giving information to the Special Court investigators, or lawyers?" Your reply was as follows, "Tell him that these people, the investigators, normally when they came to the Gambia, what I can say, what I have from them was that my fare to go and come used to be refunded because I pay my own fare to see them. Apart from that I had no benefit from them." Today you are telling us that apart from that you did have some benefit from them in the form of some assistance. Why didn't you tell us, when I first asked you the questions, that you had some benefit in addition to the reimbursement of your expenses?

A. What do you mean by benefits? If you say benefits that means that I am in a deal with them when you talk about benefits and there was no deal between me and them. There is no business whatsoever between me and them. That is what I understood by benefits.

Q. Mr Camara, you made it very plain, I suggest, on Monday afternoon that the only money you ever received from the investigators was the reimbursement of your expenses and nothing else. Do you agree?

A. They have given me - they have refunded my transport fares, but I don't think of that in terms of benefits because there was no deal between us. You must be thinking that there was a deal between them and myself.

Q. Don't worry about what I may or may not be thinking.

Concentrate, please, on the question.
A. I am telling you I am giving you my opinion. I am not - you thought that I was maybe in business with these people and that I got some benefits from them. That was not the case.
12:55:06 Q. Mr Camara, don't trouble yourself with what might be going on in my head. On Monday I asked you, "Were you given to understand by the investigators that there would be any benefit for you, of any sort, if you were to tell them - if you were to answer their questions, or give them information?" That is the
12:55:34 question I asked and this was your reply, "Tell him that what I was told by the investigators was that this is - this is something voluntary if you want to join, but I was not promised for anything that they will give me something, no."
A. That is what I told you. I told you that nobody promised
12:55:58 me anything.
Q. I then asked you the following question, "Have you ever had any benefit for giving information to the Special Court investigators?" You replied as follows, "Tell him that you are not hearing what I am telling you. I said I am not looking for
12:56:22 any interest for this and I was not promised that they were going to give me something if I give evidence."
A. That is what I said. Nobody promised any benefit. When you talk about benefit that means, according to me, that means that there is something going on, a business, or a deal.
12:56:45 Q. I then went on to ask you the following question, "I am going to ask you the question one more time only. It is a very simple question. Have you ever received any benefit for giving information to the investigators?" Now, at that point Mr Werner intervened and said that you had already answered the question.

The Presiding Judge replied to Mr Werner as follows, "He didn't actually, Mr Werner. The first question was in the future, were you promised at the time, and this one is have you had any benefit? They are two different questions." The learned judge then allowed me to ask you the question once again. I asked you the question again, "Have you, in fact, ever received any benefit of any sort for giving information to the Special Court investigators, or lawyers?"

12:57:40

You did not at any stage say, "What do you mean by benefit?" You gave the answer that I first read out to you when I began to ask you these questions. You gave the answer, "I used to be refunded because I pay my own fare to see them. Apart from that I had no benefit from them. When I leave they do not send anything to me in the Gambia as benefit." So in your mind you knew perfectly well what benefit meant, didn't you, on Monday afternoon?

12:58:07

12:58:37

A. What is benefit according to you? Because benefit, for me, is when you are in a deal with somebody. Assistance and benefit, for me, are two different things according - in my opinion, in fact. So, the way you understand benefit is completely different from the way I understand it.

12:59:12

Q. Just in case that was the position I then went on to ask you a further question so that we could all be absolutely clear. The question I asked was this, "So the position is this: That they have reimbursed your expenses, but they have not given you anything else in addition, is that right?" To which you replied, "Tell him that exactly that is what happens."

12:59:44

A. That is - you said benefit. That is why I answered yes.

Q. Mr Camara, I did not mention benefit in that last question.

I am going to repeat it to you so that you understand what I asked and what your answer was on Monday afternoon. The question I put was as follows, "So the position is this: That they have reimbursed your expenses, but they have not given you anything else in addition, is that right?" And your answer, "Tell him that exactly that is what happens."

13:00:46

A. Yes, that is what I said. They refunded my transport costs, but the amount they gave me was a kind of assistance, assistance for me, because since I have started seeing them they said that it was on a voluntary basis so something which is voluntary, whatever they give you is assistance.

13:01:14

Q. Do you mean over and above your travel expenses they have given you assistance?

A. Yes, that is assistance only. For me that is not benefit because it was on a voluntary basis, so the amount they gave me was a kind of assistance.

13:01:53

Q. Do not get bogged down with benefit. We have moved on from benefit. The answer that you gave us on Monday was therefore untrue, wasn't it?

A. No, no, no, that is not true.

13:02:18

Q. You were first interviewed in 2006 in October and November. Did you incur expenses in 2006 when you were being interviewed in the Gambia?

A. Yes, I got some assistance, help from them.

Q. I want you to be absolutely clear about this. This is the first time they ever come to see you and then a month later they come again. Now, just let me ask you this first of all: When the investigators first made contact with you was it by letter, by telephone, or did someone turn up at your house and say they

13:02:47

wanted to see you and interview you? How was contact first made?
A. The way I happened to know these people, the way they learnt of my - I was in Gambia. I don't know how they learnt that I was in Gambia. I just saw them when they came in the
13:03:47 Gambia. They got my telephone number, they called me and I went to meet them.
Q. And when you went to meet them did that involve you having to travel at your own expense?
A. I went to meet them and the place I reside are completely
13:04:27 two different areas.
Q. Right, we don't need to know where you reside, or where you went to meet them, but did it involve you having to spend money in order to go and meet them in this other place?
A. Yes, I paid. I paid my own transport to go and meet them
13:04:58 in a different village.
Q. Was that transport by road, or by rail, or for that matter by air?
A. By car.
Q. Did it involve you staying overnight anywhere?
13:05:32 A. Yes, indeed. It is because I wanted to stay overnight, but I could have come back the same day.
Q. Were you given expenses for your overnight stay?
A. They didn't even know that I would be spending the night. I didn't tell them that.
13:06:08 Q. So they didn't give you any overnight expenses for that first interview. Is that what you are telling us?
A. They gave me something, but I didn't tell them that I was spending the night somewhere.
Q. All right, let us just be clear on what they gave you. Did

they give you money - did you have to pay to travel by car? Was it like a taxi?

A. Yes, yes, I had to hire a car.

Q. You had to pay for that. Did you also - did you get reimbursed for that?

13:06:55

A. Yes, it was refunded.

Q. Did you get a meal allowance for that day?

A. Yes, because the amount they gave me exceeded my transport cost. I knew that it was more than what I spent, so I thought that the rest was a kind of assistance.

13:07:32

Q. What currency were you paid in?

A. Sorry, can you repeat that question, please?

Q. Certainly. What currency were you paid in? What kind of money? Was it Gambian money, or was it United States dollars, or what was it?

13:08:02

A. They gave me some assistance. US dollars, in US dollars.

JUDGE SEBUTINDE: Mr Munyard, I am just concerned and I am seeking guidance from Madam Interpreter. Is the witness using the word "assistance" or "subsistence"?

13:08:35

THE INTERPRETER: In fact it is assistance, help assistance, not subsistence.

MR MUNYARD: Thank you, your Honour:

Q. What was the amount of this assistance, over and above the cost of you having to hire the car?

13:09:05

A. They gave me 100 US dollars.

Q. On top of the money that you had spent hiring the car, is that right?

A. I always paid my transport myself. Since I have left my village, until I arrived, I always paid - I always paid my

transport. They gave me the money and told me that it was as a refund and the effort also I made to come and meet them.

Q. So you were reimbursed your expenses and you were rewarded for giving them information. Would you agree with that?

13:10:21 A. Yes, that was not a payment.

Q. You were reimbursed your expenses, the cost of the hire car, and, to use your words, you were also given money for "the effort" you made to come and meet them?

A. Yes.

13:11:01 Q. So you were rewarded for the effort in coming to be interviewed?

A. Yes.

Q. And the amount of the reward, was it 100 US dollars only, or was it 100 US dollars and the cost of the hire car?

13:11:34 PRESIDING JUDGE: [Overlapping speakers].

THE WITNESS: Yes, yes, yes.

JUDGE SEBUTINDE: What exactly do you mean, Mr Witness? Two propositions were put before you, which of these two propositions are you agreeing with?

13:11:59 THE WITNESS: Can you repeat?

MR MUNYARD: I will repeat the question:

Q. Were you given a total sum of 100 US dollars, or were you given 100 US dollars and, on top of that, the cost to you of hiring the car?

13:12:31 A. They gave me 100 US dollars as a compensation for the efforts I made and for my transport. That is what happened, in my opinion.

PRESIDING JUDGE: Mr Witness, does that mean you got a total of 100 dollars?

A. Yes, yes, exactly. That is what they gave me. That is what they gave me the first time I went to see them and whenever I met them later on they gave me some help.

MR MUNYARD:

13:13:31 Q. Did you pay for the cost of the hire car in Gambian currency, your own money?

A. That is - in Gambia we use the dallasi. You cannot use the US dollars, so I had to pay in dallasi.

MR MUNYARD: Madam Interpreter, it has come out on the

13:14:03 screen as "in Gambia we use the dollars"?

THE INTERPRETER: No, the dallasi, the dallasi.

MR MUNYARD: It is a different word that needs to be typed onto the transcript:

Q. Mr Camara could you spell the dallasi, please, the unit of

13:14:18 Gambian currency?

A. D-A-L-L-A-S-I, dallasi.

Q. Thank you. How many dallasis did you have to pay, roughly speaking, for the hire car?

A. I am going to give you an estimation then: Something like

13:15:11 500 dallasi from my village to the meeting point.

Q. And how many dallasis are there to one US dollar?

A. At that time the dollar was not so high. I think it was something like 1,000 - it amounted to something like 1,700-1,800 dallasis at that time.

13:16:19 Q. So the rest of the 100 US dollars was your reward for being interviewed. That is correct, isn't it?

A. Yes, yes, I already told you that it was a compensation for the efforts I made and the transport I had to pay for.

Q. The next time they saw you did they see you in the same

place? Again, I don't need to know the identity of the place, but did they see you in the same meeting point, or somewhere different?

A. Yes, yes, I used to meet them at a hotel. I used to meet them at their hotel.

13:17:22

Q. Did you stay overnight on the second occasion, now November of 2006?

A. No, I didn't spend the night. No, no, no, I never spent the night there.

13:17:47

Q. So what were your expenses on the second visit? Was it just the hire of a car and a meal?

A. Normally when I see them, when I meet with them, when - if my memory serves me right, because they usually give me 100 dollars, US dollars.

13:18:27

Q. Do you think that is what you got in November of 2006?

A. I don't remember exactly the exact date, but --

Q. Don't [overlapping speakers].

A. They came on one of the occasions and on that occasion I told them about problems of the education of my kids and on

13:19:15

that occasion they gave me some assistance also. I remember that. They told me that if I had any problems I could tell them so that they would try to help me.

Q. Help you financially you mean?

A. Yes, yes. They gave me something for my kids.

13:19:53

Q. I just want to be clear about the second time you were interviewed. Do you think now that you received 100 US dollars on that second occasion?

A. I didn't put that on record. I didn't record the - but sometimes they gave me dollars, but some other times also when

they knew they had dallasis they would give me dallasis.
Q. Mr Camara, I know that it was a while ago and I am not expecting that you necessarily kept records, but I just want to be clear, if we can be, do you think that on the second occasion, 13:20:55 the second interview, also in 2006, that you were paid another 100 US dollars?
A. Yes, they gave me dollars, but I can't tell you exactly on which occasions because sometimes they gave me dallasis also.
Q. Right. There is a reason for me asking you about those 13:21:23 first two occasions and I can tell you it is this: That we have been supplied with written records of the money that you received, but the written records do not indicate that you received anything at all in 2006, so that is why I am having to ask you rather more questions about those first two interviews.
13:21:58 A. Yes, indeed, they gave me something.
Q. Now, can I ask you to look at tab 8, please. On the first page of tab 8 we are looking at a document headed "Special Court of Sierra Leone, all Disbursements for Witness" and on the left-hand side, underneath the crest of the Special Court, there 13:22:52 is an indicator "TF1-548" and we know that that is an indication that you are the witness that this document is concerned with. Do you understand that?
A. Yes, I do understand.
Q. Have you ever seen this document, or something like it 13:23:18 before?
A. No, they usually gave me a paper to sign to acknowledge that I have received money from them in a form of assistance.
Q. I want us to look through this document, please. You will see that there are a number of boxes on each page. There are

four boxes on each page. The first three on the first page have not been filled in and so we start with box 4 and in that box we can see the date of 27 February 2007. Now, I want to ask you this: When you were interviewed were you given the money for your expenses and your reward for giving information on the very same day that you were interviewed? Did it always happen like that?

A. They gave me that sum of money as compensation and for my transport costs.

Q. Yes. Did they give it you on the day that the interview finished?

A. Yes, when the interview finished they used to give me the money at that time.

Q. Was there ever a time when they travelled to your village to give you the money some time after you had been interviewed?

A. Coming to my village you said?

Q. Yes, did that ever happen?

A. No, no, no. I am the one who used to meet them on appointment, no, but they don't know where - they don't know my village.

Q. Was there ever a time when they didn't give you the money after the interview and so you had to go back and see them again to get the money on some later date?

A. Yes, possible.

Q. Did it happen? Anything is possible, did that actually happen?

A. Yes, that happened.

Q. How did it happen? Did you travel - let us break it down, first of all. After you had been interviewed, were there

occasions when they didn't give you the money even though the interview had finished and you were ready to travel back to your village?

A. Yes, that happened. They said it was on a voluntary basis. I was not expecting them to give me something every time.

13:27:12

Q. Well, they always reimbursed your expenses, didn't they?

A. Yes, they did refund my expenses. They refunded my expenses, yes.

Q. I just want you to help us with this before the break: Was there ever a time when you were interviewed and they said at the end of the interview, "Sorry, we can't give you the money now, you will have to come back to see us in a couple of weeks time", or a couple of days time, or anything like that? Did that ever happen?

13:27:44

A. No, no. To my knowledge, usually when I met with them, usually they would stay for three, four days in the Gambia and sometimes at the end they would give me the money.

13:28:06

Q. At the end of the interview, or later at the end of their stay?

A. Sometimes when they are about to leave the country, before they leave the Gambia.

13:28:39

Q. Last question before the break: So you would have to go back to your village and then come back again some time later to see them to get your money. Is that what you are saying?

A. Yes.

13:28:56

MR MUNYARD: Madam President, on the computer it is about one minute to go.

PRESIDING JUDGE: I am watching this clock, but we will not split hairs, Mr Munyard.

MR MUNYARD: I am in the Court's hands.

PRESIDING JUDGE: We will take the lunchtime adjournment and adjourn until 2.30. Madam Court Attendant, please adjourn the Court.

13:29:23 [Lunch break taken at 1.30 p.m.]

[Upon resuming at 2.30 p.m.]

PRESIDING JUDGE: Mr Munyard? I apologise, Ms Hollis.

MS HOLLIS: No problem, Madam President. I just wish to note that Nicholas Koumjian is not with us this afternoon.

14:29:56 Otherwise, the composition remains the same.

PRESIDING JUDGE: Thank you for that, Ms Hollis.

MR MUNYARD: No change on the Defence team:

Q. Mr Camara, can you have a look, please, at tab 8, and I am going to ask Madam Court Officer to come over and put it on the

14:30:15 screen for you. Madam Court Officer, could you show us the lower half of this document, please. Thank you. Mr Camara, if you look at the fourth box, the bottom box, this is the first piece of information that we on the Defence side have been given about the money that was paid to you for assisting the Office of the

14:31:08 Prosecutor. You will see that the date there is Tuesday, 27 February 2007 and Mr Haddad, the investigator who you are familiar with, has filled in some entries in that box, and what we can see there is that for meals and communication and transport you were paid 100 United States dollars. Do you see

14:31:54 that?

A. Yes, I see it.

Q. And the amount was approved by Mr Berry, who is the other investigator who you are familiar with?

A. Yes, exactly.

Q. Now, we all understand what meals and transport are. I know it is not your document, you haven't filled this in, but have you any idea what "communication" refers to? You were given money for meals, transport and communication. Do you know what
14:32:46 "communication" refers to there?
A. According to my understanding, I have been told that it was the way we used to communicate with each other - with one another.
Q. Why did that cost you money?
14:33:29 A. When I used to communicate by mobile phone with them and mobile phone you need to subscribe.
Q. Did the investigators buy you a mobile phone?
A. No, I already had a mobile phone.
Q. So, this money is intended to cover the cost of your calls
14:34:00 to the investigators?
A. Yes, that is what I think.
Q. Right. And are you able to help us -- [Mobile phone interference] Can I just check in case. Neither Dutch nor English, not me. I am sorry, Mr Camara, we had a little bit of
14:34:34 interference from a foreign object. Appropriately enough it would seem it was a mobile telephone. Can you just help us with this. How much were your calls to the investigators in February of 2007? In other words, how much of the $100 was covering the cost of your phone calls to the investigators in their hotel?
14:35:16 A. I didn't tell you that I was using the whole amount of 100 US dollars for only communications.
Q. No.
PRESIDING JUDGE: Well, Mr Witness, counsel is asking how much - what part of that one hundred was used.

THE WITNESS: Actually, I can't tell you the exact amount. I didn't calculate. I didn't think anybody was going to ask the question - that question.

MR MUNYARD:

14:35:48 Q. Well, I don't want to spend a long time on it. [Mobile phone interference] I think it is happening again, unless - I don't want to spend a long time on this subject, but can you help us with this. Did you make a couple of telephone calls to them, or many more than that?

14:36:14 A. Yes, I made some calls to them and it was not very cheap.

PRESIDING JUDGE: Just before you proceed on, Mr Munyard, can we just make sure that nobody has a mobile phone in the Court, because I suspect it may be in the booths. That is what I am thinking.

14:36:45 MR MUNYARD: Very well.

PRESIDING JUDGE: In which case if that is the case I would be grateful if that could be checked. I am sorry to interrupt. Please proceed.

MR MUNYARD: That is quite all right, Madam President:

14:37:03 Q. Mr Camara, can you just help us with this. Have you any idea now how much - how many Dalasis, if I have got the currency correct, you spent in making phone calls to the investigators?

A. I told you that I don't know the exact amount. I don't remember the exact amount. I never thought that somebody was

14:37:35 going to ask me any question about that.

Q. All right, let me put it another way. Would I be right in assuming that the cost of your meals, your transport and your telephone calls translated into United States dollars would only be a matter of a few dollars?

A. I don't - I can't tell you how much dollars it would be, because I can't tell you the exact amount of my transport fare and so actually I didn't calculate the amount of my communication expenses.

14:38:26 Q. Was the transport fare the same as usual; the same as in November and in October of 2006, the cost of car hire?

A. No.

Q. Was it less expensive, or more expensive?

A. More expensive on some occasions, so it depends. It really

14:39:03 depended on the number of days I would spend in the town.

Q. All right. Well, just tell us this. What was the most amount of money that you spent on car hire when you were going to see the investigators?

A. 1,500 Dalasi. Yes, I can remember on some occasions I

14:39:51 hired a car at around 1,500.

Q. Thank you. Sticking with box 4 on the first page, you are paid this money on 27 February. Now, we know that you were interviewed on 9 and 10 February. Are you saying that you were not paid this money at the end of the interview, but that it

14:40:26 wasn't until another two and a half weeks later that you got the money?

A. No, they gave me the amounts at the end of the interview. They gave me the money when we finished the interview.

Q. Can you turn over the page, please, and we will look at box

14:41:03 5. Now this is a receipt dated Thursday, 1 March 2007, paid by Mr Haddad and approved by Mr Berry, and the reason given for this money being spent is "Investigations Interviews", the category is "MEALS/COMMUNICATION/TRANSPORT" and the amount is 20.83 US dollars. Now, were you interviewed - sorry, were you given money

A. I don't - I can't tell you how much dollars it would be, because I can't tell you the exact amount of my transport fare and so actually I didn't calculate the amount of my communication expenses.

14:38:26 Q. Was the transport fare the same as usual; the same as in November and in October of 2006, the cost of car hire?

A. No.

Q. Was it less expensive, or more expensive?

A. More expensive on some occasions, so it depends. It really

14:39:03 depended on the number of days I would spend in the town.

Q. All right. Well, just tell us this. What was the most amount of money that you spent on car hire when you were going to see the investigators?

A. 1,500 Dalasi. Yes, I can remember on some occasions I

14:39:51 hired a car at around 1,500.

Q. Thank you. Sticking with box 4 on the first page, you are paid this money on 27 February. Now, we know that you were interviewed on 9 and 10 February. Are you saying that you were not paid this money at the end of the interview, but that it

14:40:26 wasn't until another two and a half weeks later that you got the money?

A. No, they gave me the amounts at the end of the interview. They gave me the money when we finished the interview.

Q. Can you turn over the page, please, and we will look at box

14:41:03 5. Now this is a receipt dated Thursday, 1 March 2007, paid by Mr Haddad and approved by Mr Berry, and the reason given for this money being spent is "Investigations Interviews", the category is "MEALS/COMMUNICATION/TRANSPORT" and the amount is 20.83 US dollars. Now, were you interviewed - sorry, were you given money

each time you were interviewed, or were you given money between interviews as well as at the end of each interview? And if you want me to explain that to you again I am quite happy to do so.
A. I don't remember exactly. Sometimes they would give me at
14:42:20 the end of the interview. That is what I remember. Some - on some occasions also they will give it to me during or before the interview.
Q. Well 1 March is a long time before the next interview, which was on 18 April 2007. Six - more than six weeks away from
14:42:49 the next interview. Is this the position, that every time you were given money by the investigators you were interviewed by them?
A. They came to The Gambia. When I went to see - to meet them it is on those occasions that they used to give me the money, and
14:43:27 sometimes they would stay for a long time without coming to The Gambia.
Q. But every time you went to meet them and got money from them, you gave them some information. Is that correct?
A. Yes, if they asked me questions I would answer.
14:43:54 Q. And every time they asked you questions did they write down notes of what it was you were telling them?
A. Yes, I saw them writing it down.
Q. And I don't suppose you can remember now what it was on the 1 March 2007 that you got $20.83 for?
14:44:37 A. Yes, they gave me that amount of money.
Q. Yes, but do you remember what it was for?
A. I told you at the beginning already that my transport costs expenses and assistance also as they gave me that amount for that purpose.

Q. Mr Camara, all I am trying to find out is do you now remember what it was you got that particular sum for in March of 2007? Do you remember anything about the occasion that led to you being given that money?
14:45:42 A. Whenever they gave me money they would ask me to sign a receipt. I have never read that it was for meals communication, transport.
Q. All right. And whenever they gave you money it was because you had given them information, correct?
14:46:09 A. It was on a voluntary basis. They gave me some assistance. It was on a voluntary basis. They told me that it was on a voluntary basis.
Q. Can I just go back to the question I asked you. Whenever they gave you money, was it because you had given them
14:46:37 information?
A. It is possible, yes. It is possible. It is just possible that they just wanted to help me.
Q. Well, sticking with box 5, it looks as though you have been given money on that occasion for a very specific purpose for
14:47:14 meals, communication and transport. So does that suggest to you that you travelled to see them and they reimbursed your expenses?
A. Yes, it is possible. That is what I am talking about assistance. That is the assistance. That is what they have written there.
14:47:45 Q. And the only reason that you would travel to see them would be to give them information, correct?
A. No, not only that, because they used to interview me when they were in town.
Q. I think we may be at cross-purposes here. When you say

they used to interview me when they were in town, do you mean when you travelled to the town they were in they used to interview you?

A. Unless they come to Gambia, I wouldn't see them. It is when they came to The Gambia that I would meet them and it was not always for an interview.

Q. For what other reasons would they - would you travel to see them apart from for an interview?

A. I met them in The Gambia. The reason why they were in Gambia, I wouldn't know that, because they just when they arrive they used to just call me. So, I don't know for which purpose exactly they came to The Gambia.

Q. Mr Camara, I wasn't asking you about their purpose. Just listen, please, very carefully to the question. When they were in The Gambia and you would travel from your village to see them where they were staying, the purpose of your going there would be so that you could give them information. Is that correct?

A. They used to come to The Gambia. It is not every time that they interviewed me when they came to The Gambia.

Q. It may be me, Mr Camara, but I am not asking you about them coming to The Gambia. I am really asking you about why you would go to see them when they were in your country. Don't worry about them being in The Gambia, or why they came there. Just answer this question, if you can. Whenever you went to see them, was it in order to give them some information?

A. No, no, not at all. When they came to The Gambia, when they needed me they would call me. When they - and they would tell many I that it was for an interview. They would tell me that. If they didn't need me, if they didn't need me they would

tell me also.
Q. I am going to have one last attempt. You wouldn't ---
A. But I used to go and meet them personally because I knew them.
14:51:50 Q. Are you telling the Court that you used to go and meet them for social reasons?
A. In our culture when you know somebody then you have relations. You know that person. That is our culture. We have a certain social life. It is not that you meet somebody just
14:52:20 because when you need the person. When they came to the Gambia and call me and tell me that they are there, and even if they don't tell me to go there I just go there and meet them.
Q. In box 5 do you see what is recorded underneath the name of A had dad as the reason why you were being paid your expenses?
14:52:56 Can you see what is written there against the word "Reason"?
A. Yes, I have seen it.
Q. What it is in English?
A. If I am not mistaken it is investigations interviews.
Q. Right. And so you were reimbursed travel expenses on 1
14:53:32 March 2007 because you went to assist these two investigators with their investigations and interviews, correct?
A. Yes, it is possible because I don't remember all their stays in the Gambia. It is possible.
Q. Mr Camara, no-one is expecting you to remember that. I am
14:54:01 just trying to find out for each of these occasions what you were given the money for, do you follow?
A. Yes, it was on that occasion they gave me the money.
Q. Box 6, please?
A. Yes, I see box 6.

Q. Four days later, on 5 March 2007, Mr Haddad gave you 100 US dollars for assistance rendered in the form of information. Do you see that?
A. Yes, yes, I see that.
14:54:49 Q. Pausing there. In other words, you were paid money by the investigators to give them information, do you agree?
A. It is an assistance. It was not a payment. You are using payment. It was not a payment.
Q. Forget the word I used. You were given $100 for giving the
14:55:23 investigators information, weren't you?
A. Yes, yes, they gave it to me because of that. For that.
Q. So, why was it that you told this Court on Monday of this week that you were never paid for giving information to the investigators?
14:55:53 A. I told you not to say that they have paid me. They didn't pay me. It was - it was for assistance. It was not a payment. Don't say that they paid me.
Q. What did they do with the 100 United States dollars on 5 March? How was it - how did it end up in your hands?
14:56:27 A. I am a chief of family. I have wives and kids. I am a married man and I have a family. I have problems.
Q. Mr Camara, I don't think you are understanding. How did the one pounds get from Mr Haddad's hand into your hand?
MR WERNER: US dollars, your Honours.
14:56:49 PRESIDING JUDGE: It is actually dollars [microphone not activated].
MR MUNYARD: I may have slip --
PRESIDING JUDGE: A slip of the tongue, Mr Munyard. You said pounds.

MR MUNYARD: I am so sorry.

PRESIDING JUDGE: Don't worry about it.

THE WITNESS: Yes, he gave me the money.

MR MUNYARD: Had it been in pounds it would have been worth twice as much of course:

14:57:08

Q. He gave you the money. And we know from the entry that he has made on that form that he gave it to you for giving them information, yes? I don't know if that was --

A. Indeed. Indeed, that's what is written.

14:57:41

Q. And that's right, isn't it? You were paid 100 United States dollars for providing assistance to the interviewers in the form of information that you gave to them?

A. I was not paid. I told you please - I have asked you to stop saying that I was paid.

14:58:05

Q. Let's use the word "given"?

A. I was not paid. They helped. It was an assistance.

Q. You were given 100 United States dollars for the information that you gave them. Do you agree with that?

A. Yes, I agree with that.

14:58:22

Q. All right. I will try to stick to the expression "given". Now did you give them information each time you were given $100?

A. No, no.

Q. Were you given $100 on 5 March because you gave them information that day?

14:59:01

A. Yes. I already said yes. I said yes. They gave me assistance.

Q. No, with respect, you gave them assistance. That's what this box means. "Assistance rendered, information" means you gave them assistance in the form of information?

A. Yes, me too, I answered to their questions. That is why I am using the term "assistance".
Q. I don't think you're going to get any answers from that side of the Courtroom, Mr Camara, so don't keep looking over there. Look towards the judges, please. Now let us go to box 7.
THE INTERPRETER: Sorry, can the witness repeat?
PRESIDING JUDGE: Mr Witness, the interpreter didn't catch what you said. Can you repeat it, please.
THE WITNESS: I am not looking at a particular person. I am looking in the room, in the Courtroom.
MR MUNYARD:
Q. Look at the page now, please, box 7. Four days later on Friday 9 March Mr Haddad gave you 50 United States dollars?
A. Yes, indeed.
Q. For assistance rendered by you to them. Do you agree?
A. Yes, I do agree.
Q. And it was in order to reimburse you for your meals, your transportation, your telephone calls and then something called assistance, this time assistance from them to you?
A. Yes.
Q. Do you know what their assistance to you was? How much of the $50 amounted to assistance? If you don't know, just say so?
A. It is exactly what is written there.
Q. Box number 8, please. Six days after that, on 15 March, Mr Haddad gave you another 100 United States dollars. The reason --
A. Yes, that's true.
Q. The reason for it is the assistance rendered by you to them and the money is to cover your transport, your loss of wages and the information that you have given them. Transport we know

about - sorry?
A. Yes.
Q. Transport we know about. You told us yesterday that you had not been in work I think from the time you got back from
15:02:57 Liberia in 2003. So what's lost wages here?
A. Yes, yes, indeed, I was not working.
Q. So you didn't have any loss of wages for which you had to be compensated in March of last year?
A. Why don't you ask Haddad for that what he means by loss of
15:03:33 wages? He would explain it to you. What I know is that they gave me assistance and they made me sign the receipt. They asked me to sign and I signed. And then I have seen on the paper - I have seen the lost wages written there, transport, loss of wages, information. That I have seen. I have seen that on the paper.
15:04:04 I can't say that I haven't seen it.
Q. Did you tell them that you had lost earnings in coming to see them at some point in March of 2007?
A. No, no, I don't - I didn't - I didn't go there for that. I'm a cultivator.
15:04:40 Q. We know that you gave them more information that day because it's recorded there. When you gave them information they always wrote it down, you told us earlier, and so can we assume that they wrote down what you told them on 15 March 2007?
A. Yes, that's what they have written down.
15:05:13 Q. Box 9, please, and I think Madam Court Officer will have to move the page on the screen. We are now on the third page of this document. Wednesday 18 April last year. This is a day when we do have interview notes for, unlike the previous date we have just been looking at, 15 March. On 18 April you were paid 100

United States dollars again and the reason you were paid that money was because you had given them assistance in locating people and in transportation and communication?

A. Yes, yes.

15:06:15 Q. It doesn't actually say there that you were given the money for information, does it?

A. Yes, indeed. Indeed. It's not written there.

Q. Although we know that you did give them information that day because for that particular day we do have interview notes?

15:06:45 A. Yes, it's possible.

Q. Box 10, please. On 24 May you were paid 57.69 United States dollars. This was to cover family assistance to you?

A. Yes.

Q. The reason, what you had done for them, is a number 1,500.

15:07:29 Does that make any sense to you, the 1,500?

A. No, I don't know. They are the ones who know what it means. I don't know what it means.

Q. Box 11, the same day, you are given 38.46 United States dollars, this time for family assistance and transport and the

15:08:04 reason given there is 1,000 and I don't suppose that the 1,000 means anything to you in that box, does it, Mr Camara?

A. That you are talking about I don't - I really don't know, but maybe - I don't know what they have written. I am not used to what they are writing. I don't know their terms. I don't

15:08:42 know what they have written there.

Q. Yes, don't worry about that. I don't claim to know what it means either. But on that day, 24 May, you were given close to 100 United States dollars to cover family assistance and transport and we - just pause for a moment. We know that you

were interviewed by the investigators on 23, 24 and 28 May?
A. No, this was - I didn't say that all these things - occasions were for interviews. I didn't say that. It was not for interviews.
15:09:41 Q. Did you take your family with you when you went to see them in late May last year, or is this simply money that they gave you because you wanted it for your family?
A. No, that was not the case.
Q. No, you didn't take your family with you?
15:10:09 A. No.
Q. So they gave you this money in order for you to spend it on your family?
A. They knew my conditions. They know that I had a family. I have wives, I have kids. They knew my conditions, so they had
15:10:34 asked me about my conditions.
Q. Box 12, please. On Tuesday 12 June you were given another 100 United States dollars, no reason was given, but it was to cover family assistance and your telephone calls?
A. Yes, it was assistance indeed. They have been helping me.
15:11:07 Q. Do you know if you gave them any information in June of last year?
A. No, no, I don't remember. I don't remember having given them any information on that date.
MR MUNYARD: Madam Court Officer, could you turn over the
15:11:28 page, please, and we will look at box 13:
Q. Two days later on 14 June last year you were given 100 United States dollars again also for family assistance?
A. These people, they usually - that's usually what they write when they gave me the assistance, but I don't remember each and

every occasion. They have helped me, but I can't remember each and every occasion.

Q. Box 14, please. Six days later on 20 June Mr Morris paid you 7.88 United States dollars reimbursing you for the cost of a meal or meals?

15:12:32

A. Yes, it's possible.

Q. And the assistance you had given them is recorded as a number 205 and again, Mr Camara, I am not asking you to comment on that. Now 7.88 United states dollars would buy an awful lot of food in The Gambia, wouldn't it?

15:13:00

A. The part you have just read to me, if it's true - if it's Haddad who has written this or Morris or John, it's true then.

Q. I am not suggesting it's not true. I just want to ask you can you remember were you given this amount of money, $7.88, or was a meal bought for you that cost 7.88 US dollars?

15:13:42

A. $7 would not be too - I mean a lot of meal, because at that time already one dollars - one dollar would be - would amount to 18/19 Dalasi, so that was not a big amount. I use - what I spend for my family daily is far more than that.

Q. If you had a meal with Mr Morris and/or with Mr Berry that would mean that you had gone to see them, wouldn't it?

15:14:27

A. Yes.

Q. And when you went to see them to have a meal, you would usually give them information, wouldn't you?

A. No.

15:14:53

Q. Usually. Not always, but usually you would give them information, wouldn't you?

A. Sometimes, yes.

Q. Most of the time, yes?

A. No.
Q. Mr Camara, you weren't under the illusion that these men were your personal social friends, were you?
A. Yeah, we knew each other and when you know somebody and you
15:15:43 come to have this type of meetings I will - I can say that I know them.
Q. You do appreciate, don't you, that the reason that these men were spending money on meals for you was because they wanted to get information out of you?
15:16:14 A. No, no, because it's not on every occasion that they would ask me for informations.
Q. I have accepted that, but most of the time they would ask you for information, wouldn't they?
A. No. I said no.
15:16:34 Q. That was the sole purpose of their continuing to see you to get more and more information out of you, wasn't it?
A. No, I said no.
Q. Five days later on 25 June Mr Morris gave you $42.31 in US currency?
15:17:11 A. Yes.
Q. To cover your transportation and family assistance?
A. Yes.
Q. So within the space of eleven days you had been given $142 for family assistance and transportation and another nearly $8
15:17:54 for a meal. Are you saying --
A. It's possible.
Q. Well, it's there. Are you saying that you didn't give them any information at all over that period?
A. No.

Q. Let us just clarify what you mean by no. Are you saying that you gave them no information during that period, or are you saying that you might have given them information during that period?

15:18:36 A. When I give them information they write it down. When I give them information indeed they do write it down.

Q. Mr Camara, they don't. Would you go back, please, to box 9. We know that on 18 April 2007 you were interviewed and you gave them information and you were given on that day 100 United

15:19:13 States dollars for your assistance in locating people and your transportation and communication costs. They didn't write down information then, did they?

A. Yes, it's written there.

Q. Yes, but where is the word "information" written in box 9?

15:19:44 A. No, not in those terms. I haven't seen that in those terms.

Q. Box 16, please. On 30 July last year Mr Morris gave you 145.83 US dollars and the reason for that was investigations, interviews and to cover the costs of your transportation and your

15:20:19 phone calls. Now we know that you were interviewed five days before that on 25 July. So this money was clearly given to you partly for the information you gave them, wasn't it, and partly for your expenses?

A. Yes, that's what he wrote - he wrote down. That's why he

15:20:53 gave me the money.

Q. Box 17, please. September 26, 2007, this time somebody else, a Mr Swart or Miss Swart for all I know gave you 200 United States dollars for 100 dollars for security for October, in other words the month that had not yet arrived, and 100 dollars for the

assistance that you rendered to them. What assistance did you render to them on or before 26 September 2007?
A. I don't remember that meeting with Swart.
Q. That meeting with who?
15:21:57 A. With Swart. Who is Mr Swart? Can you tell me who is Mr Swart?
Q. I was hoping you would tell us who Mr Swart is. Whoever they are, they were being very generous to you in September last year, weren't they, giving or authorising 200 United States
15:22:19 dollars to you. And do you know what the assistance was that you had rendered to them to justify the giving of 100 dollars out of that 200?
A. If you give me the name, because I don't remember the name.
Q. It may be that it was simply authorised by this person, I
15:22:53 don't know. All I am concerned about is do you agree that you got 200 US dollars on 26 September for a combination of assistance that you gave them and something to do with security the following month, October?
A. Yes, yes, I do remember having received 200 US dollars.
15:23:27 Q. Thank you. Do you know what the security aspect of it refers to? It says, "Security October". Can you help us at all with what that means?
A. I don't actually know what it means. And then the assistance also I really don't know. This is their way of
15:23:59 putting things.
Q. Yes, let me just ask you a little bit more about security. Had you had to pay for any security for yourself, your family, or your house?
A. When they give me assistance they write down "assistance".

Q. This was the largest single amount of money that you were ever given, 200 dollars. Can you remember the occasion? It's not that long ago. It is only late last September. Can you remember getting $200 in your hand, if that's how it was given to
15:24:57 you?
A. Maybe for you 200 is a lot of money, but for me it is not because I have already had much more - I have already had much more in my hands.
Q. That's very interesting, Mr Camara, but it doesn't go
15:25:24 anywhere near answering the question I asked you. What do you recall of the circumstances in which you were paid $200. Let me withdraw that word. What were the circumstances in which you were given $200 on 26 September 2007?
A. They know why they gave me the money and they wrote it
15:26:08 down.
Q. Do you remember being given 200 US dollars in your hand just a few months ago at the end of September last year?
A. I said that it's possible. I don't put - I didn't put things on record. I told you - I told you that I don't remember
15:26:33 exactly. I didn't even know that somebody was going to ask me questions about these questions.
Q. How often does somebody walk up to you and give you 200 United States dollars?
A. Before I came here I found people - I have some teachers
15:27:01 outside, they gave me amounts much more important than 200 US. I always get money, you know, much more than this amount. So for me that is not a big issue.
Q. Well, you are obviously in a very lucky position, Mr Camara, but I want to go back, please, to these investigators.

Just let me finish the question. Somebody has recorded here that on 26 September last year you were paid 200 US dollars. Can you remember if that was put into your hand?

A. I am telling you that this is not a big issue. I have got much more than 200. People, brothers have given me much more than this.

PRESIDING JUDGE: Mr Witness, the question is can you remember if that amount of money was put into your hand.

THE WITNESS: No, I don't remember. I don't remember. It's possible, but I didn't put it on record. It's possible, because they have given me assistance on many occasions. I didn't say that it didn't happen. It's quite possible.

MR MUNYARD:

Q. Do you have a bank account, Mr Camara?

A. No.

Q. So are you able to help us with the security aspect of this money. Did you yourself have to spend any money on your personal security or that of your family, or your home, or homes, in October of last year?

A. Unless you ask the person named Swart, you ask him that question. What I know is what I have told you already. They usually gave me assistance and they gave me a receipt to sign and I signed, because normally they were supposed to report to their supervisors when they gave me an amount of money.

Q. I am taking that as the answer no to my last question and I am going to move you on to the box 18. The very next day Mr Morris reimbursed you 43.18 United States dollars for transport?

A. That's possible.

Q. Can you remember what you would have spent 43 United States dollars on for transport?
A. I didn't put things on record. I didn't note those informations. Really I don't remember on which occasion I was
15:30:59 given a specific amount of money. I don't remember all of the different occasions. I know that they used to write it down, so what they have written, it's true. It is not a lie.
Q. Boxes 19 and 20, please, the same page. Box 19 on 5 November and box 20 on 4 December you were paid 100 dollars on
15:31:41 each of those dates for something entitled "Security". Can we assume that you don't know what that security refers to?
A. I can't tell you what it means. You should maybe ask those people who gave me the money. I think they would be in a better position to explain why they gave me that money, but I am not in
15:32:20 a position to explain.
Q. You took the money on these two occasions. Did you spend it on your own security?
A. The amount they gave me, you mean?
Q. Yes.
15:32:45 A. They have given me the money and they wrote down the reason, but the way I use the money they gave me, that was left up to me.
Q. I don't want to be unfair to you. Were you actually given 100 United States dollars in your hand at the beginning of
15:33:07 November and again at the beginning of December?
A. When they came to The Gambia, I was the one who took them to the hotel and they want to go to what is called a cultural area - cultural area and so I had to go there with them. Maybe that's why they have written "Security", because you know they

asked me to go with them, to accompany them. I am the one who accompanied them. All that might be included in "Security".

MR MUNYARD: I'm sorry, I don't know if you have finished the interpretation. Madam Interpreter, had you finished interpreting?

15:34:14

THE INTERPRETER: Yes, I had.

MR MUNYARD:

Q. Are you telling us, Mr Camara, that you were paid in September 100 United States dollars to provide security cover for the Special Court investigators when they came in October?

15:34:31

A. I didn't say that, exactly that. I know that they gave me that assistance as a kind of compensation to help - to help me. I am not the one who wrote "security".

Q. Is this right: That you have no idea what security means on these receipts?

15:35:06

A. No.

Q. And I think for the sake of clarification that means you are agreeing with me that you have no idea what it means?

A. No, I don't know.

Q. If they are paying you this money as security offered by you to them while they are going around cultural areas, what you are really saying is that you were acting as their bodyguard while they went touring as tourists. That's what you're suggesting, isn't it?

15:35:28

15:36:00

A. They just asked me to go around, to go with them.

Q. As their friend, or as their bodyguard, or possibly as both?

A. It is just because we know each other. That's how I perceive it. You're the one saying that I was the bodyguard, but

for me it is just a matter of relations - personal relations.
Q. Thank you. So you have removed the idea that you're being paid security money to show them round as tourists?
A. I didn't tell you that.
15:36:55 MR MUNYARD: Madam Court Officer, can we now turn, please, to the final page and look at box 21 next, Mr Camara.
Q. Do you see that on the screen in front of you?
A. Yes, I see the page.
Q. On 7 January this year you were paid 100 United States
15:37:33 dollars as security for the month of January 2008 and under "Category" it says "Property". Was your property given security measures?
A. No, no, no, I don't remember that. No, no, that's not the case.
15:38:09 Q. So, as far as --
A. My orchard was not fenced and so maybe it was an assistance in that they gave me some kind of assistance for my orchard to have it fenced. I remember talking to them about that.
Q. Are you saying that they gave you the money and you spent
15:38:45 it on fencing your orchard?
A. Yes, yes, yes, to - they wanted to help me to fence my orchard, yes, so that I could protect my property. Yes, I remember having told them that and so they gave me - they just helped me for that.
15:39:24 Q. And quite by chance it happened to cost 100 US dollars to put a fence round your orchard, did it?
A. Yes, that's why they helped me.
Q. And when did you pay this 100 dollars to fence your orchard?

A. That's what's so. That's why they have written that, because I remember having told them that.
Q. Have you fenced the orchard, Mr Camara, or haven't you?
A. I have started it before I came to The Hague.
15:40:16 Q. The reason given in box 21 is "Security for the month of January 2008". It does not say "Security for the orchard"?
A. I'm telling you what I remember. What I do remember, that's what I'm telling you. It is possible. They are the ones who know why they wrote - they put that down, why they put
15:40:46 "Security for the month of January".
Q. On 4 December you were paid by coincidence another 100 United States dollars for security. What did you use that 100 dollars for?
A. Please don't deal with my personal problems. What my
15:41:22 family problems and my personal problems have nothing to do with this issue.
Q. Mr Camara --
A. I'm an adult.
Q. The last thing I want to do is to pry into your personal
15:41:33 problems. What I do want from you though is truthful answers about these large amount am of the money, $100 at a time given, you to you in November, December and January for security and I want you to tell these judges why public money was given to you under the heading of "Security" to this amount?
15:42:17 THE INTERPRETER: Can he repeat it, please?
JUDGE SEBUTINDE: Mr Witness, can you please repeat your answer for the interpreter slowly.
THE WITNESS: If the money belongs to the public - to the state, it is not the whole state which is helping the Special

Court. I am the one helping the Special Court. So in that case any assistance I render in that framework - I mean, it is as a compensation.

MR MUNYARD:

15:43:06 Q. Go back to 7 January, Monday 7 January 2008. Where were you then?

A. I'm in the Gambia.

Q. You were in The Gambia. Do you remember did somebody hand you 100 US dollars on that day?

15:43:45 A. Yes. I said yes. I told you yes.

Q. You actually have a memory of being given the $100 at the beginning of January?

A. Yes, I already answered.

Q. Who gave it to you? Who was it who handed you the money?

15:44:12 A. The name is written at the bottom.

Q. What is the name?

A. I don't know the person, but I know that he works for the Special Court. He was introduced to me.

Q. The way it is printed on the page makes it difficult to

15:44:41 know which of the initial or initials, but what we have on the page is "Approved by RDIACK". Assuming that is somebody called R Diack, is that a name that you know?

A. No, I don't know the name. I really didn't, because was my first time to see that person.

15:45:11 Q. Don't worry about the name. Where were you when you were given this money?

A. I was in The Gambia on 7 January.

Q. I'm sorry, I should have been more specific. Were you at your home or were you at some other place in The Gambia? I don't

need to know where either of them are?
A. I was in The Gambia. Where else would I be?
Q. Were you at your home or at some other place?
A. [Inaudible] telling me. These people have given me the
15:46:04 assistance, yes. They have given me an assistance. The person
who did this, I don't know that person. I just know that that
person works for the Special Court. I didn't ask for anything.
I told them that I wanted to fence my orchard, but the receipt
itself, I haven't seen the receipt.
15:46:45 Q. Did the person come to your property, your home, to give
you the money, or did you have to travel somewhere to get it from
them?
A. I went to receive the money.
Q. Did you incur travel expenses in going to receive the
15:47:12 money?
A. Yes.
Q. Were you reimbursed for your travel expenses?
A. No, it was a kind - it was an assistance I was receiving.
Q. Assistance in West Africa means financial support, doesn't
15:47:37 it?
A. Yes.
Q. Thank you. We can see here at the bottom of this - well,
below box 21 we can see the total that you are said to have
received according to these receipts and the total is 1,506.18
15:48:07 United States dollars. If you turn back - again Madam Court
Officer. If you turn back to the first page this total only
relates to money you were given on or after 27 February 2007 and
so we have to add to the total $100 for your interview in October
2006 and $100 for your interview in November 2006, don't we?

A. Yes, I wouldn't know the total.
Q. We have to add in those two figures, don't we, because they are not shown in this document which only starts in February of 2007?
15:49:22 A. Which days?
Q. October and November 2006 when you were interviewed and gave information to the investigators and you told us that you were paid for doing that?
A. I didn't tell you that I was paid for giving information.
15:49:43 I didn't tell you that. And I told you - I asked you to stop saying that I was paid.
Q. I'm using an apparently emotive term again and let me change it. You were given $100 each time for those two earlier interviews for which we do not have financial records. That is
15:50:09 correct, isn't it?
A. If it is not written down, that means that they didn't give it to me. If it is written down there in the statement then it is true. Whatever amount they gave me they wrote it down.
Q. Mr Camara, you will not know this, but the entry in box 4,
15:50:34 $100 on Tuesday 27 February 2007 was not disclosed to us. Box 4 was empty until we got a revised version of this document just a matter of a few days ago. So the fact that there is nothing in a box doesn't mean that you were not paid - sorry, doesn't mean that you were not given money. Now you told this Court earlier,
15:51:03 did you not, that when you were interviewed in 2006 you were given money for the assistance you provided to the investigators?
A. Everything, if they haven't written it down, I haven't got the money. Whatever I got from them they wrote it down. Whenever they gave me money they wrote it down. I don't remember

having received money from them without them writing it down. That's what I remember.

Q. If I had been asking you these questions three weeks ago I wouldn't have had anything in box 4 to ask you about and so it doesn't follow, does it, that an empty box means that you weren't paid?

A. I told you that whatever I received they wrote it. It was written down and I remember that whenever I got money they asked me to sign a receipt.

15:52:21 Q. How long have you now been in Holland, the Netherlands?

A. I came here on last month I think in January, around 17 January. If my memory serves me right it must be around 16/17 January that I arrived in The Hague.

Q. And have you finally been to the Amsterdam?

15:53:01 PRESIDING JUDGE: What is the relevance of this question, Mr Munyard?

MR MUNYARD:

Q. You told the Court this morning that when you left The Gambia in 1986 your intention was to go to Amsterdam?

15:53:21 A. I didn't tell you that. I didn't come. This is my first time to come to the Netherlands.

JUDGE SEBUTINDE: Mr Munyard, I do recall the witness using or referring to the word Amsterdam as an example, that if you are travelling from somewhere to Amsterdam, maybe from The Hague to

15:53:44 Amsterdam, this is what you would do, so and so, but he didn't literally mean that he went to Amsterdam.

MR MUNYARD: Your Honour --

JUDGE SEBUTINDE: That's what I recall.

MR MUNYARD: Before I reply I think the witness wants to

say something to you.

THE WITNESS: Yes, I remember. It's the judge who is reminding me now what I said. You had put a question to me. You asked me whether I left Gambia to improve my financial situation. I said that I didn't leave with the intention of going to fight - to join the SOFA and I gave you an example. I said for example you can take a car in The Hague to go to Amsterdam. You might have an accident on your way even if it was not your intention at the beginning. That is how Amsterdam came in my statement. Now I remember. I never told you that I wanted to go to Amsterdam.

MR MUNYARD:

Q. Let's go back to the money, please. Have you spent the 1,700 odd dollars that you received?

A. Yes, indeed.

Q. Have you received any money since Monday 7 January?

A. No, I haven't received anything yet.

Q. You haven't received anything yet, but does that mean you're expecting to receive more money for having given further assistance to the Prosecution in this case, Mr Camara?

A. Since they went as the first - at the beginning they told me that all this matter was on a voluntary basis, so if I receive money from them it will be a kind of surprise.

Q. But are you expecting that pleasant surprise once you have finished giving your evidence?

A. No, not at all. I am not expecting anything.

Q. Is that an honest answer, Mr Camara?

A. Yeah, that's quite true.

MR MUNYARD: Madam President, I have no further questions. Thank you.

PRESIDING JUDGE: Thank you, Mr Munyard. Any re-examination, Mr Werner?

MS HOLLIS: Madam President, excuse me for rising instead of my colleague, but there is something that we need to put on the record relating to the disclosures about reimbursements for this witness, because when the matter came up in cross-examination I sent an email to Freetown asking them if payments had been missed and I received a response and the reason that I am giving this to you is that, as a senior trial attorney, this is my responsibility. So I wanted to let you know.

And here is the information that I received: On 7 October 2006 there was a disbursement made to this witness of $14.81. The reason was given as transport and communication and meal. The category was transport. I apologise for not having printed this out, but we have no print capability of our own. On 13 October 20 --

MS MUZIGO-MORRISON: Excuse me, your Honour, if Ms Hollis forwards the email to me I can print it out for the Court.

MS HOLLIS: Okay, maybe I will forward it and as you're printing it I will be providing the information.

MS MUZIGO: Thank you.

MS HOLLIS: Let me provide the information and then I will forward it for you. On 13 October 2006 this witness was provided the amount 22.22 United States dollars. The reason given was transport and communication, the category was transport.

On 3 November 2006 the witness was provided $18.51. The reason given was reimbursement for meal, transport and communication and it was listed as transport/lost wages.

On 10 November 2006 the witness was given the amount of 100

US dollars. The reason given was potential witness location, the category was information.

On 9 February 2007 the witness was given $23.07, that is US dollars. The reason given was transport and communication. The 16:00:37 category was transport.

On 10 February 2007 the witness was provided 100 US dollars. The reason given was cost for transportation and communication in locating potential witnesses. The category was information.

16:01:09 On 19 February 2007 the witness was given 100 US dollars. The reason given was locating of potential witnesses. The category was information.

The next entry is 27 February 2000 entry that Defence counsel has spoken of and in that regard the updated disbursement 16:01:45 record that Defence was given did include the 27 February 2007. It was at the top of the next page. The amount that was corrected was the total amount.

Now I have enquired, because obviously this is an issue of concern - I have enquired as to why these payments were not made. 16:02:07 It has been indicated to me that it was some issue relating to entries in the computer, but I have requested that a double and triple check be made of disbursements to all upcoming witnesses and for all witnesses who have already testified and should there be changes in that information for upcoming witnesses we will of 16:02:34 course provide it to the Defence. If there are changes in information for witnesses who have already testified, that information will be provided to the Court and to the Defence.

PRESIDING JUDGE: Thank you for that information, Ms Hollis.

MR MUNYARD: Madam President, can I just say this: My learned friend might be quite right in saying that the 27 February amount was disclosed to us. The fact is if it was then it was in box 5 and box 4 was empty. I have actually got both of the pages with me. I am not taking a point on it. I just want the Court to understand that until very recently boxes 1 to 4 were blank.

Can I also say that in the light of what Ms Hollis has just told us then obviously the total that appears below box 21 is boosted by more than $300, not just by $200.

MS HOLLIS: And if I may, your Honour, what I have been sent does reflect the new total and the new total is reflected as $1,984.79 and that is US dollars.

PRESIDING JUDGE: Mr Munyard, that has now been disclosed to you. As Ms Hollis correctly says, that's a duty of the Prosecution. This information was not before you when you were cross-examining. Have you any application to make?

MR MUNYARD: I am grateful for the opportunity, but I don't propose to labour these points any further than I have done.

PRESIDING JUDGE: Thank you for that indication. In the light of that please proceed with your re-examination, if any, Mr Werner.

MR WERNER: Thank you, Madam President, your Honours.

RE-EXAMINATION BY MR WERNER:

Q. Good afternoon, Mr Witness.

A. Good afternoon.

Q. Mr Witness, today my learned friend the Defence counsel directed your attention to the statement behind tab 3 and in particular he spent some time with you on one page which is

I N D E X

WITNESSES FOR THE PROSECUTION:	
TF1-548	3712
CROSS-EXAMINATION BY MR MUNYARD	3712
RE-EXAMINATION BY MR WERNER	3811

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

THURSDAY, 14 FEBRUARY 2008
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr Simon Meisenberg Ms Sidney Thompson Ms Carolyn Buff
For the Registry:	Ms Rosette Muzigo-Morrison Ms Rachel Irura
For the Prosecution:	Ms Brenda J Hollis Mr Mohamed A Bangura Ms Shyamala Alagendra Ms Maja Dimitrova Ms Julia Baly
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Mr Terry Munyard Mr Morris Anyah

name of the street.

PRESIDING JUDGE: Pause, Mr Witness.

MR BANGURA:

Q. Mr Witness, you talked about a street in your area. What's the name of that street, please?

16:16:34

A. Bus stop. It was an old bus stop closer to Kissy Mental Home, in that area.

Q. And what happened there?

A. So all of them came and parked the vehicles in which they had come.

16:16:56

Q. Can you remember how many of them?

A. They were more than 40.

Q. And did anything happen when they arrived there?

A. Yes, sir. He went and met us. When he met us, where they had killed the people and where they had amputated my arms --

16:17:24

Q. Mr Witness, who are you referring to when you say "he"? Please give the name?

A. Rambo met us there along with the people he had come with. When he met us there, the commando and the others, all of them saluted him. After they had saluted him Rambo asked the commando, he said, "What are you doing here?" He said, "Why are you killing these people?" He said, "Why are you chopping off these people's arms?" He said, "Is that why you came here?" He said, "I am going to punish you." Then he said, "Release these people, release these remaining people." He told him - at that time he was holding to my one hand, my one arm, that is Rambo, he still held my one arm. He told the commando who had chopped off our arms, whom he had said he would punish, he said, "All of you follow me to the base." We went up there. Look at the church

16:17:54

16:18:36

and there was - look at the Kissy Mental Home. It was in that area that I was. So when we arrived there we met a lot of guns. When we arrived he told them to stand there, that is he told the commando and the other rebels who were there, he put them outside, he told them to stand there. He asked for one Captain Blood. I saw the Pa come out. He asked him, "Where is the doctors?"

THE INTERPRETER: Sorry, correction, interpreter, "Where are the doctors?"

THE WITNESS: And the Pa told him that they had gone out. So Rambo told Captain Blood that, "Have you seen what this man did to these people?" He said, "I was going to punish him." He said, "That was not why he came." Then he took out 100,000, that is Rambo took out 100,000 and placed it in my pocket. He told me to endure, that was what God ordained. Then he took - he asked one rebel to accompany me. So the rebel accompanied me up to Taylor Street and he returned. At that time I was feeling dizzy. I was not seeing properly and I fell down close to the bathroom. That was where I laid. In the morning of Friday I tried to get to Helena.

MR BANGURA: Your Honours, Helena is H-E-L-E-N-A:

Q. Yes?

A. So the ECOMOG met me there with their armoured car. They put me in, took me to Ferry Junction. After Ferry Junction they took me to Connaught Hospital. I was there at Connaught Hospital for 26 days, but when we went there there were no medicines there.

Q. At Connaught Hospital - your Honours, Connaught is C-O-N-N-A-U-G-H-T. At Connaught Hospital were you the only

Exhibit P-68D admitted	3829
Exhibit P-68E admitted	3829
Exhibit P-68F admitted	3829
Exhibit P-68G admitted	3829
Exhibit P-68H admitted	3829
Exhibit P-68I admitted	3829
Exhibit P-68J admitted	3830
Exhibit P-69 admitted	3830
Exhibit P-70 admitted	3830
Exhibit D-4 admitted	3831
Exhibit D-5A admitted	3834
Exhibit D-5B admitted	3834
Exhibit D-6 admitted	3835
Exhibit D-7 admitted	3836
Exhibit D-8 admitted	3836
Exhibit D-9 admitted	3836
Exhibit D-10 admitted	3837
Exhibit P-71 admitted	3890
Exhibit P-72 admitted	3890

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

FRIDAY, 15 FEBRUARY 2008
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr Simon Meisenberg Ms Doreen Kiggundu
For the Registry:	Ms Rachel Irura
For the Prosecution:	Mr Mohamed A Bangura Mr Alain Werner Ms Shyamala Alagendra Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Terry Munyard Mr Morris Anyah

football training at 7th Battalion, Freetown. When I saw him, then I went to him and I greeted him. When I greeted him then I told my guys with whom I had gone there and I said, "This was the guy who amputated my arms". When I told him that, his colleague whom I met at the gate he did not say anything in response. He entered the compound. Then I went and boarded the vehicle and we went, but since then I have not seen him again.

Q. Now, you said 7th Battalion was the place where you saw this person. Where is the 7th Battalion?

09:36:41 A. It is in Freetown at the Western Area.

Q. Was this - is this a particular place where people lived?

A. Yes, it is a military barracks.

Q. Now, do you recall when you saw this person at the 7th Battalion?

09:37:23 A. Well, I cannot remember the day now.

Q. Was it very long after this incident had occurred?

A. Yes, it even took nearly up to one year.

Q. Now earlier in your evidence, Mr Witness, you said that when Rambo came to the scene where you had been amputated he was

09:38:02 - sorry, when he took you to his base he said he was going to punish the people who had amputated your hands. Is that correct?

A. Yes, sir.

Q. Do you know whether these people were punished?

A. No.

09:38:28 MR MUNYARD: How would he know?

THE WITNESS: I don't know.

PRESIDING JUDGE: Well, I will allow the question in view of the fact that something could have happened in his presence and he has answered that he didn't know.

I N D E X

WITNESSES FOR THE PROSECUTION:

TF1-101	3933
EXAMINATION-IN-CHIEF BY MR BANGURA	3933
TF1-192	3958
EXAMINATION-IN-CHIEF BY MS ALAGENDRA	3958

EXHIBITS:

Exhibit P-73 admitted	3949

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

THURSDAY, 21 FEBRUARY 2008
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr Simon Meisenberg Ms Sidney Thompson
For the Registry:	Ms Rosette Muzigo-Morrison Ms Rachel Irura
For the Prosecution:	Ms Brenda J Hollis Mr Christopher Santora Ms Julia Baly Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Terry Munyard Mr Morris Anyah
For the Office of the Principal Defender:	Mr Silas Chekera

A. Yes, the language by itself is a code in terms of English or Krio. When you are speaking Mende on a radio communication it is a code by itself. It is a code in the sense that you may not understand Mende because you are not a Mende.

14:56:31 Q. Now, the time that Foday Sankoh left for Ivory Coast you said he went to several places. Is that correct?

A. Yes.

Q. Do you know where he ended up?

A. Yes.

14:56:50 Q. Where?

A. His last trip was when he was en route to Libya and he was arrested in Nigeria.

Q. Now, can you - when Foday Sankoh was arrested in Nigeria, how did you come to learn this?

14:57:15 A. Foday Sankoh made a trip from Ivory Coast along with Gibril Massaquoi, Martin Moinama, an operator, with the intention of going to Libya, and he was arrested in Nigeria at the airport. Gibril Massaquoi escaped and he was in Nigeria along with Martin Moinama. While in Nigeria he used to visit Mr Sankoh.

14:57:57 Q. Who is "he"? Who is "he"?

A. Martin Moinama used to visit Mr Sankoh to get information from Mr Sankoh and then transmit that information to Liberia and from Liberia we received all necessary communication into Sierra Leone. To set a bright and clear example, Mr Sankoh was

14:58:34 imprisoned in Nigeria. When he promoted Sam Bockarie, Isaac Mongor, Morris Kallon, Issa Sesay, Peter Vandi and many more saw communication that they should cooperate until his release. That particular communication was received from Martin Moinama in a telephone conversation from Nigeria in Liberia and from Liberia

I N D E X

WITNESSES FOR THE PROSECUTION:

TF1-275 4409

EXAMINATION-IN-CHIEF BY MR SANTORA 4409

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

FRIDAY, 22 FEBRUARY 2008
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr Simon Meisenberg Ms Sidney Thompson
For the Registry:	Ms Rachel Irura
For the Prosecution:	Mr Christopher Santora Ms Julia Baly Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Terry Munyard Mr Morris Anyah

and Gullit when Gullit reported to Sam Bockarie that the troops in Freetown were undergoing serious threat and pressure from ECOMOG. Sam Bockarie in return verbally instructed Gullit and all the other commanders at the various positions in Freetown to
11:16:57 ensure that they make themselves fearful so that ECOMOG will not overrun the positions which they occupy in Freetown. He said in Krio, "Gullit, if it causes you to kill all the civilians, burn all the houses where you are, just so that you will not leave Freetown, you should go ahead and make sure that you maintain
11:17:36 where you were. You should chase whosoever would want to chase you. You know that Freetown is surrounded with water. You should chase them into the water. Burn any house. You should kill and make yourselves fearful. Amputate arms. The civilians, let them go to the enemy. They will know that we are on
11:18:15 something serious."

MR SANTORA: Now, Mr Witness, I am sorry to intervene, but I do want - I was going to ask your Honours if the record should reflect that the witness recited that in Krio and it was translated, I believe, by the same translator. I think if your
11:18:36 Honours want to enquire whether the translation was - in terms of the accuracy.

PRESIDING JUDGE: Mr Interpreter, did the witness speak in Krio?

THE INTERPRETER: Yes, he did.

11:18:48 PRESIDING JUDGE: And you interpreted it?

THE INTERPRETER: In English.

PRESIDING JUDGE: The witness spoke in Krio and was interpreted by the interpreter, so we will just merely note that on the record.

Q. So when Gibril Massaquoi arrived in Lunsar with other combatants, when was that?
A. It was after they had been pushed out of Freetown in 1999.
Q. One moment, Mr Witness.
11:22:04 JUDGE SEBUTINDE: Mr Santora, I don't quite understand. This Moinama, he was a radio operator but also a prosecutor?
MR SANTORA: I can have him clarify. I am just going to look at the record very quickly:
Q. Mr Witness, you said that Martin Moinama was a former radio
11:22:29 operator who travelled with Foday Sankoh to Nigeria. Then you said, "He was the one who prosecuted Foday Sankoh during his trial in Freetown." What do you mean when you say, "He was the one who prosecuted Foday Sankoh"?
A. He was a prosecution witness against Foday Sankoh during
11:22:55 his trial, during his last trial in Freetown in 1999, 1989, yes.
MR SANTORA: Your Honour, does that clarify?
Q. You said that you heard Sam Bockarie communicate to Gullit in Krio saying, "Gullit, if it causes you to kill all the civilians, burn all their houses where you are, just so that you
11:23:48 will not leave Freetown, you should go ahead and make sure that you maintain where you are. You should chase whosoever would want to chase you. You know that Freetown is surrounded with water, you should chase them into the water."
PRESIDING JUDGE: Mr Santora, it was corrected by the
11:24:10 interpreter to sea, yes.
MR SANTORA: I didn't know if I should read the corrected one:
Q. "You should chase whosoever would want to chase you. You know that Freetown is surrounded by the sea. You should chase

Q. So when you say, "I listened to the communication ..." -- "I listened when that communication was confirmed by Major CY and that such an instruction was given to them to make themselves fearful", what do you mean when you say "... that communication was confirmed by Major CY that such an instruction was given to them"?

12:08:56

A. I am trying to say that the instruction that was given by Sam Bockarie did not only stay within the top commanders, but it went down to the least person that was in Freetown in respect of the order of making themselves fearful.

12:09:25

Q. Mr Witness, after the Freetown invasion where were you based?

A. I was in Waterloo and I later moved to Makeni and back to Lunsar.

Q. When you moved back to Lunsar, what was your assignment?

12:10:06

A. I was still with Superman.

THE INTERPRETER: Your Honours, could the witness say the last bit of the statement?

PRESIDING JUDGE: Mr Witness, the interpreter requests that you repeat the last part of your answer. We have got, "I was still with Superman". What did you say after that?

12:10:27

THE WITNESS: That was where I stopped.

PRESIDING JUDGE: Please proceed with your questions, Mr Santora.

MR SANTORA: Actually, I do want to go back to one thing:

12:10:48

Q. Mr Witness, the communications you were just referring to between Major CY and Superman, how did you know about these communications?

A. I used to sit by the radio whilst Superman was

I N D E X

WITNESSES FOR THE PROSECUTION:

TF1-275	4521
EXAMINATION-IN-CHIEF BY MR SANTORA [Continued]	4522
CROSS-EXAMINATION BY MR ANYAH	4582

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

TUESDAY, 26 FEBRUARY 2008
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr William Romans Ms Sidney Thompson Ms Carolyn Buff
For the Registry:	Ms Rosette Muzigo-Morrison Ms Rachel Irura
For the Prosecution:	Ms Brenda J Hollis Mr Mohamed A Bangura Mr Nicholas Koumjian Mr Christopher Santora Ms Shyamala Alagendra Ms Julia Baly Ms Leigh Lawrie Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Mr Terry Munyard Mr Morris Anyah
For the Office of the Principal Defender:	Mr Silas Chekera

A. Yes, it was confirmed that he was executed, but the instruction was given by Sam Bockarie on the air.
Q. Was it Massaquoi who told you that, yes, Gullit - that, yes, Moinama had been executed?
10:02:46 A. Gibril Massaquoi said it and other combatants proved that he was executed based on the instruction given by Sam Bockarie.
Q. And when you met with the Office of the Prosecution in January of 2007, specifically 17 January, you told them who carried out the execution. You said it was Alhaji Conteh or
10:03:24 Black Jesus, yes?
A. Yes.
Q. He was the triggerman or the person who actually did the deed, yes?
A. Yes.
10:03:37 MR ANYAH: Madam Court Officer, if you could assist me, please. I will be referring to tab 1, page 21 from the witness's interview with the Office of the Prosecution on 17 November 2003. The ERN number on that page is 00037118 and I will start at line 17.
10:04:26 Q. Mr Lansana, you were asked the question - actually, your Honours, it might be best if I were to start from page 20 for contextual reasons and that will be the last line, line 15, and there's a question posed to you:
"Q. Who was now in charge of the communication in Kangari
10:04:58 Hills?
A. Kangari Hill?
Q. Yeah.
A. One Martin Moinama, who - Martin Moinama was in charge.
Q. And where is Martin Moinama now?

A. Really, I cannot give a specific location of Martin Moinama, but according to other information that I got, he was the one that prosecuted Mr Sankoh in 1990 - the last case that he got, that he was condemned, yeah, he was the one who do the Prosecution. So I cannot tell his whereabouts now and I have not seen him from that time."

This is what you told the Prosecution in 2003?

A. That is what is recorded on this tab.

Q. But you did not tell them that Martin Moinama was dead, true? True?

A. Yes, yes.

Q. Yes you did not tell them, correct?

A. No, no.

Q. Yes or no, did you tell them?

A. No, I did not tell them.

Q. You did not tell them that Alhaji Conteh killed Martin Moinama, true or false?

A. Yes, but I also revealed it to them that Martin was executed by Alhaji Conteh.

Q. You told them this information on 17 November 2003, is that your evidence?

A. Yes.

Q. On the day that this interview was recorded you told them that information, that's what you're telling the Court?

A. Yes.

Q. I am putting it to you that you only mentioned that Martin Moinama was killed when you spoke with them in January 2007, true or false?

A. It was in 2007, yes.

Q. So the first time you told them Alhaji Conteh or Black Jesus killed Martin Moinama was in 2007, right?
A. Yes.
Q. In 2003, however, you did not know the whereabouts of Martin Moinama, yes?
A. I never had a complete clue on the information that I gave. I mean the information was not actually put through to them that Martin was killed at that particular time.
Q. Well, let me suggest --
PRESIDING JUDGE: Mr Witness, I'm having trouble understanding that answer. The question was in 2003 did you know where Martin Moinama was.
THE WITNESS: No. It was one of the points that I based my information on that I cannot give information or continue to give information to the Special Court if they wanted me to be a witness, because Martin who had served as Prosecution witness against Mr Sankoh was killed when the troops of the RUF and the junta entered Freetown on January 6 and Martin was recaptured by those troops under Gullit's command and he was executed because he never had protection. So that was my point of contention, that I would not want to be a witness based on this experience until the security was put in place.
MR ANYAH:
Q. So your evidence to the Court is as a result of the death of Martin Moinama you were reluctant to be a Prosecution witness, is that your evidence?
A. Yes, very fine, from 2003.
Q. And when they interviewed you on 17 November 2003 when they came to this particular issue of Kangari Hills and Martin Moinama

I N D E X

WITNESSES FOR THE PROSECUTION:

TF1-275	4736
CROSS-EXAMINATION BY MR ANYAH	4736
RE-EXAMINATION BY MR SANTORA	4763

EXHIBITS:

Exhibit P-83 admitted	4777
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Exhibit P-85B admitted	4788

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

WEDNESDAY, 5 MARCH 2008
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr Simon Meisenberg Ms Doreen Kiggundu
For the Registry:	Ms Rachel Irura
For the Prosecution:	Mr Mohamed A Bangura Ms Shyamala Alagendra Ms Julia Baly Ms Kirsten Keith
For the accused Charles Ghankay Taylor:	Mr Terry Munyard Mr Morris Anyah

MS ALAGENDRA: Your Honour, the witness has just testified he went to Kenema on one night. That's the one night I'm referring to, your Honour.

MR MUNYARD: I know that, I'm asking --

10:26:01 PRESIDING JUDGE: Of the 365 in the year?

MR MUNYARD: Thank you.

MS ALAGENDRA:

Q. Witness, are you able to tell the Court when is it that you went to visit Sam Bockarie in Kenema?

10:26:16 A. Yes.

Q. When was that, witness?

A. The time, it was in 1997 August. It was the time I went there. It was only one - it was not only once. I went there more than one time.

10:26:46 Q. Witness, when you visited Sam Bockarie in August 1997 are you able to recall the other people that you might have met there?

A. Yes, I can recall some of the people I met there, those he was residing with in that house, Sam Bockarie.

10:27:13 Q. Who was the person that Sam Bockarie was residing with in the house?

A. The time I went there I saw somebody whose name was Jungle. He was at the house. I also saw one Junior Vandi, his other name is JR. That very night I was there when Mike Lamin too arrived

10:27:56 there. There were some other people who were also junior fighters. Even Sam Bockarie's wife too was there as well.

Q. Witness, you have said that you went to Kenema Town to visit Sam Bockarie more than once. On how many occasions did you meet these people that you've named?

A. Well, the other visits I made to Sam Bockarie in Kenema, the person I had not been meeting all the time at the house was Mike Lamin, but the others had been residing there together with Sam Bockarie. Even though the house was divided into apartments, Sam Bockarie residing in one apartment and even Jungle himself was residing in one of the apartments.

10:29:05

Q. Witness, who is Jungle, do you know?

A. Yes, I knew Jungle.

Q. Who was Jungle?

10:29:30

A. Jungle, I knew him as one of the fighters.

Q. Do you know where he is from?

A. Yes.

Q. Where?

A. He is from Liberia. He's a Liberian.

10:29:53

Q. And when you say fighters are you able to say which group he was a fighter for?

A. Jungle was an NPFL member. He was an NPFL fighter.

Q. How do you know Jungle?

A. I knew Jungle at Zogoda in 1995. I met him there together

10:30:28

with Foday Sankoh. When I was called by Foday Sankoh to meet him at Zogoda, there I met him and I knew him.

Q. Do you know what he was doing with Foday Sankoh in Zogoda?

A. The information I heard about him when I met him, he was one of the person, like Jungle, Foday Sankoh would send them from

10:31:15

RUF territories to Liberia to Guinea. That was what I knew about Jungle.

Q. Do you know what was the purpose that Foday Sankoh was sending Jungle to Liberia and Guinea?

A. Well, the way I understood it, he was somebody whom Foday

Sankoh would send to Liberia for us to get arms and ammunition. Then also he used to go to Guinea to get food items for the RUF. That was what I understood.

Q. What made you understand or why did you understand that Foday Sankoh was sending Jungle to Liberia for arms and ammunition?

A. The time when Foday Sankoh called me, I would sit very close to him whilst they sit to discuss some of those issues. There I was able to gather some information. He will ask Jungle about patrols he had made with other people. They would be sitting, discussing. Because myself, Foday Sankoh considered me as an experienced person so when I used to visit him I would sit very close to him. So that was the way I gathered information about the movement of Jungle.

Q. Do you know where in Liberia Jungle was getting arms and ammunition from during this time?

A. Well, that one I wouldn't say because I had not been travelling with him.

Q. Witness, you told the Court that between March and December 1998 you were based in Quiva and you said Quiva is in Kailahun District?

A. Yes.

Q. And you told the Court your assignment there was as 2nd Battalion IDU commander?

A. Yes. I was the 2nd Battalion IDU commander at Quiva.

Q. Who were you reporting to when you were in Quiva?

A. At the time I reported to the 1st Brigade IDU commander.

Q. What was his name?

A. His name was John Ngevoa.

I N D E X

WITNESSES FOR THE PROSECUTION:

TF1-337	5289
EXAMINATION-IN-CHIEF BY MS ALAGENDRA	5289
CROSS-EXAMINATION BY MR MUNYARD	5361

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

TUESDAY, 11 MARCH 2008
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr William Romans Ms Sidney Thompson
For the Registry:	Ms Rachel Irura
For the Prosecution:	Ms Brenda J Hollis Mr Mohamed A Bangura Mr Nicholas Koumjian Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Terry Munyard Mr Morris Anyah

A. The first meeting took place at Hill Station where Sam Bockarie was residing. That is his house. That was where the first meeting took place and the meeting took place amongst us the RUF authorities and Ibrahim Bah.

09:34:34 MR KOUMJIAN: Unless I misheard, I believe the witness said Hill Station:

Q. Is that correct, Mr Witness?

PRESIDING JUDGE: I heard Hill Station.

THE WITNESS: Yes, Hill Station.

09:34:45 MR KOUMJIAN: H-I-L-L, capitalised:

Q. Sir, you said it was Sam Bockarie's house. Was Sam Bockarie present?

A. No, Sam Bockarie was not present, but it was in that house that Sam Bockarie resided at the time we went to Freetown.

09:35:10 Q. At the time you had this meeting, to your knowledge was Sam Bockarie in Freetown?

A. He was not in Freetown. He was in Kenema.

Q. Who was present at this first meeting at Bockarie's house with Bah?

09:35:29 A. Issa Sesay was there, Morris Kallon, CO Nya, who is also called Foday K Lansana, Gibril Massaquoi and then they sent for me, I was also present, and some other people.

Q. Thank you, Mr Witness. What happened at the meeting?

A. During that meeting Mr Bah came to talk to us, the RUF, for

09:36:38 us to join hands with the AFRC people whom had called on us for us to work together with them. He said it was that message that he brought from Mr Taylor for us.

Q. What was the reaction, if any, from the RUF members present?

A. Well, we did not do anything because we knew Ibrahim Bah. He had been with us before and we knew him to be a liaison officer who had been with the RUF, so when we saw him, and when he brought the message, we were happy and we received the message according to how he brought it.

09:37:56

Q. Mr Witness, this message from Mr Taylor that you should work - the RUF should work with the AFRC, did the members of the RUF discuss that, or was there any reaction given to General Bah about whether they accepted that?

09:38:20

A. Well, we accepted it because it was not that we went to have another meeting because of the message that he brought. We accepted it. We accepted that the message he brought, we received it and then we took him, the Bah - we took him, the Bah, to JPK's place, that is Johnny Paul Koroma, so that he will also get to know the message that Ibrahim Bah brought.

09:38:51

Q. Where was Johnny Paul Koroma's place that you took Mr Bah to?

A. Johnny Paul Koroma's house was at Spur Road.

Q. When you got to Johnny Paul Koroma's house who was present there?

09:39:15

A. Johnny Paul Koroma, he sent to call the other officers. Those were the SLA officers. They called SO Williams, they called Gullit, Bazzy. They called on all the other authorities who belonged to the AFRC and they were also present there.

Q. What was said at this meeting at JPK's house?

09:39:57

A. JPK and all of us who were there together with Ibrahim Bah, we went to introduce the man to him to tell him that, "This man was the man who has been with us and that it is the Pa who sent him for him to come and talk to all of us." When I say the Pa,

that is Mr Taylor. "So, he brought a message that we should all work hand in hand and that is the reason why Mr Taylor sent him here. So, we brought him so that you will also see him and then he will explain to you the reason why he was sent."

09:41:12 Q. When Mr Bah delivered this message, what was the reaction of those present?

A. Well, everybody was happy for the message. We all accepted it and we all agreed with him.

Q. Did Johnny Paul Koroma say anything?

09:41:43 A. Johnny Paul Koroma himself received the message and he was happy too for the reason being that for the message for which Mr Taylor had sent the man.

Q. You say that the reaction was that those present were happy. Can you explain why they were happy?

09:42:19 A. Well, they were happy because we also needed help and the reason why they also accepted it was because that man will be able to help us to get ammunition because we were fighting and the AFRC also never had enough ammunition that they would use to continue the war.

09:42:54 Q. Was this something that was stated at the meeting: That there was a need for ammunition?

A. Yes, we discussed that one. In fact, that was our main topic that we had in mind.

Q. How long, to your knowledge, did Ibrahim Bah stay in

09:43:25 Freetown on that occasion?

A. Well, after that day, the next morning I didn't see him again. He went.

Q. At the meeting when Bah delivered this message from Taylor, was there any response given to Bah to take back?

A. We were fighting against the ECOMOG and the Kamajors.
Q. At the time of the AFRC coup, did all of the SLAs join with the RUF?
A. Not all the SLAs joined the AFRC, but at the time we were
10:07:39 in town they all pretended as if they were with the AFRC. That was how they used to do, but some were there who were spies, who used to spy on our information and any plans that we had they would reveal them to the people to whom they were loyal. What I mean is the then President Kabbah.
10:08:11 Q. Mr Witness, I want to go back to ammunition. During the time that you were in Freetown, do you know if any significant ammunition shipments were received?
A. Yes, we received a small amount of ammunition that came before the intervention.
10:08:42 Q. What shipments do you recall?
A. Well, the one that came it was at Magburaka that they brought them, but even before they brought them Johnny Paul had told us that his brother, who is Mr Taylor, was going to send something for us and that was small amount of ammunition and he
10:09:14 said we should go and receive them at Magburaka, because at Magburaka we had an airstrip. So, that was where we went and at that time they appointed Fonte Kanu, who was an SLA. He led us to go and receive the ammunition. Mike Lamin also went. I also went. But whilst we were there, the aeroplane that brought the
10:09:52 things, when it alighted it was like the ECOMOG had intercepted the movement so the Alpha Jet came around and bombarded the place, but when it came, even before it could reach there, we had already collected the items even before the Alpha Jet got there to bombard the place.

that we had plans that Johnny Paul himself should go and see Mr Taylor, so that communication was there.

Q. Thank you, Mr Witness. First let me ask you, you said, "Johnny Paul would tell us that he talked to his brother", just so the record is clear, who do you mean by Johnny Paul's brother?

A. Well, I will call the name again. Maybe you did not get it clear. I said he used to tell us that his brother was Mr Taylor because he was also considering Mr Taylor as his own elder brother. So, he took Foday Sankoh's footstep, so he was also calling Mr Taylor his brother.

MR KOUMJIAN: Some spellings, your Honour. Memuna, M-E-M-U-N-A. Tollo, T-O-L-L-O:

Q. You said that you yourself were sent to Magburaka; is that correct?

A. Yes, I went to Magburaka with Fonte Kanu and Mike Lamin, together with other people.

Q. You described something being delivered. Can you tell us what you remember as to what was actually unloaded from that plane?

A. They brought two AA guns and those were anti-aircraft guns, two of them. They brought some ammunition, the ammunition for the AA gun, and they brought some GMG rounds. Those were the things that they brought, but although we also received them, we also expected to receive AK rounds. Although we had had AK rounds before, but we needed more.

THE INTERPRETER: Your Honours, the witness is going too fast.

PRESIDING JUDGE: Mr Witness, you are going fast for the interpreter, so if you can speak more slowly so the interpreter

can keep up with you, please. Please continue.

MR KOUMJIAN:

Q. Had you finished your answer? The last thing we understood you to say was you had expected AK rounds, "Although we had AK rounds before, we needed more." Is there anything else you wanted to add?

A. Well, I said the AK rounds that we had was small in quantity, so we expected more AK rounds. Although the one that came, we accepted it, but we will have been happier if more AK rounds came because that was what we expected.

Q. Now, you indicated that you received GMG rounds. Can you tell us again what GMG rounds were for?

A. The GMG rounds is - we use it in a gun that has something like a belt. That is where we fix the ammunition before we fix it into the gun and it is that belt that that particular gun uses with the ammunition to fight.

Q. Did you, the members of the AFRC/RUF, have GMG guns that you could use these rounds in?

A. Yes, we had the guns.

Q. You also talked about two anti-aircraft guns with ammunition. Can you describe what the anti-aircraft guns looked like?

A. Well, the anti-aircraft gun is a gun. It has a stand that you can put on the ground. Sometimes it can be mounted on a van and sometimes when we wanted to take it to the front to fight we will mount it on top of a vehicle and it has a long barrel that has the magazine by the side. It also uses a belt and it is in the belt that you will load the ammunition, and it has a box that has the magazines that you put it by the side of the barrel.

Q. These anti-aircraft guns, could they be used for other purposes besides shooting at aircraft?
A. Yes. We shot human beings with it, not just aircraft. It was to kill human beings.
10:18:52 Q. The anti-aircraft gun rounds, can you describe them?
A. It is something that is big. It is longer and bigger than the AK rounds and it is even bigger than the GMG rounds, but it is an explosive.
Q. Do you know whether this shipment was paid for by the
10:19:30 AFRC/RUF?
A. Well, I have told you here that Johnny Paul and Ibrahim Bah had a closed door meeting, so whatever they discussed in that meeting they did not tell us and Johnny Paul himself did not tell us that he sent something to be taken along, only that he told us
10:20:01 that it was an instruction that he received from his brother when they were discussing and he said we should go and receive those items.
Q. Thank you. Mr Witness, during this time between the coup and the intervention when you were in Freetown, can you describe
10:20:18 what the civilians', in Freetown, reaction was to this AFRC/RUF regime?
MR MUNYARD: Again, the civilians in Freetown is a rather large population for one man to be able to speak on behalf of, unless he was elected democratically by them as some sort of
10:20:43 spokesman.
PRESIDING JUDGE: Mr Koumjian, you have heard the objection.
MR KOUMJIAN: Yes, your Honour. This witness said he spent a year there. I can't ask him about the reactions of every

then told you you should not talk about this on the radio. What happened then?

A. He told me that I should go to Buedu for us to sit together and talk, so I also prepared myself and then I left to go there.

12:59:06 Q. Okay. Between --

PRESIDING JUDGE: Mr Koumjian, who is the "he"?

MR KOUMJIAN: Yes.

PRESIDING JUDGE: "What happened then?", and he said "He told me".

12:59:15 MR KOUMJIAN: Thank you:

Q. Who told you to come to Buedu?

A. It was Sam Bockarie, who was my commander. He was the one who called me to go.

Q. Before you actually went to Buedu, did you receive any

12:59:32 other information?

A. Yes, I had information that the advice that I gave to the man, he became angry with it because he took it that I was siding Superman, so he had already planned that if I went he would also kill me. So, somebody told me, somebody told me secretly, and he

13:00:13 said as I was going I shouldn't forget myself. I should go like a man. I also said "all right" and I went.

Q. When you say in your answer that after you "had information that the advice that I gave to the man, he became angry", who is the man that became angry?

13:00:42 A. It was Mosquito who became angry.

Q. Okay. Mr Witness, we will understand now when you say Mosquito that you mean Sam Bockarie unless you tell us differently, okay? Is that understood?

A. Yes.

Q. You mentioned another Mosquito much earlier in your testimony. So, after you received the information - you said you received information that he was planning to kill you. Who was planning to kill you?

13:01:19 A. It was Sam Bockarie who was planning to kill me.

Q. So after receiving that information, what did you do?

A. I also prepared myself. I took my bodyguards and the arms that I had with me and then I decided to go to Buedu, because he had called me that I should go to Buedu to discuss about the

13:01:45 advice that I gave him and he said I should go so as to sit and discuss better.

Q. Mr Witness, help us understand, if you believed there was a chance that he was planning to kill you why did you obey the order and go to Buedu?

13:02:05 A. Well, I went there - I never wanted anything that will spark off and spread over to other people, so that was the reason why when the problem was between himself and Superman, I decided to intervene. So, if I had also refused to go he was going to order some other people to come and meet me and do something else

13:02:42 to me. So, if he decided to do that and if the people came, I was also going to command my own men and that was not going to stop between him and I, and if that happened it will have been an infighting. So, that was what I was trying to avoid, although I did not understand that that was what he was about to do, but I

13:03:08 went there. So, if I went there and he wanted to do that, we were both going to die together.

Q. Okay. Just a bit slower in your answers, please, Mr Witness, would be helpful for the interpreters. Can you tell us then what happened after you prepared yourself to go to Buedu

with your bodyguards?

A. Well, I prepared myself and I went with some people, who were mining people who were in Kono. They had already got some diamonds and that was Mr Kennedy. They also joined me to go to Buedu, so we all travelled together and we went to Mosquito at Buedu.

Q. What happened when you got to Buedu?

A. Well, when we got to Buedu, when I entered the town, his bodyguards used to sit in front of his house under the tree and so they were sitting there. So, when I got there the bodyguards were talking to me and they said my men should not enter Mosquito's ground with arms, so they said they should disarm. Then I said no. I said "I am also an authority, so, it doesn't mean that if I am coming to meet this man my bodyguards should disarm." So, whilst we were talking Mosquito was inside the house and he heard - he overheard my voice and then he came and he told his men that, no, they should forget about me, so that my armed men will enter. So, my bodyguards joined his own bodyguards where they were seated and then I also entered to Mosquito. So, when I went we shook hands, we greeted each other nicely. I didn't see - I didn't see a countenance of him about the information that I had received, because myself I had already alerted my own men, so whilst I was with him inside, if anything was going to happen they should also do what they will be able to do. But when I got there the man gave me a smiling face, we sat down, we smoked together, he brought rum, we drank and then we started discussing.

Q. Tell us about your discussions with Sam Bockarie at that time?

A. Well, at that time the reason why he called me was because of the advice that I gave him about the Superman issue, so that we will discuss it, and then what he also told me was that he said, "Bra, I was waiting for somebody like you, for you to come here, because we have a problem here on the ground. So, we all need to sit together and hang heads and then we discuss and then we will act on what to do next." And then I asked him, "What can we do next?" Then he said, "It is about this ammunition business." Then he said, "There is nothing that we will be able to get now because the one we have at hand now has almost finished", and he said, "I have been discussing this with some other commanders here so that we will send somewhere for us to get ammunition and luckily I called you and you are here. So, we have to discuss it and when the other commanders arrive here, we always sit together and discuss it and then we will see what to do next." I said, "All right", and then I went to bed and slept.

So, the next morning all of us, the commanders who were in the town there, we discussed that we should request for ammunition from Mr Taylor and that we should write a letter and give to Brother Jungle to take it along. So, those of us, the commanders who were there, we went, we had the meeting, we held the meeting, we discussed. Even Pa Rogers was present in the meeting. We all sat down, we discussed and then we came to a conclusion that we should write a letter, and then we wrote the letter.

Q. Let me stop you and go over this a little more slowly.

MR KOUMJIAN: First of all, your Honours, line 25, it states the "war" has almost finished. I thought the witness said "what we had was almost finished".

JUDGE SEBUTINDE: He said "the one we have".

MR KOUMJIAN: Thank you, your Honour.

MR MUNYARD: "Bra" just disappeared off the top of the page, which I think must mean "Bro". I think it is line 20.

13:09:21 MR KOUMJIAN: Thank you:

Q. So, do you want to go back for a moment. When you talked about the advice you gave Mosquito/Sam Bockarie about Superman, can you tell us again what advice you gave to Sam Bockarie about his argument with Superman?

13:09:43 A. When I told him that we should forget about this and that he should forget about Superman, I said we shouldn't have anything like infighting because I wanted us to concentrate on the enemies, but if we started petty conflict amongst ourselves the enemy will take that as an advantage to advance on our

13:10:10 positions. So, I told him that we should forget about those things. So, he listened to me and he agreed. That was the reason why he brought the discussion up when he was trying to get some other people and when I came he said I was lucky to be present and that when we all meet, we sit and discuss it. That

13:10:40 was how it happened.

Q. Then you told us that the next day there was a meeting of commanders; is that correct?

A. Yes, we met.

Q. Where did that meeting take place?

13:10:55 A. Well, we held the meeting in Buedu. That was where we held the meeting.

Q. Okay. Who was present at the meeting?

A. Myself who is speaking, I was there. Mosquito was there. Jungle was there because he was also based in Buedu. We had

other commanders who were also based on that ground, like one SLA he was called Sambebe. He was also present and some other commanders who were in Buedu, we and the late Pa Rogers.

Q. At first you mentioned an SLA and I just wasn't familiar with the name. Can you say the name of the SLA who you said was present and based in Buedu?

A. Sambebe.

MR KOUMJIAN: Taking a guess, it is S-A-M-B-E-B-E:

Q. Who is Pa Rogers?

A. Pa Rogers was the - one of the RUF - he was the RUF Secretary-General who was there and he was the War Council Chairman.

Q. At that meeting - sorry, and then you said Jungle was there. Are you referring to the person who you said was also named Tamba?

A. Yes, that is the person that I am talking about.

Q. What was discussed again at this meeting of the commanders?

A. Well, I have told you that we did - during our discussions we were talking about ammunition because we had run out of ammunition. So, we did not have enough ammunition again to continue our offensive, or to fight, or to even defend our areas, so we discussed that it will be better that this time around we all ensure to write a letter and give it to Brother Jungle to take it to Mr Taylor for him to help us get some ammunition. So, those were the things that we discussed and we all came to the conclusion that we agreed. We told the adjutant, who was Rashid Sandy, to write a letter and he wrote it. He read the letter out to everybody and from there we enveloped it and we gave it to Colonel Jungle to take along. So, Colonel Jungle went with the

letter and after three days Sam Bockarie called us and said he had received a message from the Pa, and that is Mr Taylor, that he himself should go, that is Sam Bockarie, that he should go to Monrovia. So, Sam Bockarie called us and informed us and we also said okay, it is not bad, and he said, "Okay, but since I am leaving I want Issa to come to Buedu and stay here and you, Isaac, you should go to Pendembu and stay there", because that was where Issa was. That was his own area of control. So, I went to where Issa was and then Issa came to Buedu. So, when Mosquito was leaving he said, "I will not go alone. I wanted to go with some other people." So, he went with Rashid Sandy, he went with Pa Rogers and then he went with Lawrence Wohmandia and Eddie Kanneh also.

Q. Mr Witness, do you recall, or can you give us an estimate of when it was that you held this meeting in Buedu where you drafted the letter for Charles Taylor?

A. Well, at Buedu the place where they used to hold meetings, or discussions, it was not actually in the town itself, but it was out of the town going towards Liberia. There was a place that was called Waterworks. That was where we used to hold our meetings.

JUDGE SEBUTINDE: Mr Koumjian, I think the question you asked was when. It relates to a time frame, not where.

MR KOUMJIAN: Yes, your Honour, before I re-ask the question I believe Wohmandia may not be spelt correctly. Our spelling is W-O-H-M-A-N-D-I-A:

Q. Mr Witness, do you recall when the month, or the season, that it was that you held the meeting in Buedu where you drafted the letter to Jungle? I realise it was ten years ago.

A. The letter I can say it was in early November, something like that.
Q. Do you recall if it was rainy season, or if rainy season had ended?
13:17:57 A. Well, it was during the dry season.
Q. Thank you.
JUDGE SEBUTINDE: Which year is this? November of which year?
MR KOUMJIAN:
13:18:06 Q. Mr Witness, you have indicated earlier that the operation - well, what year was it that we are talking about when you drafted the letter?
A. It was in 1998.
Q. Thank you. You indicated that Sam Bockarie left and he
13:18:44 asked you to have a new assignment because he was going to Liberia; is that correct?
A. Yes.
Q. Did you take that assignment? Did you fulfil that order?
A. Yes, I took it.
13:19:05 Q. So, where did you go?
A. I went to Pendembu.
Q. Do you know if Issa Sesay replaced Bockarie in Buedu during the time he was gone?
A. Yes, Issa Sesay replaced Bockarie in Buedu.
13:19:32 Q. Now, the letter you said was given to Colonel Jungle and you have mentioned him before, but you said he is based in Buedu. Can you explain what you mean when you say he was based in Buedu?
A. Colonel Jungle was based in Buedu with Mosquito. He had his own place there where he was staying, but he would go to

Liberia and come back because himself and Mosquito belonged to the same tribe, so they were doing things together. So, he was also there. He had his own bodyguards with him and he was there in the place.

13:20:27 Q. When you say that Jungle and Mosquito were the same tribe, which tribe were they?

A. It was Kissi.

Q. What language would Jungle and Mosquito speak when they spoke to each other?

13:20:51 A. Well, they would speak the Liberian English and sometimes, when they are ready again, they will speak the Kissi.

Q. What was Jungle's job when he was there in Buedu?

A. Well, Jungle was there as a liaison officer. He used to carry messages and he will bring things come again. So, that was

13:21:33 just what he was.

Q. When you say liaison officer, liaison between which parties?

JUDGE SEBUTINDE: Mr Interpreter, what do you mean "he will bring things come again"? What do you mean by that?

13:21:51 THE INTERPRETER: Your Honours, the witness said he would bring things come. He did not specify what thing.

JUDGE SEBUTINDE: [Overlapping speakers].

THE WITNESS: I have said before that Jungle will go to Monrovia and then he will bring ammunition. I have even told you

13:22:15 that at one time when I was in Kono I requested for ammunition, when Mosquito told me that I should exercise patience because Brother Jungle had gone to Monrovia to bring some ammunition. He went to the Pa, that is Mr Taylor. So, if you are asking that when he took something along and then he brought something back,

the something that I am talking about is ammunition.

MR KOUMJIAN:

Q. Thank you, Mr Witness. You indicated he was a liaison, liaison between who?

13:23:06 A. A liaison between the RUF and the NPFL.

Q. Do you know if at that time in 1998 Colonel Jungle belonged to any unit?

A. Colonel Jungle was part of the Executive Mansion guard, but they had changed his name. At that time I was not there any

13:23:42 longer, but at that time I knew him to be an Executive Mansion guard, but they had changed the name from Executive Mansion guards and they now had another name.

Q. Do you recall what the name was, the new name for the Executive Mansion guard?

13:24:09 A. Well, they said they had SS unit.

Q. Thank you. Did you ever speak to Jungle yourself?

A. Yes, the time I went to Buedu I spoke to Jungle. He and I spoke.

Q. Do you have knowledge of who it was that Jungle reported to

13:24:39 within the Liberian structure?

A. Jungle was going to Mr Taylor because it was to him that we were sending a message, so he was going to him.

Q. How do you know that? How do you know that he was going directly to Mr Taylor?

13:25:19 A. Well, I had told you that I have been talking to him and he also told me that, so I knew that for himself.

Q. Just to be completely clear, when you say the Executive Mansion guard you are speaking of the Executive Mansion for which country and which person?

A. It was in Liberia and it was Mr Taylor, the place where he was.

Q. Going back for a moment to the time you were in Buedu and you drafted the letter, the group drafted the letter for Jungle, how many days were you in Buedu area for that stay?

13:26:20

A. I said I was there for three days in Buedu Town.

Q. During that time did you go outside of Buedu at any time?

A. Yes, I went to the village that is Kangama. I went to Kangama where Johnny Paul Koroma was.

13:26:55

Q. Why did you go to Kangama?

A. That is my village and I later understood that Johnny Paul was there and so I went there.

Q. You told us, I believe, at the beginning of your testimony that you were born in that village; is that correct?

13:27:24

A. Yes.

Q. When you got to Kangama, did you see Johnny Paul Koroma?

A. Yes, I saw Johnny Paul Koroma. I met him. He was in zorbush [phon]. Because of the Alpha Jets, in the morning people would go and hide somewhere, so when I arrived in the town there

13:28:00

people told me that Johnny Paul was in the zorbush, so I went there.

JUDGE SEBUTINDE: Would you please spell the name of that location for us.

MR KOUMJIAN: It is S-A-W-B-U-S-H. Let me just clarify

13:28:18

with the witness:

Q. Is it Sawbush?

A. Zorbush, zorbush.

Q. Is that a place?

A. It is a kind of hideout in the bush, a kind of hideout in

a shop.
Q. And do you know, if you don't know or if you don't know just tell us, what kind of shop that was before it became Sam Bockarie's house?
14:38:09 A. Well, that shop, that was where we kept the ammunition. It's a store. That's where we kept the ammunition and the food stuff which he brought. That's where we kept them. It was not owned by Mosquito himself. The house was owned by civilians, but the house had a shop before Mosquito moved into that house. So
14:38:30 he just turned the shop into a store.
Q. Had you been inside that shop area in Mosquito's house before?
A. Yes, I went there.
Q. When you went into the shop, when he took you into the shop
14:38:51 area of his house this time what did you see?
A. I said I saw the ammunition that he'd brought. They were packed from the floor up to the ceiling, that was how the ammunition boxes were packed. The ammunition was plenty at the time that he brought them. So when I saw the ammunitions I was
14:39:17 very happy.
Q. You indicated that the ammunition was packed up to the ceiling. Can you point to something perhaps in this room or give us an idea of the height in comparison to my height or in comparison to something you see in the room as to how high the
14:39:35 ammunition was?
A. Well, the ceiling that was in the house, I can say this one is higher a little. This one is higher a little. But it could be where that - I don't know if that's a speaker, where that speaker is. From down here to where that speaker is. That's how

the boxes were packed.

MR KOUMJIAN: It appears to me, your Honours, that the speaker is about three metres. Two and a half, three metres high.

14:40:21 MR MUNYARD: From here - I suppose it's the same height as this. Yes, I'd agree with that.

PRESIDING JUDGE: We will put on the record that the witness has indicated a piece of machinery on the wall which is approximately three metres from the floor.

14:40:39 MR KOUMJIAN:

Q. Can you give any estimate or did Sam Bockarie tell you how many boxes there were of ammunition in that room?

A. Well, the ammunition boxes that were packed there, he told me they were more than a hundred, but they were mixed because 14:41:01 they were different. He brought AK rounds, RPG and GMG rounds. So it was mixed.

Q. Just so the record is clear, when you say RPG what do you mean?

A. RPG is a rocket. It's a bomb. It's a rocket that we 14:41:25 launch.

Q. Had you ever seen this much ammunition before, you yourself, in Sierra Leone?

A. Well, when we started the war I did not see any kind of ammunition that Bockarie showed to me. I have not seen any - I 14:41:53 had not seen any ammunition that could be up to that quantity.

Q. Now you also mentioned that Bockarie said he brought back medicine. Do you know what kind of medicine he brought back?

A. They brought injections, medicines, tablets, but they were in cartons.

was coming I came along with some people who were in the mining group who brought some diamonds. So those diamonds were the ones he took along and when he came back he told us that the diamonds that he went with, he left them there with Mr Taylor.

14:45:29 Q. Now you said that Mr Taylor had made a connection for Bockarie with Burkina Faso and Bockarie went to Burkina Faso. Did he say who he went with on this trip to Burkina Faso?

A. Yes, he said he went with SYB Rogers.

Q. Okay. And the photographs that he showed you, did he

14:46:09 indicate where they were taken?

A. Yes, he said they took those photographs at the restaurants where they were eating in Burkina Faso and the hotel where they lodged and the swimming pool where they used to go swimming.

Q. Did you see the photographs?

14:46:36 A. Yes, I looked at them and I saw them.

Q. And do you recall now, I realise it's a long time ago, any persons you recognised in those photographs?

A. I saw Sam Bockarie himself. He was on that picture. The late SYB Rogers, he too was on that picture.

14:47:14 Q. Did Sam Bockarie indicate what the result was of his time in Burkina Faso?

A. Well, he said he had gone and seen the Burkina Faso president and they have spoken for us to be able to buy ammunition from there. So they had made those - that arrangement

14:47:44 - they had made that arrangement already. So whenever we want those things he will make sure that he goes there. So that was what he said.

Q. Did Sam Bockarie indicate where the ammunition came from that you saw in the storeroom?

A. The ammunition which he brought, he told me he had brought them from Liberia and that it was Mr Taylor who gave them to him.
Q. After your conversation with Sam Bockarie where he showed you the ammunition what happened then in Buedu?
14:48:45 A. Well, after he had shown the ammunitions to me he told me the plan that he had come with with respect to those ammunitions. He told me that he and Mr Taylor sat together and planned to come and run an operation. He said he sat with the Pa, Mr Taylor, who took out a map and showed the locations where the RUF and the
14:49:26 SLAs, where we occupied. He showed that to him. He came with a plan for us to launch an operation whereby we'll capture Kono, Makeni and advance to Freetown. And we were also to attack Joru. So those were the areas we were to capture. We were also to launch another attack on Kenema. We were to attack Kenema as
14:50:06 well.

He said he discussed with the Pa, that is Mr Taylor, to meet with Superman, that of the two of us one person should attack Joru, when that person would have attacked Joru he should advance on Zimmi. He said he discussed that.

14:50:33 MR KOUMJIAN: Your Honour, if I can just get a clarification. Well, I'll ask the witness:
Q. The interpretation we got is that Bockarie told you he discussed with the Pa, that is Mr Taylor, to meet with Superman and I thought I heard you say something different. When Bockarie
14:50:50 discussed with Taylor what did they say about you and Superman?
A. Bockarie discussed with Mr Taylor for I and Superman, one of us should attack Joru. But Superman was in Koinadugu District, so Mosquito told the Pa, that is Mr Taylor, that Superman was far away from the Buedu end. So I was close to the

place and they said I should attack Joru and advance, when I would have captured Joru I should advance on Zimmi because I was to receive some other people from the NPFL who were to come from Liberia. I was to receive them. I was to receive them in Zimmi, I should be in Zimmi when they came. That was the reinforcement that would have arrived.

Q. Now you indicated that Mr Taylor had told Bockarie that you or Superman should attack Joru and advance to Zimmi in order to receive some NPFL who were to come from Liberia. Do you know why it would be you or Superman who would have been chosen for that assignment?

A. Yes, because the two of us used to be NPFL fighters and we were familiar with the NPFL brothers.

Q. Did Sam Bockarie indicate what the purpose of this attack was going to be? What was the ultimate purpose?

A. The reason for this attack, for this advance on the various places and for us to take those places, you can remember that at that time Foday Sankoh had been moved from Nigeria and he was in jail in Freetown. So we were to attack Kono and take there. We were to attack Freetown in order to free Foday Sankoh and the others who were in jail there. We were also to ensure that we seized power.

Q. Did Sam Bockarie indicate to you in his discussions with Mr Taylor if there was any discussion about how the attack should be carried out in order to free Sankoh?

A. Yes, he said they discussed it. After he had shown those places to him they discussed that we should run that mission to ensure that we free Foday Sankoh and others and on the operation we should ensure that the ammunition is not wasted. We should

make the operation fearful than all the other operations that we had undertaken because we want to make sure that we take Freetown and hold on to power.

Q. Mr Witness, are you telling us now when you talk about the plan for a fearful operation that this is what Bockarie told you he discussed with Charles Taylor?

A. Yes, that was what Sam Bockarie said.

Q. What happened after your private discussion there in the storeroom and in the house with Bockarie?

14:55:13 A. After that, because they had sent for the commanders to come, the following morning the commanders came to Buedu. Then we had a meeting where he told us all I have explained here and what he had brought to show them to the commanders and what the

14:55:48 mission was for those ammunitions that he's brought. So just like he told me, that was what he also told the commanders after they had all come, including the SLA commanders who had come. We had the meeting and he explained the same thing that he had briefed me on. He also showed the ammunition to the people.

So when he spoke at the meeting the late Pa Rogers, SYB

14:56:18 Rogers that I spoke about with whom he came, he stood and told and thanked Sam Bockarie and he told us that if Sam Bockarie was the rebel leader at the time the war started then the war would have ended quickly because the ammunition which they brought, the man who was Foday Sankoh who was the rebel leader had never

14:56:55 brought that quantity of ammunition which they had now brought.

Q. Who was present at this meeting of commanders in Buedu that you just discussed?

A. I was there. Mike Lamin was there. Leather Boot was at that meeting. Akim Turay, Eddie Kanneh and other commanders from

other places, they too came and they were present.
Q. First, Mr Witness, can you tell us what faction Akim Turay belonged to?
A. Akim Turay was an SLA. He was a soldier in the Sierra
14:58:10 Leone Army.
Q. What faction did Leather Boot belong to?
A. Leather Boot too was a soldier, an SLA.
Q. What faction did Eddie Kanneh belong to? Who was Eddie Kanneh?
14:58:31 A. Eddie Kanneh was one of the soldiers. He too was a soldier, an SLA.
Q. Can you tell us if you recall any RUF commanders besides Mike Lamin being present at this meeting, and yourself?
A. You had Monkey Brown who was also another RUF commander.
14:59:12 Q. Thank you.
A. Issa Sesay too was there. Morris Kallon was there.
Q. Thank you. Do you recall any other names at this time?
A. Augustine Gbao, he too was there.
Q. Now, sir, you indicated that the plan for your own
14:59:52 assignment was to go and attack Joru and Zimmi to receive NPFL troops. What do you mean at this time in 1998 by NPFL forces?
A. NPFL fighters were those who came from Liberia who were Charles Taylor's men and who were in Liberia. They were the ones who were to join us. But I was to go and receive. That was why
15:00:36 he said I should attack Joru and advance on Zimmi for me to receive them. They were to join us for us all to run the operation.
Q. You did not mention Superman. Was Superman at the meeting?
A. No, Superman was not there. I had told you that Superman

was now in Koinadugu District and there was no space - there was no way he could have left that place to come because ECOMOG were at Koidu Town, they had occupied Koidu Town.

Q. Thank you and that is part of my next question. You talked about an attack on Kono. Can you explain when the plan was to attack the Kono District what was the situation in Kono at the time you had this meeting, what forces were occupying various locations in Kono?

A. In Kono ECOMOG occupied there, Kamajors and you had loyalists, that is the SLAs of former President Tejan Kabbah.

Q. Did these forces occupy all of Kono District or parts of Kono District?

A. Well, they were in Koidu Town itself. They occupied Koidu Town itself. They were in some other areas, but we too had men around them.

Q. Thank you. At this meeting in Buedu that you've talked about was SAJ Musa present?

A. No, SAJ Musa was not there. SAJ Musa and Superman were in that Koinadugu area, so he was not there.

Q. At the meeting was there any discussion of the forces in the north, SAJ Musa and Superman's forces, taking any part in your plans?

A. Yes, we discussed them and we all agreed that we should send - Mosquito should send radio message to them for all of them to join hands so that we can run the operation. But we all decided that Mosquito would not be the best person, but it would be better for Johnny Paul to talk to SAJ Musa, for us to forget about the past, to put all that infighting behind us and run the operation. That was what we agreed upon and sent to Johnny Paul

and Johnny Paul was able to talk to SAJ Musa and others for us all to join hands together to run the operation and they agreed.

Q. How do you know about the communication between Johnny Paul Koroma and SAJ Musa?

15:04:14 A. Well, that was something that we talked about at the meeting and we all agreed that Johnny Paul should do it because he will be the best person and it went on because I too had a radio in my own area. So my radio man monitored it and he told me that the message went, that they've sent the message to

15:04:48 SAJ Musa and others for all of them to join hands in the operation.

Q. Do you know if SAJ Musa gave any response to Johnny Paul Koroma's request that they all join hands?

A. Well, SAJ Musa accepted to run the operation.

15:05:16 Q. Do you know if there were any RUF with SAJ Musa at that time?

A. Yes, I had said it from the early stages that at that place we had some RUF men who retreated from Makeni to that end. So there were some RUF men with SAJ Musa.

15:05:39 Q. Can you remember any names of RUF that you know were with SAJ Musa at the time you had these discussions in Buedu about the national offensive?

A. I told you that the RUF men like one of the senior men who was there, Alfred Brown, I told you about that. He was a radio

15:06:08 man. He was a radio operator. I told you about King Perry and other fighters who were there.

Q. Did you know Alfred Brown yourself?

A. Yes, I know Alfred Brown.

Q. During this period of time in November in 1998 you told us

was the meeting were you in any communication with Alfred Brown yourself?

A. At the time that he was in Koinadugu I did not communicate with him, but at the time that the offensive started when all of us had gone on the offensive in our different areas I communicated with him.

Q. Okay. So when the offensive started you had some direct communications with Alfred Brown, is that correct? On the radio, I mean?

15:07:11 A. Yes, yes.

Q. After that meeting what did you do, after the meeting of all the commanders where the plan was made for the offensive?

A. Well, everybody agreed to run the operation. People had their various targets where they should go and they were to be

15:07:40 supplied with ammunition to go. The only people who were not able to receive the supplies at that moment were the ones who were in the northern jungle in the Koinadugu District. At that moment they were not able to receive any supplies. But those of us who were to go to the various targets, we received supplies.

15:08:06 Q. And can you explain again why those in the northern district could not receive supplies at that time?

A. I think I have said it and I'll say it again. I said because there was no way for us to transport any ammunition to go their way because the enemies who we were fighting, that is the

15:08:32 ECOMOG troops and the loyalists to former President Tejan Kabbah and the Kamajors, were based in Koidu Town. So we had no way of taking any ammunition to them.

Q. After the meeting did you receive ammunition?

A. Yes, I received ammunition to go to my own target.

A. At that time they were in Waterloo.
Q. Okay. And what exactly did Sam Bockarie tell Gullit to wait for?
A. He said they should wait until they received reinforcement.
15:58:53 Q. Now, Mr Witness, you said at one point something I'd like you to explain. You said SAJ Musa selected you to move with men to join him. Is that correct?
A. Say it again. Let me get it clear.
Q. What I understood from the translation is that you had said
15:59:17 that SAJ Musa had selected you to move with your men to join him. Did SAJ Musa ever give you an instruction to join him or did we misunderstand something?
A. Maybe you got me wrong. I didn't say SAJ Musa.
Q. It would perhaps help if you spoke a little bit slower
15:59:42 about these events. When the force got to Waterloo and this message from Mosquito was given to Gullit to wait where were you at that time?
A. I said I was around that Joru axis. That was where I was.
Q. How do you know about Bockarie's message to Gullit to wait
16:00:06 for reinforcements?
A. It was something that I heard over the communication set that we had.
Q. Now when you found out - when Gullit was in Waterloo and Bockarie told him to wait for reinforcements did you receive any
16:00:33 orders from anyone at that time?
A. Yes, I got an order from Sam Bockarie that I should come to Kailahun and then from there I moved to Kono and then get some men to join the other men who were in Makeni for me to take the men to Waterloo to join Gullit and others. That was the

troops or the forces who were considered our enemies and against whom we were fighting.

So he started communicating with Sam Bockarie and saying that he was getting pressure and he was calling for reinforcements, but there was no easy way because the other men on the Hastings side were also trying to fight to enter but they didn't make it to enter. So the other men who were inside, they had too much pressure so they decided to retreat.

16:09:34

Q. When you say the men on the Hastings side which men are you referring to?

16:10:01

A. Well, I am talking about Rambo, Rambo's own group. So when those men were receiving this pressure in Freetown Mosquito passed instruction to them telling him that if there was no way to stand the men they should start carrying out some destruction, they should set fire on the Nigerian embassy and other areas. So the men also started carrying out the orders that Mosquito passed to them. So they started setting the houses on fire, but they were - they didn't make it to burn the Nigerian embassy, but the other areas where they set the fire, they were burnt down and they carried out some other destructions.

16:10:32

16:11:04

Q. Mr Witness, could you recognise Gullit's voice?

A. I know Gullit's voice very well.

Q. When you told us about Gullit calling for reinforcements, calling Bockarie for reinforcements, is that something someone told you or is that something you heard yourself on the radio?

16:11:28

A. Well, I heard it over the radio and whilst the instructions were given to the men telling him that they should do it or they should do that, it was not something that they encoded. They were saying it out now so that even the enemy against whom they

were fighting would be afraid.

Q. You said Sam Bockarie gave orders to burn houses and the Nigerian embassy. Is that something someone told you or how did you learn that?

16:12:19 A. I said I heard him when he was passing the order that they should set the Nigerian embassy on fire.

Q. By the way what did Gullit call Bockarie, do you recall?

A. He called him Sir because he knew that the man was chief of defence staff, he knew about his position.

16:12:57 Q. Now earlier in your testimony you talked about 448s. At this time you said the troops entered Freetown on January 6 did you hear any of these alerts, these 448s, over the radio while you were monitoring?

A. Yes, that 448, they were saying it and they were sending it

16:13:33 to the men who were in Freetown and they were alerting them that 448 was around.

Q. Mr Witness, how often did you hear Gullit communicating with Bockarie?

A. Well, they did it frequently. Let's say in half an hour

16:14:06 they would communicate, because it was not just Sam Bockarie but we were all focused on the capital city at that time and all the mission that we had planned to carry out was focused on the capital city, because that was where we wanted, so we all had our attentions focused there so Mosquito was talking to Gullit

16:14:34 frequently.

Q. Now you indicated that the 448s, they were saying it and they were sending it. Who was sending the 448s to those in Freetown?

A. I had told the Court that we had a monitoring team that was

I N D E X

WITNESSES FOR THE PROSECUTION:

TF1-532 5710

EXAMINATION-IN-CHIEF BY MR KOUMJIAN 5710

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

WEDNESDAY, 12 MARCH 2008
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr Simon Meisenberg Ms Sidney Thompson Ms Doreen Kiggundu
For the Registry:	Ms Rosette Muzigo-Morrison Ms Rachel Irura
For the Prosecution:	Ms Brenda J Hollis Mr Nicholas Koumjian Mr Alain Werner Ms Leigh Lawrie
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Mr Terry Munyard Mr Morris Anyah

Guinea and Sierra Leone and he would take it from the embassy and he would carry it. So Jungle too was assigned with Tiagen Wantee and that was his mission for which he was assigned there, and my own mission was to take it from Gbarnga from Charles Taylor to escort it as far as Kissidugu. That was what I said.

12:07:43

Q. Thank you. Now you've indicated you took the ammunition and rockets from Gbarnga from Charles Taylor. Where exactly in Gbarnga did you get the ammunition and rockets?

A. From the mansion. From Charles Taylor's mansion at Bofell Hill [phon]. That was where the ammunitions were stored in his warehouse.

12:08:13

Q. Thank you. Now you've indicated this happened when ULIMO controlled Lofa County. After ULIMO disarmed, did you make any trips to Sierra Leone?

A. Plenty times, plenty times, and at that time the road was free to me. Many times. If you ask, I will name them.

12:08:39

Q. Can you just give us an estimate of how many trips you made to Sierra Leone? Give us some idea.

A. I made trips to Sierra Leone at the time Mosquito was there up to Issa Sesay's administration. So it was more than 20, 30 to 40 trips.

12:09:05

Q. Thank you. On those trips would you carry anything to or from Sierra Leone?

A. Yes, I carried arms, ammos including some artillery pieces, chasers. We had one of Charles Taylor's friends, a white guy with a big stomach. He used to bring some artillery pieces. I escorted it there so many times.

12:09:34

Q. Now, you mentioned chasers. Can you tell the Court what chasers are?

phone.

PRESIDING JUDGE: Please repeat the name of the phone, Mr Witness. It wasn't heard clearly.

THE WITNESS: I said after they left when they went to
12:34:08 Burkina they spent a week and five days and they returned; they and Eddie Kanneh - Eddie Kanneh, Mike Lamin with Sam Bockarie and Musa Cisse. Musa Cisse came along with them.

MR KOUMJIAN:

Q. Mr Witness, you were saying that you were at a club
12:34:32 drinking at a table and Sam Bockarie received a call on his phone. What kind of phone was that? Can you give us the name of the type of phone?

A. It was Thuraya satellite phone. I was in possession of one.

12:34:52 MR KOUMJIAN: Your Honours, the spelling is T-H-U-R-I-Y-A:

Q. After Sam Bockarie received a call on this phone, what did he do?

A. He rushed in to where I was sitting down and he said, "Top Bra, let's go", and I said, "All the drinks we have here?", and
12:35:17 he said, "Let's go". So, we left and went to White Flower. At the time we went, Benjamin Yeaten, Joe Tuah, Peter Saikpedeh, they were all at the White Flower's front door and they said, "Your materials have arrived. Your ammos have come". Then we left and went to the airport.

12:35:39 When we went I saw the Russian cargo plane. It came with enough ammos and arms which we were not able to offload. We were not able to haul everything to Monrovia that night. We left some there at the cargo warehouse at Roberts International Airport. Then we took some - in two days we took some, Mosquito and I,

Eddie Kanneh, Mike Lamin, FOC, the late FOC, Victor Kallon - Victor Kallon. Morie Kallon is different. Victor Kallon. We left them there and we got into the car, two trucks, a pick-up and a jeep. We escorted the first trip, yeah.

12:36:38 Q. Mr Witness, I'm going to go over that a little bit slowly and again ask you to speak slowly for the interpreter. Now you said when Sam Bockarie came back from receiving the phone call he said "Top Brass". What does the word "Top Brass" or name mean? Who is that?

12:37:02 A. I was the one they called Top Bra. Over there they called me so many names. They called me Zigzag, they called me Top Bra, they called me [indiscernible], they called me Five-O-Five, they called me Jungle Broom. Yes, these are my names.

MR KOUMJIAN: Your Honour, the spelling I believe that the

12:37:16 witness is pronouncing, Top Brass, T-O-P B-R-A-S-S:

Q. So you said that after the phone call you all rushed to the Roberts International Airport. Is that correct?

A. We were not rushed directly. We rushed to White Flower to Charles Taylor's house. It was there that we met Benjamin

12:37:49 Yeaten, Joe Tuah and Peter Saikpedeh there. Later Mosquito went inside from there. Then they took us to the airport. We went and I said at the time I saw a Russian cargo plane, a very big plane loaded with ammos and ammunition - I mean ammunition and arms.

12:38:14 MR KOUMJIAN: And the name Peter Saikpedeh, the last name is spelled S-A-I-K-P-E-D-E-H.

THE WITNESS: He was one of the Special Forces.

MR KOUMJIAN:

Q. Now, you've described that the plane was full of

ammunition. Can you tell us what kind of ammunition was in the plane?

A. Some were LAR rounds, AK rounds, GPMG, 32 PC, and some GPMG barrels. Enough, yes. These were the materials that were in the plane.

Q. For those of us not so familiar with weapons, GPMG barrels, by barrels do you mean - is that a gun?

A. Yes.

Q. And you've mentioned LAR rounds. What is LAR?

A. It's a rifle. It's a rifle. The round - the rounds of that rifle is what I'm talking about.

Q. Now, you mentioned you were not able to take all of the ammunition to White Flower that night. What did you use to transport the ammunition to White Flower?

A. In Monrovia Charles Taylor was having so many trucks and these trucks, two were assigned directly to me to escort arms and ammunition, but that night there were some trucks that were headed by Joe Tuah, one of the Special Forces, some trucks headed by Peter Saikpedeh there and some headed by Benjamin Yeaten. I led the other two, but we were not able to overhaul everything at night.

Q. Thank you.

A. The only thing we did was that we offloaded the plane, because when the plane comes we don't want that plane - day to break on that airplane. So, we offloaded the plane at all costs and stored the materials in the cargo warehouse at the airport.

Q. So, how many trucks in total carried ammunition from the airport that night?

A. If I'm not mistaken it's about - it's six or five, if I'm

not mistaken.

Q. Can you give us some idea of the size of these trucks, of how much they could carry?

A. No, I can't give account of that, but the trucks were big, the one I was using.

THE INTERPRETER: Your Honours, can he repeat the brand of truck? It's not very clear.

PRESIDING JUDGE: Mr Witness, can you tell us the name of the kind of truck again, please.

THE WITNESS: Mack truck. My own. The one that I was using. My own Mack truck, a yellow truck.

MR KOUMJIAN: Thank you:

Q. Mr Witness, did this appear to be a lot of ammunition to you?

A. Repeat.

Q. The ammunition that arrived that night, based on your prior experience was that a lot of ammunition to arrive in Liberia?

A. Yes, yes. Like the chaser, the chaser that came with our chief Charles Taylor's friend, the four white guys, they were many. Many times. Even the other truck - the other plane that came at the second to the last time that had the accident on the runway with our ammos which he Charles Taylor - when Charles Taylor had stopped all international security not to go to the airport again, we were able to produce eight to nine trucks.

Q. I want to concentrate now on this ammunition that arrived - that came just after Sam Bockarie returned from Burkina Faso and you said Sam Bockarie got the call about the arrival of the plane. Was Sam Bockarie at the airport when the ammunition was

being unloaded?
A. Sam Bockarie and I rode in the same car. We rode the same jeep. Then my driver who was assigned with me, [indiscernible] and Benjamin Yeaten, they had their own truck. Yes, but he - he
12:44:05 was not on the field at the same time. We were in Monrovia city in the nightclub when he received the call that the plane had arrived with the ammo.
Q. Mr Witness, the next day after the plane had arrived and the ammunition had been unloaded, what did you do?
12:44:26 A. We were happy. The following day we rested all day. I think we spent two days in the city. It was the following night that we took off, because we couldn't have left during the day.
Q. Mr Witness, when you say "We took off", first of all who was travelling with you?
12:44:52 A. At the time that we took the first trip from White Flower with the ammos I went along with Eddie Kanneh, Mosquito, Mike Lamin, including their bodyguards. One was called FOC, Victor Kallon, Yellow Man. I can't remember all those boys, yes.
Q. On that trip what vehicles did you take?
12:45:33 A. We used two Mack trucks, the trucks I was using. The two yellow Mack trucks with the jeep and the pick-up.
Q. Where did you go?
A. To Sierra Leone. We passed through Bong County, we got to Lofa, passed through Voinjama, Kolahun, Foya and entered through
12:46:01 Buedu.
Q. What were you carrying in those vehicles on this trip?
A. I told you the arms and the ammo that came, but the first one that came were enough ammos that we carried. That was what was in the car. But the jeep that we were in, there was no ammo

in there, but it was in front of me escorting those items. So when they see me they will know straightaway that I was the one travelling with those trucks and there would be no embarrassment through Charles Taylor's directive.

12:46:51 Q. I just want to be clear about what was being carried. In the trucks what were you carrying, if anything?

A. I said ammo. Ammo, ammo, ammo. I repeat, ammo, ammo, that can be put in a gun to shoot. That's what I'm talking about. It's not something different. We cannot carry an empty truck.

12:47:11 Q. Thank you. Now the ammunition that you were carrying, you indicated that this plane had arrived, you called it the Russian cargo plane at Roberts International Airport, and you had unloaded the ammo from that plane. Did you take all of the ammo from that plane on this trip to Sierra Leone?

12:47:36 A. No, we did not carry them on the same time. I said the ammo was plenty. What we did was that we offloaded the truck - I mean we offloaded the plane and stored these ammos and arms in at IRIA cargo warehouse. The one we were able to haul that night, we took them to Charles Taylor's residence at White Flower in

12:48:04 Monrovia. At the time they were hauling overnight we were resting. We spent two days. The following night we took off from Monrovia with the two yellow trucks and a pick-up, plus the jeep. That's what I'm saying.

Anyway, I'm very sorry, you see my head, I've got a

12:48:25 problem, so you too should take your time to ask me. You see this head? You see here? Through my ears, I can breathe through my ears, do you see? You hear that? So you must take your time too. The rocket burst this side.

Q. Okay, I'll take my time and, you're right, it will be

anti-artillery unit. Some were with the police. Some were with immigration also.

Q. Now, Mr Witness, you've indicated that Bockarie had a conflict with Issa Sesay. Did you ever receive any orders subsequent to Sam Bockarie leaving Sierra Leone concerning Issa Sesay?

12:57:56

A. Yes, I received an instruction from Charles Taylor when he said I should go for Sam Bockarie, "I don't want him to have conflict with Issa and Issa has more fighting men under him once he was facing battle and Mosquito was in Buedu. You go and bring him". It was at that time that I, Peter Saikpedeh, Joe Tuah, went for him and brought his group of people, his group of people including his mother, his wife and his children.

12:58:25

Q. Thank you. But after you had brought Sam Bockarie to Liberia, after that time did you ever receive any orders concerning Issa Sesay?

12:58:45

A. Yes.

Q. Can you tell us who gave you the order?

A. From time immemorial I was taking orders from my leader, Charles Taylor. When Issa Sesay was there I received orders to ammos for him. When Issa Sesay was there, there was some behaviours that he was putting up like signing documents with the UN. At that time I was in Kono, some UN people went there with a paper for Issa Sesay to sign. I called directly to Charles Taylor. From there he asked me whether I can execute Issa and I said, "Oh, chief, I am in Kono, the centre. I'm in the midst of these people. I cannot do anything". Then he said, "Come to Kailahun. I will call him to come for ammos in Buedu. Then you'll be able to execute him there". So I left Kono, I

12:59:09

12:59:32

I N D E X

WITNESSES FOR THE PROSECUTION:

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Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

MONDAY, 31 MARCH 2008
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr William Romans Ms Sidney Thompson
For the Registry:	Ms Rachel Irura
For the Prosecution:	Ms Brenda J Hollis Mr Nicholas Koumjian Mr Alain Werner Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Terry Munyard Mr Andrew Cayley

you want me to go over that. I did say that it was something like a container, like a jar, where normally it is something like - it was a jar in which the diamonds were and normally when they brought them he will call the commanders all to come to be present so he will show them to the commanders so after seeing them before he kept it.

Q. Okay, thank you. You have reminded me that you did discuss that previously. Mr Witness, who were the mining commanders for the RUF?

11:15:28 A. Well, the commander who was there on behalf of the RUF was Kennedy. Kennedy and Alpha were there. They were in charge of the mining. I think I have said this before.

Q. Thank you. Now, you have mentioned seeing Johnny Paul Koroma with diamonds. Did you ever see any RUF commanders with

11:16:01 diamonds?

A. Yes, RUF commanders had diamonds. Like Mosquito had diamonds.

Q. Can you tell us when you saw Mosquito with diamonds?

A. The mining which was taking place in Tongo Field, the

11:16:34 diamonds that came out as proceeds from there were handed over to Mosquito. I think I have said before that there was a point in time when I also left Freetown, I went to Tongo Field and I met with Mosquito in Tongo Field at that time and in fact he left me there when he came back to Kenema Town. I think I have said that

11:17:02 before.

Q. Did Sam Bockarie ever tell you what he did with the diamonds that he obtained?

A. Yes, he told me that the diamonds that he had been receiving were always taken to Monrovia to Mr Taylor in exchange

of ammunitions. In fact it was the issue of the diamonds that brought a problem between Mosquito and Foday Sankoh and, if you can recall, I had said that when Foday Sankoh came from Lome to Monrovia Mr Taylor showed him some diamonds that were taken to him by Mosquito, but he did not take them from him.

11:17:50

And according to Foday Sankoh he said that Mr Taylor showed him the diamonds that Bockarie had been taking to him in exchange of ammunition, so Foday Sankoh went angry and on his return he blamed some of us who were the commanders, especially me. He blamed me, saying that the diamonds that we have been getting we have not given any up-to-date report to him with regards all the diamonds that we have been getting - that we have been gathering. We have all taken the diamonds and taken them and handed them over in Liberia and so he was angry with us, but I tried to clear my own area because I told him that I never went to Liberia so I had no hands in it. And then he said, "Well, when I am saying that you have been taking diamonds over to Liberia I am not accusing you specifically, but I am accusing all of you because it is your commander who took those diamonds to Charles Taylor in Liberia".

11:18:25

11:18:51

11:19:18

Q. Thank you. I want to move on to a different topic for a short period of time and that is the military discipline system, if any, in the RUF. Mr Witness, did the RUF have any kind of internal discipline system?

A. Yes, they had it.

11:19:43

Q. Can you describe the system?

A. Yes, well we had the MPs who were in charge of discipline. They were there to ensure that any soldier who intended to move from one point to the other should have a pass. If you didn't

operation fearful. Can you tell us what that means, to make an operation fearful?

A. Yes, to make the area fearful, as we used to say it, it meant that we should kill, we should burn down houses so that we will make sure that even the people who were living in the areas, when they saw those things going on they would be afraid and that even the enemies against whom we were fighting will also be afraid. So that was what we meant.

MR KOUMJIAN: Thank you. Correction from my colleagues on the Njaiama Nimikoro. The first word is N-J-A-I-M-A, the spelling:

Q. Mr Witness, in your experience with the RUF were there any other tactics that were used to create terror in civilians in areas that the RUF was present?

A. Yes, they marked people on their chests so that even when you escaped and went to the enemy side they will also capture you there and then you will be killed. So they wrote on people's chests or sometimes on people's back "RUF".

Q. Mr Witness, did you ever witness any amputations yourself while you were actually present and saw the amputation?

A. Well, I have told you here that it happened at the time the war started when I had called the name of one soldier who became victim of that, he was called Ngawojia. He was the first soldier at that time. Momoh was in power so we used to call the soldiers Momoh's soldiers. I think I have spoken about that. We chopped off his hand and then we wrote a letter and hung it on his neck and we told him to go and show it to Momoh so that Momoh should know and that he himself should take his hands off the fighting. And one other thing that happened in certain areas that I myself

Q. Mr Mongor, I'm now going to ask you some questions, please, on behalf of Mr Taylor. I think you understand that, is that right?
A. Yes, sir.
14:36:35 Q. I just want you to help us with this please: Do you remember on one of the days when you were giving evidence before we had our break, prosecuting counsel, Mr Koumjian, made the point that you were one of the most senior RUF commanders in the field during the civil war in Sierra Leone? Do you remember him
14:37:08 making that point?
A. Yes.
Q. That's right, isn't it, that you were one of the most senior commanders of the RUF from a very early stage during the civil war in Sierra Leone?
14:37:32 A. Yes.
Q. And therefore you are one of the people, are you not, who bears the greatest responsibility for what went on during the course of that civil war in Sierra Leone?
A. No.
14:37:54 Q. Why do you say that you were one of the most senior commanders, but somehow that absolves you of the greatest responsibility of the conduct of the civil war?
A. Because I was also under command.
Q. Yes, as were others, but you were part of the most senior
14:38:26 group in the hierarchy of the RUF, weren't you?
A. I was one of the senior people in the RUF command structure, but I had people who were above me.
Q. Ultimately Foday Sankoh was the most senior figure in the RUF, wasn't he?

A. Yes.
Q. But people below him such as Morris Kallon, Issa Sesay, Sam Bockarie and yourself held positions of very great authority, didn't you?
14:39:27 A. I had authority, but I was under the authority of some other people.
Q. Yes and Morris Kallon and Issa Sesay and Sam Bockarie were at times under the authority of other people, weren't they?
A. Well, they were under an authority who was Foday Sankoh,
14:40:10 yes.
Q. Let's just try and see where you fitted in to the hierarchy. On the account that you gave us in the course of your evidence before the break, you had spent around two months in the Liberian army in the mid-1990s before you deserted and went back
14:40:44 to being a businessman. That is the start of your military career, isn't it?
A. Yes.
Q. And you don't learn very much in two months starting from scratch in the armed forces, do you?
14:41:16 A. Well, yes, I learnt so many things.
Q. Why did you run away from the armed forces of Liberia after only two months?
A. Well, I just made up my mind that I shouldn't be there. That was why I left there.
14:41:48 Q. Well, I'm going to come back to that in due course, but let's just look at your military career as it progressed: Two months in the mid-1980s in the armed forces of Liberia, then in 1989 you're captured by the NPFL, yes?
A. Yes.

Q. And you have some training with the NPFL before you go on to be a trainer yourself, is that right?
A. Yes.
Q. How long were you being trained before you yourself became
14:42:32 a trainer?
A. Well, I did not spend a long time on the training that I had from the NPFL.
Q. According to you you were training RUF recruits by March of 1990, weren't you?
14:43:07 A. Yes.
Q. When exactly is it you say that you were captured by the NPFL, just so that we get a sense of how much training you had with them?
A. Well, I have said that they captured me in Nimba County.
14:43:42 Q. I asked you when, not where.
A. Well, they captured me in December month and that was in 1989.
Q. Where were you captured, where in Nimba County?
A. Well, I said they captured me in a village.
14:44:17 Q. The name of the village, please?
A. Well, I don't know the name of the village and I don't think I have called the name of any village here where I was captured.
Q. Are you trying to avoid telling us where it was that you
14:44:42 claim to have been captured?
A. Well, I didn't try to avoid. I am not trying to avoid, but I said I was captured in a village in Nimba County. That was what I said, but I don't even know the name of the village because that was not where I was staying.

Q. We'll come back to that. By 1991, the invasion of Sierra Leone by the RUF - you are a lieutenant. You're the commander of the 2nd Battalion, aren't you?
A. Yes.
14:45:29 Q. In early 1992 you're the acting battle group commander, yes?
A. Yes, I was acting battle group.
Q. And it wasn't until 1993 that you go back to your other rank of the battalion commander. That's right, isn't it?
14:46:03 A. No, I did not take a position that was battalion commander.
Q. Well, you were acting battle group commander in 1992 because of the absence of someone else, weren't you?
A. Yes.
Q. Who was that?
14:46:29 A. It was Rashid Mansaray.
Q. When did he return to take up his position of battlefield group commander?
A. Are you waiting for me?
Q. I am. I asked you a question. The normal procedure is to
14:47:11 await the answer.
A. Okay, I would like you to go over the question one more time.
Q. When did Mansaray return to his role of battle group commander?
14:47:27 MR KOUMJIAN: Excuse me, your Honour, it assumes a fact not in evidence: That Mansaray returned.
PRESIDING JUDGE: He is allowed to lead in cross-examination.
MR KOUMJIAN: My objection is not leading, but the witness

has been asked the equivalent of, "When did you stop beating your wife?" There is no evidence that Mansaray ever returned and the question was when did he return.

MR MUNYARD: There doesn't have to be evidence. I can ask the question and the witness can answer it.

14:47:51

PRESIDING JUDGE: He can.

MR KOUMJIAN: He cannot answer when if something never occurred.

MR MUNYARD: We don't yet know whether or not it occurred. This is not the United States, as we have been constantly reminded by the other side. This is an international tribunal in which other rules of evidence apply. As far as I'm aware, there is no basis in any jurisdiction for my being denied the right to ask the question, "What happened when this man returned?"

14:48:02

14:48:22

PRESIDING JUDGE: In cross-examination there is more leeway, Mr Koumjian, and I allow the question. Please repeat the question.

MR MUNYARD:

Q. When did Rashid Mansaray resume his role of battle group commander in which you had been acting?

14:48:44

A. Well, Mansaray resumed duty in 1993.

Q. Thank you, so he did in fact return. You go back to being battalion commander, don't you?

A. My Lords, I want you to understand that I was not battalion commander and when I gave the office back to Rashid, I did not go to take up a battalion commander position.

14:49:24

Q. All right, if I've got that wrong you tell me what your position was when Rashid returned?

A. Well, when Rashid took over it was the same week that the

NPRC advanced on RUF positions, so we were all focused on the front line. There was no function in office at that moment.

Q. So, would it be wrong to say that when Rashid Mansaray came to Kailahun from Pujehun in early 1993 you went back to being a battalion commander in the field? Would that be wrong?

A. Well, I did not occupy the position of battalion commander, so I have not said I was battalion commander.

PRESIDING JUDGE: Mr Witness, I have a note here that you were asked, "In 1991 were you commander of the 2nd Battalion of the NPFL?", and you said yes. I understand that that's what is being referred to. Am I correct, Mr Munyard?

MR MUNYARD: Your Honour is absolutely correct and I can put more detail to the witness if he fails to understand the questions I've put so far.

PRESIDING JUDGE: Mr Witness, are you saying that that answer you gave was incorrect?

THE WITNESS: Well, my Lords, when you talk about 2nd Battalion commander I want the Court to know that the battalion that we were fighting with, it was the 2nd Battalion that occupied Kailahun District and the 1st Battalion occupied Pujehun District. So, in case of the 2nd Battalion, yes at the time we entered I was the commander. That was prior to my occupying the position of acting battle group commander. But when I left the position of acting battle group commander, I did not return to become the head of the battalion, but I was within the 2nd Battalion and the man who came to take over as the acting battle group commander was the man in charge of that whole battalion in Kailahun District. So, I was within the 2nd Battalion, but I was a commander at the front line. That is what I want the Court the

understand.

PRESIDING JUDGE: Thank you, Mr Witness, I am clear now.

MR MUNYARD:

Q. What I'd like you to do, Mr Mongor, is answer my question. Would it be wrong, therefore, to say that when Mansaray came to Kailahun from Pujehun in early 1993 you went back to being a battalion commander in the field? Would it be wrong to say that?

A. Yes, it would be wrong because I was not the battalion commander at that time, so I cannot say, "Yes, I was battalion commander."

Q. You've just told us that you weren't the battalion commander, but you were in the battalion and you were a commander. What happened to you after Mansaray came back and took on his previous role?

A. Well, I said I went to the front line and I was fighting until the time the NPRC started advancing on us.

Q. And when is that, do you say?

A. Well, it was in the same 1993 when the NPRC advanced on the RUF.

Q. What was your position, your rank, during that time?

A. At that time I have said I was fighting on the front line, I was with the fighting - with the fighters and the rank I carried at that time was captain.

Q. So who made you a captain and when?

A. Well, the promotion came from the leader. He gave me the promotion.

Q. The leader being who?

A. It was Foday Sankoh.

Q. Now tell us, please, when you were promoted by Foday Sankoh

to captain.
A. The time I occupied the position as acting battle group commander was the time I became captain.
Q. All right, that's 1993. Do you change your rank at all in 1993 from captain?
14:56:11
A. In 1993 I did not change to any other rank in that year.
Q. What about 1994, any promotions in 1994?
A. There was promotion in 1995. They gave promotions --
Q. You were a major then? Sorry, I interrupted. I'm sorry. You were made a major in 1995, weren't you?
14:56:56
A. Yes, they made me major.
Q. And area commander of the north?
A. Yes.
Q. Who was above you when you were area commander of the north? Who was higher up than you then?
14:57:22
A. It was Mohamed Tarawalli.
Q. In 1996 you're promoted again, aren't you, to colonel?
A. Yes.
Q. That was the year that Camp Zogoda was routed, wasn't it, that the RUF were chased out of Camp Zogoda?
14:58:05
A. Yes, sir.
Q. But you weren't there because you spent most of that year in the northern hills, didn't you?
A. Yes, sir.
Q. How many times did you visit Camp Zogoda before the RUF were driven out of it?
14:58:28
A. I visited there two times.
Q. Right. We'll return to that in due course. In 1997 the AFRC coup takes place and you become a member of the Supreme

Council, don't you?
A. Yes.
Q. That's to say you become a member of the governing body of the country of Sierra Leone. That's right, isn't it?
14:59:22 A. Yes, you are right.
Q. In the following year the junta is driven out of Freetown by ECOMOG forces, 1998, but you were then promoted to brigadier, weren't you, in 1998?
A. Yes.
14:59:50 Q. Who else was promoted to brigadier in 1998?
A. Superman, Morris Kallon, Issa Sesay and Mike Lamin was also brigadier.
Q. And the group whose names you've just given to us, including your own of course, were the most senior commanders
15:00:32 within the RUF at that time, weren't they?
A. Yes.
Q. And you remained as one of those most senior commanders in the RUF until your imprisonment at Pademba Road in May of 2000. That's right, isn't it?
15:01:04 A. Yes.
Q. And so until your imprisonment at Pademba Road, you were one of those with the greatest responsibility for conducting the civil war in Sierra Leone, weren't you, Mr Mongor?
A. I was one of the senior men, yes.
15:01:30 Q. The senior men are those with the greatest responsibility for what went on in the course of the civil war, aren't they?
A. Not all of them.
Q. Who do you say amongst them does not bear the greatest responsibility for the conduct of the civil war? Give us the

I N D E X

WITNESSES FOR THE PROSECUTION:

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Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

FRIDAY, 4 APRIL 2008
9:30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr Simon Meisenberg Ms Sidney Thompson
For the Registry:	Ms Rachel Irura
For the Prosecution:	Mr Nicholas Koumjian Mr Mohamed A Bangura Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Terry Munyard Mr Morris Anyah Ms Elizabeth Duby

A. Yes, I have it.

Q. It is headed "Additional information provided by witness TF1-532", that's you. "The witness gave the following additional information in the course of proofing interviews on 16 and 20 February in The Hague." Then it also says, "This material has not been reviewed with the witness or read back to him."

I am now going to review at least one passage of it and read it back to you to see if you agree that this is an accurate note of what you told the Prosecutors just a few weeks ago here in The Hague. I would like you to go to the third paragraph from the bottom where there is a sentence that starts, "In discussing the Magburaka plane shipment." Would you let us know when you have got that?

A. I have seen it, my Lord.

Q. Let's read it and see what you say about this:

"In discussing the Magburaka plane shipment the witness said that the shipment received included two single barrel AA guns with ammunition."

Is that right? Have they recorded that correctly?

A. It is correct.

Q. "And GMG ammunition." Did you tell them that?

A. I told them.

Q. General machine gun, I think. "But did not include any AK-47 ammunition." Did you tell them that?

A. I told them.

Q. "Which limited the military benefit of the shipment." Did you tell them that? Did you tell them that by not including any ammunition for your AK-47s that rather limited the value of what you'd received in the Magburaka airdrop?

to the RUF controlled areas. I don't recall that. The fact that they went there I have not disagreed with and, even when they came, they showed us some pictures.

Q. What was it they went for to Burkina Faso?

11:08:22 A. Well, what Sam Bockarie told me was that he had received call to go to Mr Taylor and at that time when he was going he went with SYB Rogers and some other people. And he said it was during that time that the Pa, Mr Taylor, made a connection between Sam Bockarie and the Libyan leader, so he said after they

11:09:05 went there they spoke with the man and then they later came back to Liberia.

Q. Did you mean to say, "... the Pa, Mr Taylor, made a connection between Sam Bockarie and the Libyan leader"? Did you mean Libyan leader, or did you mean Burkina Faso leader?

11:09:28 A. I said Sam Bockarie told me that when they got to Liberia the Pa, who is Mr Taylor, he connected him with the Burkina Faso President.

Q. Thank you. And what was the point of connecting him with the Burkina Faso president, Mr Mongor?

11:10:01 A. Well, he connected him with them there because of materials and that was arms and ammunition contact.

Q. Thank you. So that was the purpose of Sam Bockarie and SYB Rogers going to Burkina Faso and staying in a hotel, to try to get arms and ammunition from Burkina Faso?

11:10:38 A. Well they went there to establish the contacts, but they did not immediately get the arms and ammunition from there. That was why they went and stayed in the hotel and, when Sam Bockarie came back, that was what he explained to me.

Q. And they came back with a large amount of materials, as you

I N D E X

WITNESSES FOR THE PROSECUTION:

TF1-532 6627

CROSS-EXAMINATION BY MR MUNYARD 6627

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

MONDAY, 7 APRIL 2008
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr William Romans Ms Sidney Thompson
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For the Prosecution:	Mr Nicholas Koumjian Mr Mohamed A Bangura Mr Alain Werner Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Terry Munyard Mr Morris Anyah

[Interpreters sworn]

PRESIDING JUDGE: Thank you and I welcome you both to the Special Court here in The Hague and I think I am also welcoming our first lady interpreter. So, you are both welcome. If there
09:31:44 are no other matters I will - proceed with cross-examination, Mr Munyard. I will first remind the witness of his oath.

Mr Witness, you recall that last week you took the oath to tell the truth. That oath is still binding on you and I again remind you of this and you are to answer questions truthfully.
09:32:09 You understand?

THE WITNESS: Yes, my Lord.

PRESIDING JUDGE: Very well. Please proceed, Mr Munyard.

WITNESS: TF1-532 [On former oath].

CROSS-EXAMINATION BY MR MUNYARD [Cont.]:

09:32:14 MR MUNYARD: Thank you, your Honour:

Q. Good morning, Mr Mongor. I am going to ask you first of all about money this morning and, your Honours, I am looking at tab 17 in the bundle. Thank you, Madam Court Officer.

Mr Mongor, I have a correction to make. Throughout the
09:33:28 course of last week when I was cross-examining you, up to I think Friday, I kept saying that you had been interviewed on 24 separate dates. As I indicated at the end of last week, I thought I might have got that wrong. I have rechecked and on my counting of all the different days you were actually interviewed
09:33:53 on 26 separate dates and, as I have previously said, if I have got that wrong there are others who have the documentation who will correct me and I will be happy to be corrected.

Now, you told us when I first started asking you questions that you had been given some money on each of the occasions, each

of the dates when you were interviewed, is that correct?
A. Yes, my Lord.
Q. We looked last week at some of those occasions and I am not going to go over that material again, but I will just go through it, as it were, to tick off those dates. So we start on the first page of tab 17. We have looked already at box number 1, 28 August. That was prior to your first interview. The first interview was in the second box, 30 August, and we looked at that. We also looked at the next interview in box number 3 where you received 50,000 leones, the same as box number 2, for transport, meals and lost wages, and again the third interview, on 4 September, the same sum for the same reasons.

If you go over the page, please, box number 5 is Friday, 8 September. Again the same amount of money, 50,000 leones, for meals, transport and lost wages. Now, number 5, 8 September, follows on from number 4 which is 4 September, but we know that you were interviewed in between those two dates: On 5 September and then again on 6 September, but there are no sums recorded for those two dates of interview.

The next time you were interviewed after 8 September, in box 6, was 17 September, but there is no receipt for that date, or on that date as such. The next receipt we see is box 6. Can you have a look at that, please. Friday, September 29th 2006, transport and lost wages, 15,000 leones. No reference to meals there. Can you pause for a moment and just think back. Was there ever a time when you went along to see the Prosecution for an interview, but they didn't at the end of that interview, on that day, hand over the money to you, they gave it to you at some later date? Did that ever happen, or did you always get it on

the same day as you have told us both this morning and last week?
A. No, I can't recall that. The one you have spoken about, I don't think I was given the money on that same day.
Q. Well, I am not going to spend a long time on this, but the
09:37:56 one I have spoken about is 17 September 2006. How can you now remember whether on 17 September 2006, one out of 26 different days on which you were interviewed, that on that specific date you weren't given the money on the day?
A. Well, as we go along discussing issues about the monies
09:38:43 then maybe my - I will reflect and recall about the money issues that you are talking about. That was why I said so.
Q. The question I asked you is how can you remember on 7 April 2008 that on the day you were interviewed, 17 September 2006, on that particular day they didn't give you the money there and
09:39:10 then, they gave it you at some other time? How can you remember that now?
A. Well, I want to tell you that the date you are talking about I can't recall it actually, but I recall that there were days that I went there that they did not give me money and I
09:39:35 returned.
Q. Well, can you recall saying in the last eight minutes that every time you were interviewed you were paid? You certainly said that when I first asked you about this last week?
A. Yes, I said it. I have said it. I have not denied that.
09:40:09 Q. Are you now saying that you have got that wrong and there were in fact days on which they didn't pay you?
A. Well, it was not a large amount, but I think they were always giving me money, but if I am not mistaken I think it was just about two times that I was not given money, but the money

was later given to me.
Q. Let me see if I have understood that. Are you saying that there were about two occasions on which they didn't give you any money on the day, but they gave it to you later, or are you
09:40:59 saying there were about two occasions on which they gave you no money at all, either on the day or at any time after that?
A. I said they gave me the money later.
Q. All right. After 17 September the next time you were interviewed was 1 October 2006. In fact, in box 6, Friday 29
09:41:42 September, you are given 15,000 leones, although that wasn't a date on which you were interviewed. You were interviewed two days later on Sunday, 1 October; but if you look at box 7, which is the next one in time after box 6, that relates to 23 December 2006 when you were given 40,000 leones for meals, transport and
09:42:26 lost wages again. Now, in the meantime, between 29 September and 23 December, you had been interviewed on 1 October, 8 October, 11 December and 23 December, the same date of the next receipt in box 7. Were there four occasions when you received - well, let me put that in another way. Were there three occasions on which
09:43:11 you can think that you weren't paid at all in October and December 2006, or is the position that you just don't know now?
A. Well, I can't recall now.
Q. Box 8, 20,000 for meals, transport and lost wages, another Sunday. You said last week that you wouldn't lose wages on a
09:43:56 Sunday. Do you still maintain that?
A. I don't sell on Sundays.
Q. No, all right. Box 8, Sunday 28 January, meals, transport and lost wages. Lost wages there for that Sunday, is that a mystery to you as to why they would pay you for lost wages?

A. Well, maybe that is the procedure of their own job. I cannot dispute that.

Q. Box 9, please. Another Sunday, 4 February, which was indeed a date on which you were interviewed. The reason given 09:45:01 there is "monies provided to witness to enable clarification interview on 4 February 2007", that is the Sunday, another 20,000 for meals, transport and lost wages.

The next occasion on which you were interviewed was 8 February 2007, but there is no payment specific to that date in 09:45:31 this document. The next date where there is a payment is box 10, Wednesday 21 February 2007, "monies provided during interview with witness management unit/investigations on 21 to 22 February 2007". Now, I just want to ask you - I don't want to know the detail, certainly not at the moment at any rate. Did you have 09:46:13 interviews with the witness management unit/investigations on 21 and 22 February 2007, that is just over a year ago, that you can now remember?

A. Well, the people who were there, all I know is that they are Special Court workers who are there, who normally went to 09:46:53 call me. So I can't tell the difference between them to say this person is this and that other person is that, but all I know is that they were all Special Court people, so when they needed me they called me.

MR MUNYARD: Would your Honour bear with me for just a 09:47:10 moment:

Q. This is a document supplied to us by the Prosecution, you understand, not from court staff as such. Can you remember being interviewed on two consecutive days, one day after another, in late February last year by somebody in the Prosecution?

A. Well, I can't recall that now because it has taken a long time, but I know that those things have been happening.

Q. Right. We don't have any interviews for either of those dates, so if you were interviewed on those dates then that brings the total number of days on which you were interviewed to 28. Again, 40,000 for transport, lost wages and meals on 21 February. The next box is Monday, 26 February 2006 and it is described as follows, "reimbursement provided to witness during clarification by Witness Management Unit on same date", presumably meaning the date Monday, 26 February 2007. 20,000 for meals, lost wages and transportation then. We don't have any document relating to an interview on that date, but if you were interviewed on that date by the Prosecution then that would bring it to 29 separate dates.

The next time you were interviewed you were interviewed on 14 and then on 15 June 2007.

PRESIDING JUDGE: Just pause a moment, Mr Munyard. Did you ask - I didn't record or hear a reply when you put the 26 February interview to the witness.

MR MUNYARD: Yes, to be fair to the witness I think the only thing he could say is "yes" because I was simply putting the fact in evidence that this document demonstrates that there was an interview on that date, 26 February.

MR KOUMJIAN: Your Honour, I would say that is a matter of interpretation of grammar: Whether "on same date" refers to the reimbursement, or the clarification.

PRESIDING JUDGE: I think you have a question on record, Mr Munyard. In fairness to the witness he should be allowed to answer it.

MR MUNYARD: I completely agree. Shall I put it again?

PRESIDING JUDGE: I think it would be best. Put it again.

MR MUNYARD: I will put it again in a way I hope the witness is able to answer:

Q. Mr Mongor, if you have a look at box 11 the date is Monday, 26 February 2007. On that date you were given 20,000 leones for meals, lost wages and transport and the reason that is specified there is "reimbursements provided to witness during clarification by Witness Management Unit on same date". Now, do you have any memory now of being paid for - or being paid on that date during a clarification interview?

A. Well, the date that you are talking about I can't recall now because it has taken a long time, but I received money, but I can't recall the dates.

Q. Right, but do you agree that the document suggests that you were paid money for an interview on Monday, 26 February 2007?

MR KOUMJIAN: Your Honour, I would object because that is asking this witness to give an opinion as to the grammar of that sentence and what it means and I would say since clarification by WMU, WMU does not do the clarification. So clarification - "reimbursements provided to witness during clarification by WMU on same date", to me it is quite clear what the meaning of that is and I don't think it is proper to ask the witness to give his interpretation of the English.

MR MUNYARD: I am very happy for my learned friend to give what his interpretation is. I, of course, have nothing to do with the WMU of the Prosecution. He will know better than me.

MR KOUMJIAN: I would just point out that it is logical that WMU does not do clarifications. They to do do reimbursements, so if it says "reimbursement by WMU on this date"

that is what took place.

PRESIDING JUDGE: Thank you for that clarification, Mr Koumjian. Likewise I am not aware of the bureaucratic procedures, but clarification is now before us and it would appear that "on the same date" refers to --

09:52:57

MR MUNYARD: Can I have a try at this and Mr Koumjian will correct me if I have got it wrong:

Q. Mr Mongor, it appears that you were paid by the Witness Management Unit on the same date, i.e. Monday 26 February 2007, for your expenses during a clarification interview. Do you agree?

09:53:26

A. Yes, I agree that I received money, but I can't recall the date now, my Lord.

MR MUNYARD: All right, thank you. Can I invite the Prosecution to supply us with records of the interviews referred to in both boxes 10 and 11?

09:53:50

MR KOUMJIAN: Yes, thank you, your Honour. I want to make it absolutely clear that the Prosecution has provided the Defence with all interviews with this witness and if there is a record of a payment on a certain day we have checked all interviews have been provided to the Defence of this witness.

09:54:09

MR MUNYARD:

Q. Box 12, please. Mr Mongor, the next date on which you are paid anything is Thursday, 29 November 2007. It is for communication and it is 30,000 leones. Now, that is some nine months after the previous payment in February of 2007. In the meantime, we know that you were interviewed on 14 and then on 15 June 2007 and on 25 and then on 26 July 2007. So that is four separate dates between boxes 11 and 12. Do you have any

09:54:39

recollection of not being paid for four interviews in the middle of last year?

A. I can't recall now concerning the dates you are talking about.

09:56:02 Q. Box 12, 29 November 2007, you were interviewed on that date. Then if we go over the page to box 13, Wednesday 5 December 2007, again for communication another 30,000 leones. You had been interviewed the previous day on 4 December 2007. Do you now know what you were either given money for, or what given

09:56:38 something to the value of 30,000 leones for communication means?

A. Well, I can recall that the 30,000 that you are talking about was for me to buy a top-up card for my phone.

Q. Right. The next box, 14, Wednesday 5 December 2007, 120,000 leones for communication. Was that top-up cards, or was

09:57:18 that something else? Sorry, it is the same date, but it is a separate receipt.

A. I received that money they gave me.

Q. And what was it for?

A. Well, I had requested for communication business so they

09:57:55 gave it to me.

Q. Yes, but what do you mean by communication business? It is four times as much as the two previous payments of 30,000 which were top-up cards.

A. Yes.

09:58:15 Q. What was this one for?

A. Well, the 120,000 leones that you are talking about was given to me and I used some for communication business. That is also to buy some top-ups for my phone. Then the remaining, I used it for meals.

Q. So can you remember now how much you spent of it on communication, on top-ups?
A. Well, I can't recall everything now. To say that I can recall everything now and give you the exact amount that I used on communication I cannot recall it now, but I am sure that I was given money for me to buy top-up and put it into my phone most times.
Q. Can I just clarify something with you and I know you told us last week, but can you remember the date when you came to The Hague this year?
A. I came here in January.
Q. Right.
A. That was the time I came to The Hague.
Q. All right, thank you. Any idea now whether it was early January, late January? Can you be any more specific than that?
A. I can say it was in late January that I came here.
Q. All right. The next tab, please, number 18. I think the witness is still on the previous tab. Yes, thank you.
Mr Mongor, this is a further sum of money that was expended in relation to you and your family by the Witness and Victim Service. That is a separate body of the Court, different from the Prosecution. You can see there, in paragraph numbered 2, "subsistence allowance", that you were brought under the protection of the Court on 10 March 2007, that is just about 13 months ago, and since then, to 26 February of this year, you have been paid a total as follows: A subsistence allowance of 7,852,000 leones. Now, I don't want to know details of any addresses, or anything like that, but did you move house at all on or around 10 March 2007? I am not talking about coming to The

things?
A. You mean the information regarding this particular letter that I have spoken about? Is that what you mean, my Lord?
Q. I do.
10:23:38 A. Yes, the person who first spoke to me, who tried to ensure that I talked to the Prosecution, he assured me of that even before I came to the Court.
Q. Right, thank you. I want to turn to something else, please. In your evidence in March when you were being taken
10:24:09 through your account by Mr Koumjian, you told this Court - and correct me if I have misunderstood - that the invasion of Freetown on 6 January 1999 was essentially Charles Taylor's idea, do you agree?
A. I said that, my Lord.
10:24:49 Q. So it was all down to Charles Taylor, was it, the idea that Freetown should be attacked in early January of 1999?
A. Well, it was a plan that they arranged that we should attack all the other places that we attacked and that we should attack Freetown. That was a plan brought - that Mosquito
10:25:28 brought.
Q. From?
A. The time he came from Monrovia. That was the time he called us to a meeting and he explained that to us.
Q. Are you sure it wasn't in fact a project of the AFRC, the
10:26:07 attack on Freetown in January 1999?
A. Well, the AFRC people went there. They went to Freetown, but the plan that was brought by Mosquito from Mr Taylor was for us to attack all the other places and to advance on Freetown, but they did not select a specific group that it was this group that

was supposed to go to Freetown. I am not saying that the AFRC and the RUF did not go to Freetown. They all went to Freetown on 6 January.

Q. And whose idea was it?

10:27:02 A. Well, the plan I have told you about was a plan that Mosquito brought when he came from Monrovia and he told us that he discussed with Mr Taylor and that was the same time he brought the ammunition for us to attack Kono and other places, and for us to advance on the capital city and to capture there.

10:27:28 Q. Now, I put to you on Friday that the relationship between the AFRC and the RUF was a difficult relationship and you didn't agree. Do you remember?

MR KOUMJIAN: I believe counsel on Friday put a timeframe of during the initial junta period, during the time that they

10:27:50 were in Freetown, as I recall.

MR MUNYARD: I think what I put was "from the outset". I think I used that expression "from the outset".

MR KOUMJIAN: That is correct.

MR MUNYARD: Meaning right from the start it was a

10:28:02 difficult relationship:

Q. And you would not agree with that, would you, Mr Mongor?

A. Yes, it was because you were talking about the start. You said the RUF and the AFRC and you were talking about the beginning. That was the one I said I did not agree with.

10:28:25 Q. Yes, you have just heard Mr Koumjian's intervention, haven't you, and that is why you are now coming out with that answer, isn't it?

A. That was not it, my Lord.

Q. All right, I suggest it was. When I was asking you

Q. Thank you. It reads as follows:

"Before the AFRC coup in 1997 the witness had requested from the RUF, northern jungle, ammunition by radioing Sam Bockarie in Buedu. Sam Bockarie told him that Jungle had already left to see Papay (Charles Taylor) with the request for more ammunition and that the witness should hang on."

Did you tell them that?

A. Yes, my Lord.

Q. It then goes on:

"Sam Bockarie later told the witness [that is you] that Jungle had come back to Buedu with some 50 boxes of ammunition for AKs, RPGs and GMGs. When he was told about that the witness was already in Freetown with the AFRC and it was in 1997."

Did you tell them that?

A. Yes, my Lord.

Q. It goes on:

"The witness thinks that Jungle was in Monrovia when the AFRC coup took place in Sierra Leone and that he brought the ammunition to Buedu once the RUF had joined the AFRC in Freetown."

Did you tell them that?

A. Yes, I told them, my Lord.

Q. It continues, "When the ammunition did arrive in Buedu" - pausing there and just taking your face away from the page for a minute, Mr Mongor, can you help us, when did the ammunition arrive in Buedu?

A. Well, I can't tell you the time now because at the time I requested for the ammunition I was still in the jungle and the time it arrived I had received instruction that I should go and

join the brothers and that is the AFRC, so I can't recall any specific date now that it was on this specific date that the ammunition arrived.

Q. Well, let us just look at the whole of that sentence, please, "When the ammunition did arrive in Buedu the RUF top command" - are you in the RUF top command?

10:44:53

A. Yes, I was there.

Q. "... the RUF top command did not tell the AFRC that they had received this ammunition as some level of mistrust still existed between the AFRC and the RUF."

10:45:20

Did you tell them that?

A. Yes, my Lord.

Q. So why did you tell us that there was no level of mistrust between the two organisations just a moment ago?

10:45:52

A. Yes, I did say that I did not trust somebody. I did not feel that way.

Q. Pardon? Can you just explain that again?

A. I said I don't think I had the feeling that I feared somebody.

10:46:26

Q. Right. Now would you go back to my question, please. Why did you tell the judges a very short time ago that there was no level of mistrust between the AFRC and the RUF?

MR KOUMJIAN: Your Honour, I would refer counsel to page 29 of the LiveNote, line 9, and the witness's answer, at least on my

10:46:46

14 point screen. May I read the question and answer to help your Honours, or at least --

MR MUNYARD: [Microphone not activated].

MR KOUMJIAN: The question begins on line 6 and the answer of the witness on line 9.

the moment.

PRESIDING JUDGE: Mr Witness, did you say that SAJ Musa did not voice his opinion to you, or did not voice his opinion to "us"?

11:02:51 THE WITNESS: To us.

MR MUNYARD: All right. Right, Madam President, are we ready to move on from that one?

PRESIDING JUDGE: Please proceed.

MR MUNYARD: Thank you:

11:03:23 Q. Mr Mongor, I want you to think carefully about this question that I am going to ask you now. When you were first being interviewed by the Prosecution, was it your position that Charles - that you didn't really know anything about Charles Taylor's role, if any, in the invasion of Freetown on 6 January

11:03:50 1999?

A. Yes, if my memory serves me well maybe I said that.

Q. And is that right: That you didn't really know anything about Charles Taylor's role, if any, in the invasion of Freetown in January 1999?

11:04:29 A. Well, I did not know initially, but later I came to know.

Q. Well, I don't want to be unfair to you. When you say "later I came to know", what do you mean by that? When is later?

A. When communication started going on.

Q. Right. Let me make it perfectly plain, I am not talking to

11:05:00 you about the time that these things were happening, 1998 and 1999. I am talking about your discussions, your interviews, with the Prosecution that start at the end of August 2006. Now, when you were first being interviewed by the Prosecution in 2006, you couldn't really tell them anything about Charles Taylor's

involvement in the invasion of Freetown on 6 January 1999 because you didn't know anything about it, did you? Do you agree?

A. I want you to ask that question again. Let me understand it well.

11:06:00 Q. Right. You start to be interviewed at the end of August 2006 and you are then interviewed many times in 2006 and again many times in 2007. When the Prosecution first started to ask you questions about Charles Taylor's involvement, if any, in the invasion of Freetown on 6 January 1999, you told them you didn't

11:06:45 really know anything about whether or not he had any part in that, didn't you?

A. Yes, my Lord.

Q. And that was the truth, wasn't it?

A. That was what I said.

11:07:05 Q. What you first said to them, that you didn't know anything about Charles Taylor's involvement in the invasion of Freetown, was true, wasn't it? You didn't have any knowledge about Charles Taylor being involved in the plan to attack Freetown in January 1999, did you?

11:07:31 A. I told them that, my Lord.

Q. Thank you. There came a later stage later on when you started to tell them a story along the lines of the evidence that you had given to us in March, namely that Charles Taylor had told Sam Bockarie that you should attack all these other towns and

11:08:06 then move on to Freetown. That is right, isn't it?

A. Yes, my Lord.

Q. Why did you tell them that Charles Taylor had the plan to attack Freetown later on when earlier you had told the Prosecution that you really didn't know anything about his

involvement in the invasion of Freetown in January 1999?
A. Yes, I said that.
Q. No, why did you change your story - hang on - later on, when you were being interviewed later on, having originally said
11:08:53 that you don't know anything about Charles Taylor's involvement in the attack on Freetown in January 1999?
A. When they asked me whether I was saying the truth, what I was talking was the truth, and they said they wanted me to say the truth, I said, "Well, the plan was something that Mosquito
11:09:19 brought and he explained to us that it was he and the Pa who discussed that we should attack all the other areas and then advance on Freetown and capture there." That was the time I told them, "Okay, I will tell you the truth. This was what Mosquito explained to us when he returned."
11:09:47 Q. So why didn't you tell the Prosecutors that when they were first asking you about what, if anything, you knew of Charles Taylor's involvement in the attack on Freetown in January 1999.
A. Yes, I did not initially tell them, but later when they asked me they said to me that they wanted me to say the truth
11:10:19 about what I was explaining and then I also told them that, "I don't want to lie. Now I will tell you the truth." I said, "This plan came from Mr Taylor and it was when Sam Bockarie returned that he brought the whole plan that the attacks should go on", and that was the time I told them that.
11:10:43 Q. Right, so before you were ever interviewed by the Prosecution you knew all along that the plan to attack Freetown was Charles Taylor's idea, yes?
A. Yes, I knew.
Q. When they first start interviewing you were you telling

them lies?

A. I did not tell them at all.

Q. I am going to try again on that one. When they first asked you, "What can you tell us about Charles Taylor's involvement in the attack on Freetown in January 1999?", did you tell them the truth, or did you tell them lies?

11:11:21

A. I did not tell them the truth. At the start, at the first time, I did not tell them the truth, but later I came out plain to them.

11:11:50

Q. Would you like to explain to the learned judges why you claim that you lied to the Prosecution in the early stages of your interviews?

A. What did you say, sir?

Q. Would you like to explain to the learned judges sitting there why you lied to the Prosecution in the early stages of your interviews?

11:12:08

A. Well I myself who is sitting here now I thought those things were strategies that the people used and, although they had told me that they had nothing to do with me, I think it was something that they were doing to cajole me so that later they will be able to get me round and to arrest me for something. But later when they actually told me that I shouldn't hide anything away from them, I should tell them the truth, and then I later came out to plain to them and said, "Okay, I will tell you the truth", and I said to them that, "Yes, this plan was a plan that came from Liberia and it was Mosquito that brought it that we should carry out the attack".

11:12:41

11:13:06

Q. Right, let us look at what you have just told us:

"I thought those things were strategies that the people

used and, although they had told me that they had nothing to do with me, I think it was something they were doing to cajole me so that later they will be able to get me round and to arrest me for something".

11:13:46 On 12 September of 2006 you had been given a letter granting you immunity from prosecution, hadn't you?

A. They told me that.

Q. You have told us this morning that you knew before you ever started being interviewed by them that they were going to give

11:14:09 you this letter. Did you think that the letter might not be worth the paper that it was written on? Is that what you are saying?

A. Well it worth it, but I am a human being. I needed to think. Sometimes somebody will write something on a piece of

11:14:40 paper and then I will read it and sometimes what is said in the paper then I will just look at it that way, but equally so I am a human being. I had my own way to feel about it.

Q. So, you were still worried? Despite having had the promise of immunity, you were still worried that they might actually

11:15:10 charge you with an offence and you would end up being on trial in front of this Court. Is that right?

A. At times I had the feelings in mind and sometimes I thought over them, but sometimes again I will sit down and say, "What actually did I do? I did not do anything", but as a human being

11:15:38 you will be sure - you will not be cock sure, so sometimes I sat down and said, "Maybe these things will happen, or maybe they will not happen", and sometimes I had a free mind and sometimes I had it in mind I thought that it was going to end up this way.

Q. So, have I understood you correctly? Throughout 2006 are

you saying that you were still worried that they might prosecute you even though you were co-operating with them?

A. Yes, I was co-operating with them. Yes, I had really accepted to talk to them and they also had assured me that they were not going to do anything to me, but at the same time I had a shaky heart.

Q. Right, and because of your shaky heart you decided you wouldn't tell them the truth about some things. Is that right?

A. Well it was when I started, but later when they actually assured me I said, "Okay", this thing - I decided to give in and I decided to tell the truth. So whether anything was going to happen to me now let it just happen, whether they were going to kill me let them kill me, but I said, "Okay, I will say the truth", but as long as I wanted peace for myself and I also wanted peace for them I decided to give in to say the truth to them.

Q. So, in how many interviews did you tell them lies?

A. Well I don't think I can recall that it was so and so interview, but based on this particular interview that we are talking about I decided to give in myself and say the truth. And as long as I wanted peace I decided to say the truth and if anything was going to happen after that let it happen, but I said I will say the truth to them.

Q. Let me see if I have understood, Mr Mongor. You were worried that they would still prosecute you and so you decided that you would give them more information that they wanted to hear in order that they would not prosecute you. Is that what you are saying?

A. No, my Lord, not what they wanted to hear that I told them

only to satisfy them, but I am saying that I gave in myself so that I will say the truth for the sake of peace. This was the reason why I was willing to say the truth for to them, but I am not saying that this was any reason just for me to say something that will satisfy them. I was not trying to satisfy them at all.

Q. Did you feel at any stage during the whole interview process that you were being pressed by them?

A. What is the pressed, my Lord?

Q. You understood it last week because you said when I used the same term, "No, I wasn't being pressed by them". Have another go at that question, please, and try and give me an honest answer. Did you feel that you were being pressed by the Prosecution to give them information at any stage during the interview process?

A. Well, when you talk about press I take it that it is just like when you press somebody to say something that you want to satisfy you. That was not the case actually. It was not the case that I was being pressed just to say, okay, say this, or say this or say that. That was not what they were doing to me.

Q. Are you sure about that?

A. But at times they asked me question and later they will ask me the same question. Like, for instance, if they asked me a question today and when I went some other time when I came back they will ask me that same question. Something like that.

Q. Yes. In fact, you do know what pressed means because last week you asked me to stop pressing you. Do you remember that? Do you recall?

A. Yes, I recall when I told you not to press me. It was when you were asking me over and over, over and over.

Q. Right. Was there ever a time when the Prosecution made it clear to you that they really wanted more information out of you than you were currently giving them and that there must be more information you could give them?

11:21:42 A. They wanted more information from me based on the roles that I played and the things that I knew about for me to come out plain and explain to them.

Q. Mr Mongor, just tell the learned judges, would you, some of the lies that you told in the first interviews? Give them some

11:22:07 example of things you told the Prosecution that were lies.

A. Well I can't recall now, except this topic that we are discussing on now concerning the J6 that we were discussing, I told you that initially I did not tell them with regards Mr Taylor's plans. But when they later told me that, "We

11:22:50 actually want you to tell this Court the truth", and then I also accepted that I will be willing to say the truth, then I decided to come out plain, but if you think there is any other that you have recognised or that you have realised that I did that I had not said initially that I have not been able to say now, you come

11:23:11 up with it and then I will answer before this Court plainly that, yes, that is it.

Q. Well, I am not going to rise to the challenge. You just tell us - tell the Court - how it was to your advantage not to tell them the truth about Charles Taylor's involvement in the

11:23:41 attack on Freetown on January 6th 1999?

A. Well I don't know about any advantage that you are talking at, my Lord.

Q. You have told the Court this morning a series of questions - sorry, a series of answers and I am just going to go through

them. First of all, you knew before you were ever interviewed that you were going to get the immunity letter. Even after you got the immunity letter you still had a shaky heart and you thought they might - hang on, hang on. Listen to the question, please. That they might still find some reason to prosecute you. You have also told the Court this morning that therefore you devised strategies in order to protect yourself against the possibility of them charging you. How did it protect you to tell them that you didn't know about Charles Taylor's involvement in the attack on Freetown on January 6th 1999?

A. Before answering to your question all the things that you have said, I want to make one point clear. I have told you that I did not tell you that they were coming to give me a letter, because they did not inform me that they were going to give me a letter. And I had said initially that the person who spoke with me told me that the things that I was going to come and explain before them did not mean that the Court had something against me even before they served me the letter.

Q. How did it help you not to tell them the truth about what you claim to be Charles Taylor's involvement in the invasion of Freetown on 6 January 1999?

A. He did not help me in any way to say that was a help to me, because it was not something that as long as I was going to benefit from it if I had to say that.

Q. So, then why lie?

A. Well I did not lie, my Lord.

Q. Well, you have told us that you did lie. Do you have any recollection, Mr Mongor, of what you have been saying in the last 20 minutes?

A. I said I did not make up my mind to tell them at that time, but later I made up my mind to tell them the truth. That was what I said.

MR MUNYARD: Madam President, I am going to move on to something. Would this be a convenient moment? It is not something I can deal with in two minutes.

PRESIDING JUDGE: Well, we only have a few minutes left on the tape and so this may be an appropriate point to adjourn.

MR MUNYARD: Thank you.

PRESIDING JUDGE: We will resume at 12 and you will be able to then go into your next area.

Mr Witness, we are now going to take the mid-morning break. We will start Court again at 12 o'clock. Please adjourn Court until 12.

[Break taken at 12.00 p.m.]

[Upon resuming at 12.00 p.m.]

PRESIDING JUDGE: Mr Munyard, please proceed with your cross-examination.

MR MUNYARD: Thank you, your Honour:

11:59:20 Q. Mr Mongor, just before we broke you are recorded as having said, "I said I did not make up my mind to tell them at that time, but later I made up my mind to tell them the truth. That was what I said." Now you said that you told them lies, but you can't remember what the lies were apart from about Charles Taylor
11:59:48 and the 6 January invasion. In the last half hour while we've had a break have you been able to think of any other lies that you told the investigators during the earlier interviews?

A. I did not remember any one, my Lord.

Q. Well, can I suggest that it was a lie to say that you had

asked for and received ammunition around the time of the AFRC coming to power, that's the ammunition that you say eventually made its way to Buedu. That's a lie, isn't it?

A. Not a lie, my Lord.

12:00:39 Q. The AFRC came to power in May of 1997, do you agree?

A. I agree it was in May, yes, my Lord.

Q. What was going on in Liberia at that stage?

A. You mean in May, my Lord?

Q. That's what I mean.

12:01:17 A. Well, I can't recall anything now that I think was going on there.

Q. Well, try hard to think about it. You are part Liberian. Did you have family in Liberia in May 2007?

A. Yes, I had family there.

12:01:42 Q. Who was president of Liberia in May 2007?

A. It was Mr Taylor who was there.

JUDGE SEBUTINDE: Are we talking May 2007 or 1997?

MR MUNYARD: Did I say 2007? I am so sorry, it may be me. We will start again:

12:02:15 Q. The AFRC came to power in May 1997 you agree. Did you have family in Liberia in May 1997?

A. Yes, in 1997 I had family there.

Q. And who was president in May 1997 in Liberia?

A. It was Mr Taylor.

12:02:52 Q. Had he been elected president by May 1997 when the AFRC came to power next door in Sierra Leone?

A. Well, I can't recall the month, but I know that he was president.

Q. At the time that the AFRC staged their coup in Sierra Leone

MR KOUMJIAN: Your Honour, I believe counsel has made a mistake. If I refer counsel and the Court to page 5821, line 13, we went over this at time of the direct and there was a question of the interpretation. Page again 5821, line 13.

12:25:06 MR MUNYARD: I accept that. I am looking at line 13, yes:

Q. Well, you corrected it. Do you accept you must have made a mistake the first time round, because nobody could hear SAJ Musa in fact if you had said Gullit? Do you accept you used the wrong name the first time round?

12:25:38 A. Yes, I agree that I used the wrong name, but it was not SAJ Musa but Sam Bockarie.

Q. The plan to take Freetown had been SAJ Musa's and Gullit's plan, hadn't it?

A. It was they who moved towards that point.

12:26:10 Q. It was their plan not Charles Taylor's plan, right or wrong?

A. Well, it was a plan that Mr Taylor made together with Sam Bockarie and even before we heard it.

Q. So it was your plan first, was it, when you say, "We heard

12:26:53 it"? It was Mr Taylor, Sam Bockarie and the RUF's plan first, was it?

A. It was Sam Bockarie and Mr Taylor. They were the ones that planned and send the plans to the RUF for us to carry out those things; the advancement.

12:27:21 Q. Let us just see what you said in March. On 11 March, page 5795, and I am going to try and summarise it from line 5 down. Sam Bockarie told you he and Mr Taylor had sat together and planned to run an operation:

"... [the] plan [was] for us to launch an operation whereby

we'll capture Kono, Makeni and advance to Freetown. And we were also to attack Joru. So those were the areas we were to capture. We were also to launch another attack on Kenema ... and one person should attack Joru, when that person would have attacked Joru he should advance on Zimmi."

12:28:08

And then over the page, page 5796 starting at line 16 - well, line 14 actually:

"Q. Did Sam Bockarie indicate what the purpose of this attack was going to be?", that is the attack Mr Taylor had planned, "What was the ultimate purpose?

12:28:28

A. The reason for this attack, for this advance on the various places and for us to take those places, you can remember at that time Foday Sankoh had been moved from Nigeria and he was in jail in Freetown. So we were to attack Kono and take there. We were to attack Freetown in order to free Foday Sankoh and the others who were in jail there. We were also to ensure that we seized power."

12:28:48

Yes? That is what you told this Court in March, that it was Mr Taylor's plan and that was the objective. Is that what you have always told the Prosecution?

12:29:13

A. I told them.

Q. Can we go to tab 4, please. This is 1 October 2006. I would like you to turn, please, to page 23798 and let me know when you have that, Mr Mongor.

A. Yes, I have it, my Lord.

12:30:26

Q. Does it say in the middle of that page - can you see a line that says, "Mongor has never been back to Liberia"? Do you see that? Do you see that, halfway down the page?

A. Yes, yes, I have seen it.

Q. Two lines below that does it read as follows, "Mongor doesn't know about Charles Taylor's involvement in the decision to attack Freetown in January 1999." Does it say that?
A. Yes, that is what the paper says.
12:31:26 Q. Is that what you told the Prosecutors on 1 October 2006, a Sunday?
A. Yes, I said that.
Q. Why?
A. That was what I told them.
12:31:58 Q. Why?
A. Because I did not know about that.
Q. So that is the truth, that statement, is it?
A. I cannot say it is the truth.
Q. If it is not the truth why did you tell them that?
12:32:51 A. I don't think I have any reason why I told them that.
Q. Try again, please, Mr Mongor.
A. I said I don't think I have any reason.
Q. Have a third attempt at explaining that statement, would you?
12:33:19 MR KOUMJIAN: Asked and answered.
PRESIDING JUDGE: It has been asked twice. If you have another question to put, please put it, Mr Munyard.
MR MUNYARD:
Q. Can you think of any reason why you would have told a lie
12:33:37 to the investigators on Sunday, 1 October 2006?
A. I don't have any reason to proffer to you to say that I lied. And I am not lying.
PRESIDING JUDGE: Mr Witness, I wish to be clear. The counsel is challenging you that you told a lie on Sunday, 1

October 2006. Are you saying in reply that you are not lying now, or you didn't lie on 1 October 2006?

THE WITNESS: I said I am not lying now. That is what I'm saying.

12:34:32 MR MUNYARD:

Q. Well, you haven't given us any reason yet.

MR KOUMJIAN: Well, that's not a question.

MR MUNYARD:

Q. Have you? Have you given us a reason yet that isn't a lie?

12:34:48 PRESIDING JUDGE: Are you now referring to 1 October 2006, for purposes of clarity?

MR MUNYARD: Yes.

THE WITNESS: Yes, my Lord, ask your question again.

MR MUNYARD:

12:35:19 Q. You told us, in fact you told her Honour, the Presiding Judge, "I am not lying now". Not lying about what?

A. I am not lying now that Taylor did not take part in the January 6 invasion. I am not lying at all.

Q. Mr Mongor, we're not talking about Mr Taylor's taking part

12:36:06 in it. Look at the words on the printed page, 23798: "Mongor doesn't know about Charles Taylor's involvement in the decision to attack Freetown in January" 1998 - sorry "1999". I'm doing it again. 1999.

A. Well, that is what I am trying to tell you and that what I

12:36:46 am telling you now is that Charles Taylor knew about that attack.

Q. You started this interview at 10.20 in the morning on Sunday, 1 October 2006. Would you have been to church already before you went to have this interview on that Sunday?

A. Maybe, but I can't recall whether I went to church, or that

I had come from church at that time. I can't recall.
Q. You knew then how important it was to tell the truth to the investigators, didn't you?
A. I know.
12:38:01 MR MUNYARD: I'm not sure if that was "I know", K-N-O-W, or "no", the opposite of yes.
PRESIDING JUDGE: I thought it was "I know".
Mr Interpreter, what did the witness say? We are not clear.
THE INTERPRETER: The witness said, "I know".
12:38:18 MR MUNYARD: All right:
Q. Mr Mongor, can you think of any way in which it would have protected you to tell a lie to the investigators on 1 October 2006 about Charles Taylor's involvement in the decision to attack Freetown?
12:38:55 A. I don't think I have any reason to lie to the investigators.
Q. Yes, all right. Could you turn, please, to tab 19 and for the benefit of everybody this was the small bundle that I distributed last week. I am afraid there was a slight fault
12:39:42 with the bundle that was the main bundle that was prepared. There is one tab in there, I think it's tab 17, that is a duplicate. No, it's tab 16. Tab 16 is a duplicate so we can ignore that and tab 19 should have gone in sequentially after tab 7, but we have just continued - sorry, sequentially after tab 8.
12:40:21 We have just continued the tab numbering.
In any event, we will look at tab 19, please. This is 8 February 2007. Do you see that, Mr Mongor?
A. Yes, I have seen it, my Lord.
Q. Now the interview we have just been looking at which took

place on 1 October, you were asked more questions about your answers in that interview on 8 February following and if we look at page 28455 we can see that you were interviewed at just after 2 o'clock in the afternoon on 8 February and the interviewer was
12:41:38 continuing to clarify the answers that were contained in the record of the interview of 1 October. If you turn, please, to page 28457 I would like you to look three paragraphs down from the top. Do you have that in front of you?

A. Yes, my Lord.

12:42:18 Q. Three paragraphs down from the top the sentence starts, "When the witness said". Do you see that?

A. Yes, I have seen it, my Lord.

Q. And it reads as follows:

"When the witness said that he didn't know about
12:42:36 Charles Taylor's involvement in the decision to attack Freetown, he meant that he understood that the Freetown invasion was largely an AFRC project."

Did you tell them that?

A. Yes, my Lord.

12:43:06 Q. Is it the truth?

A. Yes, I told them, my Lord.

Q. No, is what you told them there the truth?

A. Yes, my Lord.

Q. So it wasn't all Charles Taylor's idea. It was largely an
12:43:34 AFRC project?

A. AFRC had the movement, but how would they have done it without the RUF? They wouldn't have been able to do it.

Q. Mr Mongor, they did do it without the RUF, didn't they?

A. Yes, it was when they were in Freetown that they made the

coup in May that you are talking about.

Q. You know what we are talking about here. We are talking about the invasion of Freetown in January 1999.

A. Yes, I told you that they wouldn't have been able to do it without the help of the RUF.

Q. The invasion of Freetown in January 1999, is that what you're talking about?

A. Yes, my Lord.

Q. In fact, it wasn't until the AFRC contingent started to get into trouble in Freetown that they only then called in the RUF. That's right, isn't it?

A. I want to tell you that if the RUF had not been attacking all the other places those men wouldn't have been able to get inside. What I know about fighting is what I am trying to tell you.

Q. This was a SAJ Musa and Gullit idea to attack Freetown to restore the Sierra Leone Army, wasn't it, January 1999?

A. They wouldn't have been able to bring the Sierra Leone Army back together if they only depended on that small group that they used to go, because you can see that all the other areas where the ECOMOG troops were occupying will not allow them to pass through to go and restore the army, except the RUF participated to reduce the burden on them. It is the experience that I have concerning war that I am sharing with you.

Q. Thank you. SAJ Musa was not on good terms with the RUF at this stage, was he?

A. Well, initially SAJ Musa was not in agreement with the RUF. He never had any good dealings with the RUF.

Q. Tab 12, please, page 39001. Now this is an interview in

July 2007 conducted by an investigator, Umaru Kamara, and the attorney present was Mr Koumjian. Mr Nick to you. If you look at the top of page 39001, paragraph 14 reads, "SAJ Musa was hard to work with because SAJ felt he should take orders from nobody." Did you tell Mr Nick and the investigator that?

A. I told them that.

Q. Is it true?

A. Yes.

Q. SAJ Musa was a fully qualified soldier, wasn't he?

A. Yes, he was a fully qualified soldier.

Q. He did not have a lot of respect for you RUF fighters, did he?

A. That was later on that he did not have respect for us.

Q. Yes, he died in the attack on Freetown, didn't he?

A. He did not enter Freetown, my Lord.

Q. Waterloo was where he died, wasn't it? Benguema Barracks?

A. Yes, my Lord.

Q. As part of the advance on Freetown, yes?

A. Yes, my Lord.

Q. He was not cooperating in some big plan of Charles Taylor's to seize Freetown in January 1999, was he?

A. Well, he agreed with the arrangement.

Q. Tab - I am sorry.

A. That was why when the --

MR KOUMJIAN: Excuse me, can the witness be allowed to finish his answer please.

MR MUNYARD: I did actually apologise and some moments before Mr Koumjian stood up to say that.

PRESIDING JUDGE: Mr Witness, please finish your answer if

you have not done so.

THE WITNESS: Well I have finished, my Lord.

MR MUNYARD:

Q. Right, thank you.

12:50:46 JUDGE SEBUTINDE: Mr Witness, you did not finish your answer. You said, "Well, he agreed with the arrangement. That was when the --" The question asked to you was, "As part of the advance on Freetown?", and then you didn't finish your answer.

THE WITNESS: My Lord, I thought I finished it, but I did
12:51:24 say he agreed with the plan that Mosquito brought. That was why they moved.

MR MUNYARD:

Q. This was the time later on when he did not have respect for the RUF. That is right, isn't it?

12:51:50 A. I think I had said initially that the man was not taking any command from the RUF at the time they were there, but the time the plan came up that we should forget about all the petty misunderstandings that we had, they said we should forget about it all and that we should go on this plan. That was the reason
12:52:15 why they agreed and then they moved.

Q. Tab 13, please. Do you have tab 13, Mr Mongor?

A. Yes, my Lord.

Q. This is an interview where - on 29 November 2007 where you were interviewed by Mr Werner, or he was present certainly, with
12:52:58 an investigator, S Streeter. Do you remember that interview, November of 2007? Can you remember being interviewed in an interview in which Mr Werner was present?

A. Well there were interviews but I cannot recall the dates as you are keeping the records, but the name of the person that you

are referring to if I see it and if I know the person then I will answer, "Yes, I know the person".

Q. Right. Mr Werner is the gentleman that we have identified earlier sitting closest to you on the Prosecution side. Now I would like you, please, to turn to page 45403, paragraph 28. Keep turning. Do you have that? It is in the middle of that page.

12:53:56

A. Yes, I have seen it, my Lord.

Q. It reads as follows, "The witness states that he was in Kenema District when he heard that SAJ Musa died." Did you tell them that?

12:54:46

A. Yes, my Lord.

Q. It continues, "The witness stated that Gullit took over command of this group after the death of SAJ Musa." Did you tell them that?

12:55:06

A. Yes, I told them that, my Lord.

Q. Then it goes on, "The witness said that as a member of the RUF high command he was happy when Gullit took over command." Did you tell them that?

12:55:27

A. Yes, I told them, my Lord.

Q. It continues, "He stated that he was happy because he did not feel that SAJ Musa would have cooperated with the RUF if he had led the group that took Freetown." Did you tell them that?

A. I told them, my Lord.

12:55:48

Q. The invasion of Freetown was an AFRC project, wasn't it?

A. Well, it was not just AFRC.

Q. Let me make it absolutely clear to you that when you said that, when you didn't know about Charles Taylor's involvement in the decision to attack Freetown, you meant you understood that

the Freetown invasion was largely an AFRC project, you were there being asked questions about your earlier statement, "Mongor doesn't know about Charles Taylor's involvement in the decision to attack Freetown in January 1999." That is the invasion of
12:56:54 Freetown that we are talking about. Not the AFRC coming to power in a coup, but the invasion J6 as I think you called it. Is that right?

A. Yes, that was how I called it, my Lord.

Q. Why did you tell the interviewer then, in February of 2007
12:57:39 when he was trying to find out what you meant in October 2006 - why did you tell him that you didn't know about Charles Taylor's involvement in the decision to attack Freetown because that invasion was largely an AFRC project?

A. Well if AFRC had that plan then it was their business to
12:58:15 have it, but I am saying they would not have been able to do it. I am mainly explaining to you what my experience is about war. That group, being a small group, wouldn't have been able to enter Freetown when ECOMOG was occupying Kono, Makeni, Gberie Junction and all those other areas up to Freetown. To say that small
12:58:41 group will have been able to go through all of those obstacles to go to Freetown without the help of the RUF for them to be able to enter, they were able to enter Freetown because some other RUF groups who were in Kailahun District were able to attack Kono, Kenema District, Makeni, Gberie junction and all those areas.
12:59:14 They were able to attack there, so that was what made the way for them to be able to enter inside.

Q. So it is not right to say, is it, that the Freetown invasion was largely an AFRC project?

MR KOUMJIAN: Asked and answered. I believe the witness

has given a detailed answer explaining that.

MR MUNYARD: Well, we were dealing with October 2006 when we went over that. I have now moved on to February 2007. This is the second part of his explanation to the investigator about why - about not knowing about Charles Taylor's involvement in the decision to attack Freetown. As far as I am aware, 8 February was not a Sunday. I had only been dealing with the Sunday, 1 October, before.

JUDGE SEBUTINDE: Mr Koumjian, as I understand it, we are dealing with prior inconsistent statements. I for one have not had a satisfactory answer to the numerous questions by Mr Munyard around this issue. Every time he asks a question we get a slightly different answer from what he has asked and I would like to get an answer to this prior inconsistency.

PRESIDING JUDGE: Put the question, Mr Munyard.

MR MUNYARD: Can I just go back to it? I have got to find it on the transcript:

Q. Mr Mongor, why did you tell the interviewer in February 2007, when he was trying to find out what you meant in October 2006 when you had said that you didn't know - sorry, let me just make sure I am putting the right thing to you.

PRESIDING JUDGE: Which one are we dealing with, Mr Munyard?

MR MUNYARD: We are dealing with February 2007. I have got it now:

Q. Why did you tell the interviewer in February 2007, when he asked you what you meant in 2006 October when you told him, "I don't know about Charles Taylor's involvement in the decision to attack Freetown in January 1999", why did you tell the

investigator when he asked you the second time that by that you meant you understood that the Freetown invasion was largely an AFRC project? Why did you tell him that in February 2007?

A. I think when you said it was the AFRC that planned that to
13:02:52 enter Freetown, but I was able to make it explicit to you that the AFRC were unable to enter Freetown without the help of the RUF because the enemies did occupy the other areas where we attacked them before SAJ Musa's group were able to get a free access to enter.

13:03:25 JUDGE SEBUTINDE: Mr Mongor, I think you are avoiding the question. Nobody asked you to tell us the logistics of who entered or when they entered. The question by counsel is very clear. For the nth time: Why did you in 2007 tell the investigators what you told them, namely that the attack, the
13:03:52 January 1999 attack, was largely an AFRC project? Why did you tell that to the investigators? That is the question that has been asked. You haven't answered it.

THE WITNESS: The reason why I told them that was because if you look at the group that moved for the Freetown invasion,
13:04:23 many of them were AFRC men who were soldiers. They refused to wait for the RUF group to join them. They were just doing it by themselves. It was based on that I said that.

MR MUNYARD: I'm not going to pursue this any longer:

Q. However, there came a time, did there not, in November 2007
13:05:06 when you tell them, the investigators, that Sam Bockarie told you that he'd had a meeting with Charles Taylor and a plan had been developed to attack Koidu, Makeni, Kenema and other strategic areas prior to advancing to Freetown. Why did you tell them that in November 2007 when you had been saying on several occasions

before that you did not know about Charles Taylor's involvement in the decision to attack Freetown?
A. This was the time that I said they had not asked me anything concerning the plans and I did say that it was when Sam
13:06:13 Bockarie came with the ammunition that he explained to us the things that they discussed with regards our advancement.
Q. But they asked you about Charles Taylor's involvement in the decision to attack Freetown on a number of occasions before November 2007 and you said you didn't know anything about his
13:06:43 involvement. What made you change your story in November 2007?
A. It was because I knew and I later realised something about the plans that Sam Bockarie brought with regards the advancement that I later told the investigators.
Q. Are you saying that you had forgotten about what Sam
13:07:40 Bockarie told you of Charles Taylor's big idea to attack Freetown when you were questioned in 2006 and 2007 and that you suddenly remembered in November 2007? Is that what you mean by, "I later realised something about the plans that Sam Bockarie brought"?
A. Yes. I am a human being. I am liable to forget and you
13:08:21 cannot say - you cannot say what I am saying I will sit in one place and explain everything about it because it is a history. That was why I said that.
Q. Were you being pressed in November 2007 to give the Prosecutors more than you had given them on this subject before?
13:08:52 A. Well, I have told you, yes, the Prosecution would want more information.
Q. Yes, were you being pressed?
A. Yes, when they asked me over and over.
Q. And did you feel you had to give them more than you had

already given them to satisfy them?
A. Well, it was not something to satisfy them that I was to say, but it was because it came to my mind that I told them at that time.
13:09:50 Q. Did you have a shaky heart in November 2007 when you were being interviewed yet again?
A. Well, I have so many other things, so many problems that disturb me, but I cannot say it was because of that at that time that my mind was shaky, but I am a human being. I normally have
13:10:33 problems that I think about.
Q. Interview number 19 it was. Did you worry, Mr Mongor, that you were being interviewed now for the 19th time and that they really needed something more out of you, or that you might be in trouble yourself?
13:11:03 A. I have my mind on so many other things. I think about so many things, my Lord. I'm a human being. I will have something in mind as I am sitting here and then maybe I will forget about it and start thinking about some other thing. You will not tell me that as a human being it is always that you have a steady
13:11:33 mind.
Q. I asked you one day last week if you knew, now that is, last week - if you knew that the RUF accused Sesay, Kallon and Gbao were on trial and you said no, you didn't know they were on trial. You changed your account later, but do you remember
13:12:02 saying nobody had told you they were on trial when I first asked you that question last week?
MR KOUMJIAN: I believe asked and answered. This area has been covered quite in detail.
MR MUNYARD: Can I say I understand my learned friend's

Q. Did you feel pressed by that comment that you hadn't disclosed everything to them?

A. They did not press me. It was not a press.

MR MUNYARD: Madam President, I see the time. Is this a convenient moment?

PRESIDING JUDGE: Yes, Mr Munyard. We have only about a minute left so we will take the lunchtime adjournment. Mr Witness, we are now going to adjourn for lunchtime. We will recommence court again at 2.30. Please adjourn court.

[Lunch break taken at 1.28 p.m.]

[Upon resuming at 2.30 p.m.]

PRESIDING JUDGE: Mr Munyard, please proceed.

MR MUNYARD: Thank you, Madam President. Your Honours, I have no further questions of this witness.

PRESIDING JUDGE: Thank you, Mr Munyard. Re-examination, Mr Koumjian?

RE-EXAMINATION BY MR KOUMJIAN:

MR KOUMJIAN: Yes, your Honour, just a few areas:

Q. Sir, I want to start, Mr Mongor, with talking to you about what we were discussing just before the lunch break and you were asked about an interview that you had last year, with Mr Streeter and Mr Werner, where you talked about the nationwide offensive that led to the attack on Freetown. I want to ask you about a couple of other interviews you gave previous to that, starting with 23 December 2006. So if I could maybe borrow the Defence tabs that they've provided, it's in tab 7 of the Defence bundle and if that could be just put on the screen, page 0002676. This is from 23 December 2006.

PRESIDING JUDGE: Is it 26276?

I N D E X

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Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

TUESDAY, 8 APRIL 2008
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr William Romans Ms Carolyn Buff
For the Registry:	Ms Rachel Irura
For the Prosecution:	Ms Brenda J Hollis Mr Mohamed A Bangura Mr Alain Werner Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Terry Munyard Mr Morris Anyah

communicate with the other side?
A. When I got to Buedu it was at that time I was given the authority to communicate.
Q. Now, which radios did you communicate with in Liberia on
10:56:52 the other side?
A. On the other side - before crossing there I was given a radio set. I crossed into Liberia with a radio set. Of course, when I arrived and 50 received me from Foya --
Q. Can I pause you. I think you are not actually answering
10:57:11 the question. Before you left to go to Liberia when you said at some point at Buedu you had authority to communicate, you could also communicate with the radios in Liberia. Is that correct?
A. Yes, sir.
Q. Now which radios in Liberia, or which stations in Liberia,
10:57:27 would you communicate with at that time?
A. Call sign 020, 020, that was located at the Executive Mansion Ground in Monrovia, and one call sign, Base 1, like I said earlier, was located in Congo town at Benjamin D Yeaten's residence. That is by White Flower and White Flower is the
10:57:56 personal residence of President Charles Taylor of Liberia.
Q. Thank you. Before these - before this time when you could communicate to 020 and Base 1, was there any radio - any other radio - that you communicated with in Liberia?
A. Yes, there was also another radio station located in Foya.
10:58:29 That is Foxtrot Yankee as we referred to.
Q. So, at the point of your assignment to Liberia there were - (your Honours, my attention has just been called to the spelling for Foxtrot. Foxtrot Yankee.)
THE WITNESS: We just say "FY" and we were referring to

A. One Base 1 had our code. Base 1 was operated by an operator called Sunlight.
Q. Where was Base 1?
A. Base 1 was located in Congo Town, that is to Benjamin
12:30:18 Yeaten's personal residence.
Q. And you stay it was operated by?
A. Operator Sunlight, one, and, two, operator Dew.
Q. Can you spell Dew?
A. D-E-W.
12:30:34 Q. Now, these names that you've just mentioned, the names of the operators, how do you refer to them in communication parlance?
A. Those were code names and I knew them only by those code names.
12:30:48 Q. So the operators for the radio called Base 1 were?
A. The name Base 1 was the call sign of the radio. Dew, Sunlight were the code names of the operators who operated that radio.
Q. And you say that radio had access to the RUF code?
12:31:10 A. Yes, sir. They had a copy of our code and the other station Zero 20 at the Executive Mansion Ground, that was operated by Sky 1.
Q. When you say operated by Sky 1, what do you mean?
A. Sky 1 is the name of the operator who operated that radio
12:31:32 with the call sign 020, 020.
Q. To your knowledge who did the operators Sunlight and Dew for the radio Base 1 report to?
A. They reported to Benjamin D Yeaten, Unit 50.
Q. And when you say Unit 50 and you call Benjamin Yeaten's

name, what was Unit 50? Why was it called Unit 50?
A. That was his code name. He was called by that name, Unit 50.
Q. Now, you also mentioned radio call sign 020 which you say
12:32:25 was at the Executive Mansion, is that correct?
A. Yes, sir.
Q. It had a radio operator whose code name was --
A. Sky 1.
Q. Sky 1. Now, who do you recall that - the radio at the
12:32:45 Executive Mansion reported to who?
A. To the president.
Q. Who was the president then?
A. President Charles Taylor was in power at that time.
Q. Now, let us focus briefly. You say that these two radios
12:32:56 had the code for the Sierra Leone - for the RUF radio network, is that correct?
A. Yes, sir.
Q. How do you know this?
A. I was an operator and when I was taken to Liberia the
12:33:11 number of times I received a message from them in our code and besides when I was to cross into Liberia I was given a special code which was distributed to operators Sunlight, Sky 1 and the other radio that was in Foya and that was the code we used.
Q. Now, let's for a brief moment focus on communication within
12:33:42 Sierra Leone, the RUF within Sierra Leone. Now, you have mentioned that the RUF operated on a 7 megahertz and that means that the frequency numbers on this network started with the number 7, is that correct?
A. Yes, sir.

they be initiated?
A. They could call us. Sometimes if our call sign - when it was Bravo Zulu 4 they could call, "020 calling for Bravo Zulu 4" and we could respond. And in response they could tell us, "Have
14:42:32 your principal informed to get on the 21, that the chief is on the 21 the talk to him" and the message would be relayed to Sam Bockarie.
Q. Now here you have just given an example using Bravo Zulu 4. In your earlier testimony you said this was the previous call
14:42:52 sign for Bockarie's radio. Is that correct?
A. Yes, sir.
Q. So if you got a call on Bravo Zulu 4 it means that call came before a certain time, a certain period in time. Is that right?
14:43:03 A. Yes.
Q. It would be before what time?
A. Before the operation in Voinjama, because the call sign changed to Planet 1 when the operation in Voinjama was carried out and those recruits brought to Buedu. That was the time the
14:43:20 call sign changed.
Q. Now when there was a call from 020 and indicating that they wanted log to go on the 21, who would come on the 21 to speak to Log?
A. They made reference to the chief. The operator could make
14:43:44 reference to the chief by telling us on the radio to have Log informed to go on the telephone and Log was Sam Bockarie in the code and the chief they were referring to was Charles Taylor.
Q. Now how did you know that he would be speaking to Charles Taylor?

A. After their conversation himself could come on the radio to draft message to be transmitted to the front line and he could tell us. He never used to hide anything from us.
Q. Now apart from telling you, would you tell from the nature
14:44:20 of the conversation who he was talking to?
A. He could say, "Yes, sir", the thing would be implemented, "Yes, sir", and thereafter he would go. We had the radio room like this. In fact when the radio was transferred to the vehicle and when the station was now in the vehicle the vehicle was
14:44:39 parked just by or let's say outside of the radio room where he had the computer and the satellite phone.
Q. And did Bockarie in your experience and the time you were with the RUF, who would he defer to by answering "Yes, sir" in your recollection?
14:45:05 A. He could refer to Benjamin D Yeaten as sir and his chief.
Q. Apart from those two do you recall anyone else who would call him on the radio and to whom he would answer "Yes, sir"?
A. No, I can cannot confirm that.
MR BANGURA: Now, your Honours, at this stage I want to
14:45:34 deal with the document which I had referred to earlier.
PRESIDING JUDGE: Yes.
MR BANGURA: Can the witness be shown - the document is marked ERN 00047121:
Q. Mr Witness, do you recognise that piece of paper that has
14:46:11 been shown to you?
A. Yes, sir.
Q. What do you recognise it as?
A. It is an example of how the messages were processed. As you can see the preamble, let's say for example there is a

communicating with Gullit, really improved after the death of SAJ Musa.

Q. When did SAJ Musa die?

A. I cannot come up with the actual date, but it was during the venture to retake Freetown.

14:59:11

Q. Now, do you recall when this venture was to retake Freetown?

A. It was 1999, early.

Q. Now, do you recall before the actual effort to take Freetown - the actual attempt to take Freetown, what was the state of communication between the RUF and SAJ Musa?

14:59:41

A. There was not that much flow of communication between them.

Q. Do you recall which group entered Freetown?

A. I only used to receive a call when I was on duty. In fact, when you are on duty you have a right to stay in the station. I was not all the time assigned on the radio set.

15:00:24

Q. And so what communication did you receive about the move to Freetown?

A. In fact, the time I was on duty communicating with those forces, that was the time they were already about to pull out from Freetown and Gullit sent a message to Sam Bockarie that the situation was tense and that they were without ammunitions. So he told SAJ - I mean Gullit to stay at the particular location and move to Rambo at a particular point, and communication was going on between Rambo and Superman and the other commanders to move in to reinforce Gullit at a particular point. But again he told him, "If they mount - if the pressure is too much, if pressure is mounted on you too much, take your time to retreat by the peninsula, but before retreating you have to make the area

15:00:57

15:01:32

fearful to call the minds of the international community", and he was doing that to maintain --

Q. Can I pause you, Mr Witness. Can you say who was saying all of this to who?

15:02:21 A. Sam Bockarie was talking directly to Gullit.

Q. Can we go back and establish how the communications came about between Sam Bockarie and Gullit. To your recollection, when did you first get to know that there was communication going on between Sam Bockarie and Gullit?

15:02:45 A. His operator was communicating to us.

Q. Whose operator?

A. Elongima.

Q. Whose operator is Elongima?

A. Gullit's operator.

15:02:57 Q. Can you spell that name, please?

A. E-L-O-N-G-I-M-A.

Q. Yes. What was the substance of that communication?

A. He used to give a report to Sam Bockarie, the position they were and the situation in which they were. And entering Freetown

15:03:26 they were communicating still. So when they entered Freetown they contacted Sam Bockarie that they were at the State House.

Q. Can you just pause. Your Honours, I see the name which the witness gave is not --

THE WITNESS: Elongima who was the radio operator.

15:03:46 PRESIDING JUDGE: But it's been noted that there was a spelling, Mr Bangura, so I think it will be picked up on record.

MR BANGURA:

Q. Yes, you said you - continue, please?

A. When they entered Freetown he contacted that they were at

that we used to collect information from the front lines.
Q. Now you said that at some point there was this message about the prisoners. Was there some other substance in the communication with Bockarie with Gullit that you came to know about?
15:06:32
A. At one time he told them - he told Gullit, he said, "Listen to the radio." He said, "I have just had some interview with the correspondent, BBC West African correspondent Mark Doyle, saying if pressure is mounted on your position you have to burn some government buildings, the oil refinery and try to pull out by the peninsular and then find yourself to a particular location." He said, "But you have to maintain communication with Rambo, Superman and the other officers for smooth operations."
15:06:58
Q. Now you said that he informed - he told Gullit on the radio to burn down public buildings. How did you know this?
15:07:23
A. It was openly stated on the radio and again he had an interview with the BBC correspondent following that instruction. He informed the combatant on the front line to listen to the radio, that he had had interview with the BBC correspondent and they would get the instructions.
15:07:57
Q. Did you yourself listen to that radio broadcast, BBC radio broadcast?
A. Yes, sir.
Q. Now in Sam Bockarie's radio communication with Gullit where he ordered him to burn down public structures, do you recall the exact words that he said --
15:08:13
A. He said --
Q. -- when he gave that order?
A. He said it in Krio.

Q. What exactly did he say in Krio?
A. He said, "If they mount pressure on us", he said, "I will burn the fucking place."
Q. And translated what would that mean in English?
15:08:39 A. He said if pressure is mounted on them they should burn down the buildings, the government buildings, and that will now raise alarm.
Q. Now you used a word that came in Krio "fucking". Did that feature in your translation that you gave in English? What did
15:09:10 he say? He said it in Krio. Can you give us that in English?
A. He said let them burn the entire place, more government buildings and then mount pressure on them, that on Gullit - Sam Bockarie then passed this instruction to Gullit.
Q. Yes, we get that in Krio, but when you put it in English it
15:09:31 sounds a little different because I understand Krio.
A. He said, "If the pressure is mounted on you", he said, "Burn down the fucking place and try retreating by the peninsular."
Q. Thank you. You mentioned that Superman and a number of
15:09:59 other commanders were also to be involved in coordinating Gullit's retreat if he was to pull out of Freetown. Is that correct?
A. Yes, sir.
Q. Where was Superman at this time?
15:10:17 A. They are all within the same axis.
Q. Which axis?
A. The Freetown axis, the western, they were all within that same axis.
Q. Do you know whether Superman himself was in Freetown?

have crossed into Liberia. So 50 again commanded Sam Bockarie to open a training base to recruit civilians and that was implemented. The place was opened right there in Bunumbu Mababo [phon].

15:23:33 Q. Now, apart from communications with Benjamin Yeaten's radio, Base 1, during the Freetown invasion period was there communication with any other station by Bockarie?

A. Yes, sir, 020.

Q. And how was this communication initiated?

15:23:56 A. 020 called on our radio frequency requesting Bockarie to go on the 21.

Q. That is over the period of the Freetown invasion?

A. Yes, sir.

Q. And what happened after that?

15:24:12 A. After their telephone conversation Bockarie could then come on the radio and draft message instructing commanders as how best to manoeuvre to capture areas and Bockarie could tell us that he had had contact with his chief.

Q. Now, in the particular Freetown situation, and not other

15:24:34 situations where there had been communications, what specifically did Bockarie order his troops, meaning Gullit in Freetown, after the conversation on the 21?

A. He could instruct Gullit to set ambushes to go on attacks like that.

15:24:55 Q. Was this a one-off communication on the 21? Was it a one-off communication?

A. No. No, sir.

Q. How do you know this?

A. I was there myself.

Q. Were you present when the satellite communication was going on, or -

A. We were in the vehicle and sometimes by the vehicle, if I was not on duty and we heard the satellite phone just in the room and we had the vehicle parked, let us say, by the window.

15:25:28

Q. Now, during the period of the Freetown invasion was there any form of support which was given to the fighters in Freetown from Buedu?

A. Freetown is a long distance away from Buedu.

15:25:59

Q. Did the commanders in Freetown get any assistance, or any support from Bockarie in Buedu at the time during the course of the invasion?

A. All they were discussing really was strategy, giving them instructions as how to manoeuvre to capture so and so area and when the fighting was tough with them he could issue instructions to pull out to a particular point. After 72 hours another instruction could be transmitted.

15:26:24

Q. Did you hear anything about jets during the Freetown invasion?

A. We had a monitoring team that was another group of radio operators. Those were the SLAs: One Gbamayagi, Atati and the other SLA I cannot just recall his name. They were tasked with the responsibility of receiving messages from ECOMOG and decoding that message. So that was then used to be transmitted to the fighters on the front line, more especially the flying of the jet, so they could just say on the air "448" meaning the ECOMOG jet, or let us say jet bomber was up and everybody could take concealment.

15:26:38

15:27:17

Q. Now, when you say 'take concealment', what do you mean?

Q. Now, FOC, did he have another name?
A. I only knew him to be FOC. He was a bodyguard to Corporal Sankoh and when Sankoh left for Yamoussoukro he was ordered to work with Sam Bockarie.
15:51:08 Q. Now, you mentioned another name, Takpo. Can you spell that name, please?
A. T-A-K-P-O, Takpo.
Q. Who was Takpo?
A. Takpo was an RUF soldier sent to Foya.
15:51:31 MR BANGURA: Your Honours, Takpo was spelt T-A-K-P-O. I see "B" comes up:
Q. Sorry, you said he was an RUF soldier sent to Foya?
A. Yes.
Q. What was the purpose of him being sent to Foya?
15:51:50 A. He was there to provide security at the airfield where the helicopter used to land.
Q. How important was Foya?
A. Foya was a strategic point wherein we used to coordinate to meet with those who were sent from Monrovia and those to be, let
15:52:13 us say, taken to Monrovia from Sierra Leone. In fact, Eddie Kanneh, who was given the responsibility to take diamonds across, used to get to Foya to await the helicopter to fly into Monrovia.
Q. Now, you said that Takpo was stationed at - or posted to Foya to provide security. Did the RUF maintain security around
15:52:43 Foya, or in Foya regularly?
A. Men were assigned along with Takpo, men were assigned, and their responsibility was purely to keep security on the airfield.
Q. What was the movement/flow of people? I am talking about the RUF, like between Buedu and Foya normally. Between Buedu and

Foya what was the frequency of movement of RUF personnel between those two points?

A. There was no hindrance at all.

Q. And this Foya was - Foya was on the Liberian side, is that correct?

A. Foya was on the Liberian side, yes.

Q. And Buedu on the Sierra Leone side?

A. Yes, sir.

Q. And the question was how was the flow of people, the RUF personnel, across the border to Liberia?

A. It was frequently. The flow was frequent.

Q. Thank you. Now, you said that before the route became unsafe to travel by road supplies from Liberia would come always by road, by vehicle, is that correct?

A. Yes, sir.

Q. Now, who would go for these supplies to Liberia?

A. Sometimes Sam Bockarie himself and sometimes Zigzag could come with these materials, Colonel Jungle could come with these materials, Dopoe and late during General Issa's regime, and at that time Superman and others were fighting in Lofa, there was a man called Amphibian Father, Roland Duoh, was also coming with materials and Mosquito, one black Liberian Mosquito, also used to come with the ammunitions to Buedu.

Q. And this was around what period?

A. That was in the year 2000.

Q. Okay. Now, when supplies came from Liberia by road, how were they conveyed?

A. From Foya in a vehicle to Buedu and in Buedu there was a unit called G4 and one Captain Felix was the commander of that

unit. So the materials could be handed over to Felix for safekeeping.

Q. What about the situation where they were flown to Foya? How were they then conveyed to Buedu?

15:55:47 A. By vehicles.

Q. Who provided the vehicles?

A. Mosquito had vehicles on the ground there in Buedu. There were vehicles in Liberia with the Liberian soldiers. They used to sometimes make use of their own vehicles, or sometimes they

15:56:04 asked Mosquito to send vehicles to take the materials to his location.

Q. Now, these men who you have mentioned, particularly Zigzag Marzah, Dopoe Menkarzon and Jungle, did they ever stay in Sierra Leone after 1998?

15:56:27 A. They only came with materials and returned and even when they came, their movement was restricted.

Q. Was there any kind of documentation kept for material which was brought across from Liberia?

A. Materials - the G4 used to take account of those materials.

15:56:51 That was what - and sometimes they came with document and Sam Bockarie could sign that document which was taken back.

Q. Who would come with documents?

A. If it were Jungle that came with the materials he could come with the document and that document had to be signed, so

15:57:10 also with the other men.

Q. Now, apart from ammunitions what else came from Liberia?

A. Petrol, medicine and sometimes food and in General Issa's regime I was there when some cartons of military fatigue, and that was referred to in Liberia as the immigration combat

and Democracy, that were fighting Charles Taylor's government. They were occupying Voinjama. They captured Voinjama and held it for almost two to three months --

Q. Yes.

16:20:21 A. -- under their control.

Q. Now, what were the helicopters --

A. The ATU helicopter flew to Kolahun, took off from Kolahun and went to Voinjama, bombarded and came back to Kolahun. There again it was refilled with bombs and went back to Voinjama.

16:20:42 Q. Now, were the --

A. They were used as well as a sort of gun ship.

Q. The ATUs were used as gun ships? Is that what you are saying?

A. The ATU helicopters were used as well to bombard enemy

16:20:59 locations.

Q. What about the SSS helicopters? Do you recall what uses they were put to?

A. The SSS helicopters really were to transport I would say two or three, four, five persons, very small size helicopter. I

16:21:15 flew on board this helicopter from Schefflein myself and General Yeaten, from Schefflein, to Kolahun.

Q. Where did you fly from?

A. From Schefflein.

Q. Can you spell that name?

16:21:28 A. I heard it. That was the point we took off. I heard it Camp Schefflein.

Q. Can you spell Schefflein? Are you able to spell Schefflein?

MR BANGURA: I am informed, your Honours, that the name has

I N D E X

WITNESSES FOR THE PROSECUTION:

TF1-516 6820

EXAMINATION-IN-CHIEF BY MR BANGURA 6820

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

WEDNESDAY, 9 APRIL 2008
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr Simon Meisenberg Ms Carolyn Buff
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For the Prosecution:	Ms Brenda J Hollis Mr Mohamed A Bangura Mr Alain Werner Ms Kirsten Keith
For the accused Charles Ghankay Taylor:	Mr Terry Munyard Mr Morris Anyah
For the Office of the Principal Defender:	Mr Silas Chekera

reported that they were persistently attacked and Sam Bockarie came on the radio and told Gullit to instruct the men to burn down some areas, in fact the government buildings, so that will raise alarm in the international community.

09:35:01 Q. Now, this communication which Bockarie had with Gullit, my question was, "Do you recall a situation where after communicating on a 21 with 020 in Liberia, do you recall a situation where Bockarie came back and gave an order?" So are you saying that this order which he gave followed a conversation

09:35:34 on the 21 with 020?

A. Yes, sir.

Q. Thank you. Do you recall any other communication that Bockarie had during this period with 020?

A. Communications was going on with 020 and Base 1 and some of

09:36:00 those communications were like one I have explained and the other was the instructions to Gullit to report with the POWs who were released from the prison. I mean the prisoners who were released from Pademba Road prison, that they were to be taken to Bockarie's location.

09:36:30 Q. It's not so clear, was there a communication on the question of the prisoners between Bockarie and another radio?

A. Yes, sir.

Q. Which radio was that?

A. That was Base 1.

09:36:46 Q. And following that you said Bockarie then communicated with Gullit?

A. Yes, sir.

Q. In Freetown?

A. Yes, sir.

Q. And what did he specifically say?
A. Bockarie told Gullit to ensure that all the prisoners who were released from Pademba Road prison were sent to his location.
Q. How do you know this?
09:37:09 A. I monitored this on the radio myself.
Q. You mentioned yesterday that a radio operator with the forces in Freetown would communicate with your radio in Buedu and you called the name of Elongima, is that correct?
A. Yes, sir.
09:37:35 Q. Apart from Elongima was there any other radio operator in Freetown who communicated with Buedu?
A. After the death of SAJ Musa, King Perry also used to communicate, operator King Perry.
Q. Thank you. Now, you mentioned that Sam Bockarie gave an
09:37:52 orderer to "burn down the fucking place" when there was pressure in Freetown. Do you recall that?
A. Yes, sir.
Q. And did you get any report about atrocities in Freetown?
A. Yes, sir. The operator reported and he went further to
09:38:15 tell them to listen to BBC, that he had had an interview with the BBC correspondents.
Q. Now, the question was did you get any report about atrocities in Freetown?
A. Yes, sir. The radio operator, Elongima, briefed us that
09:38:39 the men who were left by the commander at that particular location were engaged in some kind of atrocities, that in fact they had gone on the rampage. He said, "They are just doing things at their wish."
Q. Did he say exactly what sort of atrocities were being

let's say to move to Monrovia just like that.
Q. Now, at this time that we're talking of who was the leader of the RUF in Sierra Leone?
A. The other attack I'm talking about in the year 2000 was
10:44:47 General Issa Sesay.
Q. Before that, when you had just arrived in Liberia, who was Benjamin Yeaten communicating with, through you, on the Sierra Leone side?
A. Okay. When I arrived let's say initially communications
10:45:06 were to Sam Bockarie.
Q. And what were the subject of those communications at that time?
A. Requesting for materials, but let me make this part clear: Sam Bockarie was still in Sierra Leone in control, but Issa had
10:45:22 the authority as well, maintaining communication directly with General 50.
Q. What would be the subject of Issa Sesay's - well, let's finish Sam Bockarie. What would be the subject of Sam Bockarie's communication with Yeaten at this time?
10:45:41 A. Information. Information, making requisition for manpower.
Q. Information about what? Who requested information?
A. Benjamin D Yeaten requested from Sam Bockarie manpower, manpower to be sent to his location there in the Voinjama axis.
Q. What would be Bockarie's line of communication - what would
10:46:12 he be communicating with Yeaten about?
A. Making of requisitions.
Q. For what?
A. Ammunition and Yeaten sometimes responded by saying, "Okay, same message will be transmitted to my father and I will get to

you later", and he came with the instructions for him to get to Foxtrot Yankee.

Q. Now, during the early part of your stay there in Liberia do you recall any supplies coming through, following communications from Sam Bockarie for supplies?

10:46:44

A. This was occurring. Taking of ammunitions from Foya into - I mean to Sierra Leone was occurring.

Q. When you say it was occurring, can you be more specific? During this period that you were now in Liberia, do you recall?

10:47:11

A. Materials were sent to Sam Bockarie any time he requested for those materials.

Q. What role would you play in the communications --

A. It was to inform --

Q. -- between Bockarie and Yeaten about material?

10:47:31

A. If I could recall, if materials were to be sent to Foya and Bockarie was to come to Foya to collect those materials then the message could be transmitted to come to Foya. If the message was requesting him to move to Monrovia to get the materials, then that was the message.

10:47:47

Q. Now, do you recall what the nature of the communications was between Issa Sesay - you said he also communicated directly with Yeaten. What was the nature of his communications with Yeaten?

A. In 2000, when General Issa Sesay took over, messages were now channelled directly to General Issa Sesay.

10:48:14

Q. What was the subject of some of those messages?

A. Similar messages, just as the messages transmitted when Sam Bockarie was there in power.

Q. When you say similar what do you mean?

Corporal Sankoh's base in Sandiaru and they were handed over to Morris Kallon and taken to Liberia.

Q. Was that how you got to know?

A. Yes, sir.

12:32:57 Q. Now, after this incident which you have just explained, when was the next time that the RUF got involved in any operation in Liberia?

A. That was now in 1999.

Q. All right.

12:33:13 A. That was in 1999.

Q. About what time in 1999?

A. Before I crossed into Liberia.

Q. Yes, we know you crossed into Liberia, you have said, in June/July.

12:33:27 A. I cannot state the exact month, but it was in 1999 before I crossed into Liberia.

Q. What was the - what led to the RUF going into Liberia again at this time?

A. There was an attack on Voinjama and that man - a man

12:33:49 identified himself as a Mosquito Spray and he claimed that Voinjama was under his control and Voinjama being the supply route for the RUF, Sam Bockarie organised men - because I was not on the base when the message came really. He organised men and called on one Colonel Olso to report to Buedu and undertake that

12:34:23 mission. So Olso led the troop that went into Voinjama and captured Voinjama.

Q. Now, first of all you say you were not on the base when the message came; which message?

A. For Sam Bockarie to organise men to move across. Not all

the day I was on the radio. Most of this information I received by looking into the message book.

Q. All right, and on this occasion where did this message come from?

12:34:54 A. From 50.

Q. What did the message say?

A. That he was to organise armed men to attack Voinjama.

Q. And you said he appointed a commander called Olso?

A. Olso.

12:35:14 Q. And Olso led his troops into Voinjama?

A. Yes, sir.

Q. Do you recall how many men, manpower strength, Olso led into Voinjama?

A. The number was big, over one hundred with some artillery

12:35:32 pieces.

Q. How long was this operation for in Voinjama?

A. When they crossed into Voinjama, on that whole operation it spent about a month, because when - they did not just capture Voinjama and return.

12:35:52 Q. After they captured Voinjama, what happened?

A. They were still there maintaining security and the forces were still coming from where they were based in Guinea. That was what it was alleged: That the insurgents were based in Guinea, crossing into Liberia and attacking Voinjama and the environs.

12:36:12 Q. Right. How long then did the troops stay in Voinjama before the operation ended?

A. I can not state any specific time anyway.

Q. Do you recall when they came back from Voinjama?

A. I cannot really recall. They did not spend much time in

Voinjama and they retreated. In fact a good number of them retreated without the consent of the commander. They looted goods and they were interested in transporting those looted materials into Sierra Leone.

12:36:55 Q. How did you know this?

A. We used to see them and it was put on the radio that a good number of the men have started pulling out.

Q. Now what sort of goods were looted on this operation by the RUF men?

12:37:07 A. I saw vehicles.

Q. What kind of vehicles?

A. Those were believed to be vehicles belonging to certain NGO.

Q. Now you mentioned earlier - at this point in time what was

12:37:22 the call sign of your radio in Buedu at the point before the operation in Voinjama?

A. I think it was Bravo Zulu 4, something like that, but these call signs used to change from one call sign to the other and one cannot really recall all those call sings because they were

12:37:45 changing with time gradually.

Q. Now what was the name of this operation which the RUF got involved in Voinjama?

A. That was called Operation Vulture. That particular operation was code named Operation Vulture.

12:38:01 Q. Now in your evidence yesterday you did say that vehicles were captured from that operation which had radios in them and were brought and which Sam Bockarie later used as his radio bases. Is that correct?

A. Yes, sir. In fact, during the particular time those

recruits were brought to Buedu I was not on the ground. I think we went on patrol somewhere. When I came back I met those recruits on the ground.

Q. Now was this the operation that you referred to?

12:38:41 A. As Operation Vulture. The first operation after - that was the second operation after Morris Kallon's operation in 1993. That was another operation carried out by the RUF, or in which the RUF fighters took part in.

Q. Now when you said the second operation after Morris

12:39:06 Kallon's operation in '93, was there one between that '93 operation and this one?

A. No, I am explaining the different occasions RUF fighters took part in fighting in Liberia. The first one was that which was carried out by Morrison Kallon, the second one was that

12:39:26 Operation Vulture.

Q. Okay, thank you. Now after Operation Vulture was there any other operation in which the RUF was involved in? Just before we talk about any other one, did the RUF fight alone in taking Voinjama in this operation?

12:39:51 A. There were Liberian soldiers.

Q. Which Liberian soldiers were they?

A. The AFL.

Q. How do you know this?

A. They were making mention of the other - they said the

12:40:11 brothers, our brothers, they were making too much of their panic, they are not confronting the men.

Q. Who were making mention of - you said they were making mention. Who were they?

A. On this Operation Vulture a radio operator was sent on this

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mission and that was Tiger, operator Tiger was giving us detailed information about what was happening on the front line.

Q. And when you said they were referring to them as brothers, what do you mean?

12:40:42 A. The allied forces because --

Q. Who was referring to who as the brothers?

A. The RUF fighters were referring to the AFL as their brothers.

Q. And you said something about them being panicked. You said

12:41:04 something about them, that there was too much panic. What the you mean?

A. Too much panic. The AFL were not confronting the insurgents.

Q. And who said this?

12:41:17 A. That was the report sent by the operator.

Q. Thank you. Now after this operation when was the next one that the RUF got involved in in Liberia?

A. There was another operation also involving the RUF a short while after that, because the insurgents came back and took care

12:41:45 of Voinjama. Then other armed men were sent to join Benjamin D Yeaten to take Voinjama. They succeeded in capturing Voinjama and the men took - in fact patrolled around Voinjama and captured civilians. They took those civilians to their personal residence. They were taking them as their wives. Looting

12:42:11 materials in and around Voinjama. Then --

Q. Who were behaving in this way?

A. The RUF fighters who were sent into Liberia to fight and retake Voinjama.

Q. Okay, now before you just continue, now when was this

operation? This next operation, when did it take place?
A. That was in the rainy season now.
Q. Of what year?
A. That one was '99.
12:42:42 Q. Where were you at this time?
A. I have crossed into Liberia.
Q. And how did you get to know about this operation?
A. When Voinjama was captured I was taken to the Free Pentecostal Bible Institute.
12:43:04 Q. Say again?
A. Free Pentecostal Bible Institute where 50 was residing. I was with him.
Q. Is it Free --
A. Pentecostal Bible Institute.
12:43:20 MR BANGURA: Okay, your Honours, Pentecostal --
THE WITNESS: You climb the hill from the main road going to towards Zorzor and you roll down and the institute is situated there.
MR BANGURA: Okay. Your Honours, Pentecostal is spelt
12:43:36 P-E-N-T-E-C-O-S-T-A-L. I see it come up in three separate words.
THE WITNESS: Free Pentecostal Bible Institute.
MR BANGURA:
Q. Right. So the question was how did you get to know and you said you were taken to Benjamin Yeaten or where he was staying at
12:43:53 the Free Pentecostal Bible Institute, to do what? Why were you taken there?
A. There the radio was operating, was installed.
Q. And what happened?
A. The men were taking patrol around. They started collecting

civilians and bringing them to Voinjama.

Q. No, not about that, but about how you got to know about the operation. You know you talked about being taken to this location where Benjamin Yeaten was?

12:44:22 A. When I crossed into Foya I - when I crossed into Foya I got in touch with Benjamin Yeaten. After that we flew to Gbarnga. He collected - he requested for materials from there to Tenenbu and from there to the target, but twice unsuccessful attacks conducted to retake Voinjama, okay? And thereafter he made

12:44:47 requisition for armed men and they had a good number of armed men crossing from Sierra Leone into Liberia.

Q. Okay, now just pause. You say he made requisition for armed men. To who did he make the requisition?

A. It was to General Issa. The message was to be sent to

12:45:10 General Issa.

Q. Now who passed this message on to General Issa?

A. The message was transmitted to his radio. In fact at that time Bockarie had - he had left Buedu into Liberia I think on some other mission and then he remained there, the incident took

12:45:29 place, okay? Then who was on the ground was General Issa. So the message came to him directly since he was on the ground.

Q. Now who communicated the message to General Issa?

A. Benjamin D Yeaten drafted that message and it was transmitted. General Issa received that message and organised

12:45:47 armed men. They were sent to Liberia.

Q. Now when you say it was transmitted, who transmitted the message?

A. I transmitted the message.

Q. Right. And the message requested General Issa to provide

men for this situation in Liberia, in Voinjama. Is that correct?
A. Yes.
Q. And who did General Issa send on this occasion?
A. One Colonel Sherrif. One Colonel Sherrif.
12:46:19 Q. And was he the commander?
A. Colonel Sherrif was the commander.
Q. And do you recall how many troops, how many men, he had in his - he led?
A. Over 150.
12:46:35 Q. And what was the outcome of this operation?
A. Voinjama was captured.
Q. By?
A. By Colonel Sherrif. Voinjama was captured by the RUF fighters led by colonel Sherrif.
12:46:48 Q. Was Colonel Sherrif - were the RUF fighting alone, or were they fighting along with other forces?
A. Along with other forces.
Q. Which forces were they fighting along with?
A. The AFL, the Armed Forces of Liberia.
12:47:01 Q. And who was commanding all of that force, the combined forces that fought to get - to take back Voinjama?
A. Colonel Sherrif was the mission commander.
Q. Now how do you know this? Personally how did you know all of this?
12:47:30 A. When the men report - when they crossed into Liberia they reported to the commander and I was with the commander.
Q. So who did they report to when you said the commander?
A. Benjamin D Yeaten.
Q. So Colonel Sherrif was answerable to Benjamin Yeaten on

this operation?
A. Yes, sir.
Q. Okay. And how long did the operation last?
A. Not too long. Not too long. And when they captured
12:47:57 Voinjama they started taking patrol, collecting civilians, taking them and looting materials and taking them to private bases. Then Benjamin D Yeaten grew annoyed and told them, "Oh, no, here you are, you are not rebels, but you are purely fighting in the interest of the government and so this is not expected of you.
12:48:20 This is not Sierra Leone wherein you behave like rebels." So they were asked to pull out of Voinjama and they came back to Foya.
Q. When he said you were fighting in the interests of the government, what government was he referring to?
12:48:32 A. The Liberian government. He said, "Here you are representing - you are fighting in the interests of the government so there is no need to behave like a rebel, looting is not expected of you at all" and he asked that they pull out and they pulled out from Voinjama.
12:48:48 Q. Did all of them pull out of Voinjama?
A. A good number of them pulled out from Voinjama.
Q. And did anything happen? You were in Voinjama, you were on the Liberian side at this time. Is that right?
A. Yes, sir.
12:49:02 Q. Did anything happen after they withdrew?
A. We did not spend much time and they were - the target Voinjama fell again into the hands of the insurgents.
Q. At this time did you know who the insurgents were?
A. There was no pronouncement made of - or about who was

fighting.

Q. Now after this incident was there any other situation in which the RUF got involved in fighting in Liberia?

A. Yes, sir.

12:49:37 Q. Which one was that?

A. After the insurgents took back Voinjama another attack was organised, but that was now within the Armed Forces of Liberia and Voinjama was captured. It spent so long and in 2000, the year 2000, some time in 2000, Voinjama again fell into the hands

12:50:05 of the insurgents and this time Superman was called upon to come and take care of that situation.

Q. When you say Superman was called upon, who called upon Superman to come and take care of the situation?

A. The negotiation was between Benjamin D Yeaten and General

12:50:25 Issa Sesay.

Q. How do you know this?

A. A message was transmitted to the effect requesting manpower.

Q. Who transmitted the message?

12:50:37 A. I transmitted the message.

Q. And the message was directed - the message was from who?

A. From Benjamin D Yeaten.

Q. And directed to who?

A. To General Issa Sesay.

12:50:49 Q. And what was it requesting Issa Sesay to do?

A. To send a strong commander to come and have Voinjama situation under control.

Q. Was any particular commander requested?

A. Yes, Superman. After the information about sending

manpower then General Issa responded that Superman was going to be dispatched to meet 50 for that operation.

Q. And was Superman dispatched?

A. Yes, sir.

12:51:20 Q. And where did Superman - where did he go to when he got to Liberia?

A. To Foya.

Q. Who did he report to?

A. To 50, right at one Pa Taylor. Pa Taylor is said to be a

12:51:36 chief. He was once a chief in Foya and so he reported to 50's house there in Foya.

Q. Were you there when Superman reported to 50?

A. Yes, sir. In fact, we went to receive Superman at a certain point and we all crossed into Liberia.

12:51:55 Q. When you say you "went to receive Superman at a certain point", at a certain point where?

A. To the border, to the border.

Q. The border between?

A. Between Liberia and Sierra Leone. When the message was

12:52:07 transmitted that he was on the way coming from Makeni to cross into Liberia, we moved to a certain point and he met us there and together we all entered now into Liberia, or Foya.

Q. When you say "we", who were you referring to?

A. I was not the only person in Liberia. There were some

12:52:31 other Sierra Leoneans who were in Liberia and those were RUF fighters. So when we got the news that Superman was on the way coming, everybody was happy. So together with 50 he sent some armed men and we got on board the vehicle. We came to a certain point, we I received Superman and we all travelled to Foya.

Q. Did Superman travel alone?
A. He came with a good number of RUF fighters and with some artillery pieces. I am talking about a 50 calibre.
Q. Now, these --
12:53:10 JUDGE SEBUTINDE: Mr Bangura, sorry to interrupt, at the top of page 96 there is something the witness said that didn't make sense to me when he was saying it and certainly doesn't make sense on the paper. Look at line 2, "To 50, right at one Pa Taylor. Pa Taylor is said to be a chief. He was once a chief in
12:53:32 Foya", et cetera, et cetera. What is that?
THE WITNESS: When Superman --
MR BANGURA: Okay:
Q. Now, you said Superman reported to Yeaten at a particular place in Foya?
12:53:49 A. Yes, sir.
Q. Whose place was this?
A. Pa Taylor's house in Foya.
Q. Who was Pa Taylor?
A. Pa Taylor was once a chief of Foya, so his house was
12:54:04 somehow special and Superman, together with his men, were sent that particular house that was provided as their lodging.
Q. Thank you. What happened after Superman had --
JUDGE SEBUTINDE: So, in other words, 50 was residing at Pa Taylor's house at the time that Superman reported?
12:54:30 MR BANGURA: I am not sure whether that is the evidence. I will get the witness to clarify, your Honour:
THE WITNESS: That is exactly what I am saying.
MR BANGURA:
Q. 50, say again please?

A. 50 was staying in Pa Taylor's house and when Superman arrived in Foya he reported to 50 and 50 was staying at Pa Taylor's house.
Q. Okay, so where was Superman provided accommodation for?
12:54:56 A. That same Pa Taylor's house.
Q. Thank you.
A. And in fact we did not spend much time in Foya and we proceeded to Kolahun.
Q. Now, you said Pa Taylor was one time chief of Foya, is that
12:55:11 right?
A. Yes, sir. I was trying really to state the particular point Superman reported to - or where he met 50.
Q. Okay. Now, what happened after Superman reported to 50?
A. Everybody was commanded. I mean Superman's bodyguard, the
12:55:44 men he travelled with, including myself, were all commanded to move to Kolahun.
Q. And then? What happened at Kolahun?
A. In Kolahun I think about 72 hours we set in for the target, that was Voinjama.
12:56:04 Q. Right. Then what happened there?
A. Fighting started in a town called Vesala. Vesala, to LPMC, to Voinjama and Voinjama was captured.
Q. Were the RUF forces under Superman fighting alone, or were they fighting along with any other forces?
12:56:26 A. Superman was the overall boss for the RUF fighting in Voinjama, Liberia, at that time.
Q. The question is: Did the RUF fight alone in this operation, or did they fight with another force?
A. They fought alongside another force.

Q. Which force was that?
A. The AFL and at this time we heard of the AFL, the ATU and the SOD and of course there were some other armed forces referred to as the SSS, but another group - the SSS fell under a group
12:57:05 called Jungle Fire.
Q. Now, you have given us all these acronyms. Can you say what they stand for. AFL?
A. Armed Forces of Liberia.
Q. What about ATU?
12:57:20 A. Anti-Terrorist Unit.
Q. What about SSS?
A. I think that is Special Security Service. I am really not sure of that, but that was what I heard, SSS.
Q. What about SOD?
12:57:37 A. Special Operational Division.
Q. Now, you worked with 50, Yeaten. Which one of these units did he belong to?
A. 50? 50 was operating under the SSS.
Q. What was his position there?
12:58:01 A. He was the director for that unit.
Q. Right. You mentioned Jungle Fire. What group was this?
A. Jungle Fire was under the same SSS, Jungle fire. According to what I learnt from 50 was that during the NPFL days, during the time of the rebel fighting in Liberia, there was a particular
12:58:28 group called Jungle Fire and when their party was legitimately put into power they formed those armed groups, the SSS, which comprises mostly the former fighters of Jungle Fire.
Q. Thank you. Now, we are still talking about this operation in which Superman was involved. What was the outcome of the

operation?
A. Voinjama was captured.
Q. What happened after that?
A. Superman retreated to Sierra Leone, but during that
12:59:12 fighting 50 assigned me to Super in that particular operation. I was communicating all messages for Superman. All messages from Superman to General Issa were transmitted by me. He gave me the message, it was drafted, it was codified and transmitted to General Issa in Kono, Sierra Leone.
12:59:41 Q. At this time what was the substance of communication between Superman in Liberia and General Issa in Sierra Leone?
A. About the situation on the front line, how fighting went on, how many men were wounded. Of course those who were wounded were taken to Monrovia by the helicopter. After a short time
13:00:10 Superman returned to Sierra Leone, to Makeni, and Voinjama again fell in the hands of the insurgents, so everybody retreated to Kolahun. So in Kolahun we were there for some time.
Q. Now, let us be clear again about the time frame. The operation which you have just described, in which Superman was
13:00:35 involved, took place in what year?
A. That was in the year 2000.
Q. Okay. Do you remember the month?
A. It was in the rainy season, some time 2000. The year 2000.
Q. Okay.
13:00:52 JUDGE SEBUTINDE: This is the rainy season of where?
THE WITNESS: The year 2000.
JUDGE SEBUTINDE: The rainy season of which country?
MR BANGURA: I will get the witness to say.
THE WITNESS: Liberia and Sierra Leone.

MR BANGURA:

Q. When you said the rainy season of Liberia and Sierra Leone, let us stick to --

A. It was raining in Sierra Leone and Liberia as well.

13:01:15 Q. Can you try and put a month to what would be the rainy season in Sierra Leone? Was it in the early part of the rainy season, or the mid-rainy season, or the latter part?

A. Mid, because it was still raining. It was raining seriously at that time.

13:01:39 Q. Right. Now, you said that the injured were taken to hospital where?

A. To Liberia - Monrovia. They were taken to Monrovia by helicopter and then Superman returned to Sierra Leone and when he returned to Sierra Leone he was involved in an accident and he

13:01:59 was brought back to Liberia.

Q. Now, when you say Superman returned to Sierra Leone, did he return with his troops to Sierra Leone?

A. With his bodyguard. He returned with some of his bodyguards, leaving some of the troops with Benjamin D Yeaten in

13:02:15 Kolahun, but whilst based in Kolahun they were still moving, attacking Voinjama. I was based at that time in Kolahun with the radio.

Q. Okay. During this operation how - you said Superman came with his men from Sierra Leone. Were they armed when they came

13:02:39 in from Sierra Leone?

A. They crossed into Liberia with arms.

Q. Okay, thank you. Now, you said Superman went back to Sierra Leone and was involved in an accident?

A. Yes, sir.

Q. What kind of accident?
A. I was contacted by his radio in Makeni that he fell on bike, on top of a bike.
Q. He fell off from a bike?
13:03:11 A. Yes, sir.
Q. And what happened?
A. He had serious bruises on his face and almost all over his body and so he was brought back to Liberia and flown to Monrovia. Whilst fighting in Lofa, we were based at that time in Kolahun.
13:03:32 This time around the forces made several attempts to capture Voinjama, more than ten times Voinjama remained uncaptured. It was still under the control of the insurgents.
Q. Now, let us be clear. We have a situation where Voinjama has just been taken by the combined forces in which Superman was
13:04:03 fighting. Is that correct?
A. Yes, sir.
Q. And then Superman goes back to Sierra Leone?
A. Yes, sir.
Q. And some of the forces stay with Yeaten in Liberia, is that
13:04:17 correct?
A. Yes.
Q. The RUF.
A. Yes, sir.
Q. And then what happened?
13:04:20 A. Voinjama was again captured by the insurgents, but at that time Superman had already crossed back into Sierra Leone.
Q. What happened after that?
A. I was still in Liberia with 50 in Kolahun and the RUF fighters, together with the other forces in Liberia, were still

attacking led by General Yeaten, but in Kolahun we used to move to Gbarnga and back, Monrovia and back to Kolahun, okay? Then another request was made by Benjamin Yeaten to General Issa Sesay calling for reinforcement, reinforcement of fighters. There was
13:05:14 one officer, who was sent by General Issa, called Harris. Harris came and took part in - I think about so many attacks in Voinjama that were unsuccessful. Harris was called back to Sierra Leone and one Colonel Eagle came just after the return of Harris. Colonel Eagle, together with the RUF fighters he came with and
13:05:47 those he met on the ground with General Issa and together with other armed forces, captured Voinjama.

Q. Now, when you said those he met on the ground with General Issa --

A. Yes, sir, not General Issa. General Yeaten.

13:06:04 Q. Thank you. They together captured Voinjama again?

A. Yes, sir.

Q. Now, when was this latter request made for reinforcement by Yeaten, when you said he made the request and for reinforcement and Harris was first sent and then later Eagle?

13:06:28 A. When Voinjama was captured by Superman, he returned. We were now in Kolahun with General Benjamin D Yeaten and Voinjama fell in the hands of the insurgents, okay? Those men who were left with General 50 by Superman were still with 50 attacking.

Q. Yes.

13:06:54 A. And another request was made by 50 to General Issa Sesay requesting for manpower reinforcement and they came.

Q. When was this request made for reinforcement?

A. That was in the year 2000.

Q. Was it a long time after Voinjama had been retaken by

Q. So the forces then moved to Foya. The forces then moved on to Foya. What happened there?
A. We were in Foya for about one to two months, about that. Then Foya came under attack because at that time the LURD forces
14:42:33 had already captured Kolahun and advanced to a junction referred to as Kamatahun junction and that was leading to Vahun and the other road was leading to Foya where we were.
Q. What's the name of the junction again? Can you spell that name, please?
14:42:51 A. K-A-M-A-T-A-H-U-N, Kamatahun.
Q. You say Foya came under attack from the LURD forces?
A. Yes, sir.
Q. What happened?
A. During the confrontation to repel the attack Superman got
14:43:11 wounded and he ordered that we should all retreat to Sierra Leone. We had two vehicles there in Foya, one a truck and a one a military jeep and we used that jeep to retreat to Sierra Leone through Koindu and the other day we arrived at Buedu.
Q. Now you in Foya were a mixed group of RUF and other
14:43:36 Liberian forces. Is that right?
A. Yes, sir.
Q. When Superman ordered that you should retreat into Sierra Leone was this order for the RUF only?
A. We were not able to withstand the tension. The force that
14:43:55 attacked us in Foya was heavy. The fighters exchanged fire with them and still it was serious, so he got wounded in that confrontation and everybody became concerned. They ordered everybody to retreat to Sierra Leone.
Q. When you say everybody did that include --

discussing with General Dopoe - and this is what he stated.
Q. And did anything happen after this?
A. After some days I was authorised to join with Amphibian Father to travel. I travelled together with Amphibian Father and
15:03:30 one Next to God. There was another commander who was supposed to join Amphibian Father to travel up to Buedu, his name was Second God - either Next to God or Second God. They used to call him Next to God, sometimes Second God.
Q. Did he have another name?
15:03:49 A. I only knew him by that name Next to God or Second God.
Q. Which nationality was he?
A. He was a Liberian fighter.
Q. You said he was a commander?
A. He was a commander for a particular group that came to
15:04:02 travel up to Foya.
Q. You said you were ordered to travel with Amphibian Father to - where were you supposed to go to?
A. To Buedu. I was to work with him. He had some ammunitions on board the vehicle.
15:04:19 Q. Where was Amphibian Father at this time?
A. He was in Vahun. He had come also to Vahun. At that time the UN patrol team that was - was it UNAMSIL? The UN patrol team had started patrolling in the Kailahun District.
Q. Right. But when you said the UN patrol team, which UN
15:04:45 patrol team was this?
A. I think it was UNAMSIL, but the contingent that were visiting Buedu were the Ghanaians and sometimes the Nigerians, but first it was the Ghanaians.
Q. And this patrol team was based where?

A. They came from Daru, that was what they told us.
Q. They were based in Sierra Leone?
A. They were based in Sierra Leone. They had started patrolling. So whenever there was a convoy from Liberia through
15:05:17 Vahun to Bomaru, Baiwala to Pendembu a Sierra Leonean had to be among that group to lead them.
Q. Why was it necessary to have a Sierra Leonean among the group?
A. For security reasons, because travelling with ammunitions
15:05:32 on board the vehicle. Sometimes we waited until in the evening before we started moving.
Q. Now when this patrol was moving around that area what would happen if they came across the members of the RUF?
A. That was the security measures taken.
15:05:54 Q. The question is what would happen if they met with members of the RUF?
A. Really at that time it was not expected of the RUF to be moving with that kind of ammunition because they were approaching the point of disarmament. The negotiation was going on and of
15:06:16 course at some part of - some part of the RUF head territory in Sierra Leone had started undergoing disarmament.
Q. Just before I get onto that, what about the Liberian forces who were on the Sierra Leonean side? What if they came across the UN patrol, what would happen?
15:06:45 A. No, they did everything in their ability to avoid that for security reasons.
Q. Now you said some part of Sierra Leone at this time was already - there was already disarmament going on. Do you recall where?

I N D E X

WITNESSES FOR THE PROSECUTION:

TF1-516 6975

EXAMINATION-IN-CHIEF BY MR BANGURA 6975

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

THURSDAY, 10 APRIL 2008
9:30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr Simon Meisenberg Ms Carolyn Buff
For the Registry:	Ms Rachel Irura
For the Prosecution:	Ms Brenda J Hollis Mr Mohamed A Bangura Mr Alain Werner Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Terry Munyard Mr Morris Anyah

this interview, yes?
A. This is what --
Q. Yes or no?
A. This is what I am seeing stated.
15:58:50 Q. Mr Witness, did you or did you not tell the Prosecution that on 11 September 2001 you were in Liberia, yes or no?
A. That was in Vahun. That was in Vahun and it was --
Q. Mr Witness, are you saying on 11 September 2001 you were in Vahun? Is that your evidence?
15:59:21 A. Yes, but let me make that point clear.
Q. Okay, go ahead.
A. I have said that after the retreat from Foya, Liberia, back to Buedu I was still moving into Liberia and back. I was still moving into Liberia and back. So many times General Barbue was
15:59:44 instructed by General Issa Sesay to join forces with Amphibian Father and the other commanders to attack Liberia. I went with the radio, the operation - I mean the mobile radio. But that doesn't mean I was just throughout in one particular location. I have stated this one. Even the question of asking - I mean the
16:00:05 question of saying "how long were you there?", and "where were you when this incident occurred?", I was a mobile radio operator. Today I am in Liberia, the other day I'm back to Sierra Leone.
Q. I see.
A. More especially when fighting was going on along the
16:00:21 border.
Q. I see, but when you testified on direct examination you indicated, as far as your radio operations work was concerned, that at one point you were assigned to Buedu, Buedu, you gave us that impression, and at another point you were assigned to

I N D E X

WITNESSES FOR THE PROSECUTION:

TFI-516 7134

EXAMINATION-IN-CHIEF BY MR BANGURA 7134

CROSS-EXAMINATION BY MR ANYAH 7186

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

MONDAY, 14 APRIL 2008
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr William Romans Ms Carolyn Buff
For the Registry:	Ms Rachel Irura
For the Prosecution:	Mr Mohamed A Bangura Mr Alain Werner Ms Shyamala Alagendra Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Morris Anyah
For the Office of the Principal Defender:	Mr Silas Chekera

A. He was also one of the commanders of the RUF, but died some time in the year 2001.
Q. Who is Sherrif Parker?
A. Where is the name?
10:42:08 Q. I'm just putting the name to you, Sherrif Parker. Who is that?
A. He was also one of the commanders.
Q. Where did he command?
A. In Kono and in some other areas.
10:42:25 Q. Did you hear about Sherrif Parker on the RUF radio?
A. Yes.
Q. Under what circumstances did you hear about him?
A. At one time he was a wounded soldier - he got wounded - and that he crossed into Liberia on a mission and got wounded,
10:42:44 Colonel Sherrif, and he was taken to Monrovia. He was there for some time.
Q. I'm speaking of Sherrif Parker. You've said now Colonel Sherrif. We're focusing on Sherrif Parker, the one in Kono, right? Was he the one that was wounded and taken to Monrovia?
10:43:02 A. He lived in Kono first before crossing. These commanders I'm talking about were not permanent in one area. One would be assigned on this target today and let's say in a couple of hours he would be posted to some other target. They were not fixed in one area.
10:43:23 Q. Did you ever intercept any calls or monitor any calls pertaining to Sherrif Parker?
A. Intercept call from where?
Q. Well, not intercept. While you were a radio operator for the RUF, were there any calls you listened to, either monitored,

transmitted or received, that pertained to Sherrif Parker?
A. Yes, in Liberia. Yes.
Q. Under what circumstances did you hear any messages pertaining to Sherrif Parker?
10:43:57 A. He got wounded in Voinjama attack and I was informed to have the headquarter informed that that was the situation; that Colonel Sherrif had got wounded.
Q. How was he wounded? What sort of injury did he sustain?
A. He was shot in his leg and the leg was broken. He had to
10:44:22 be flown into Monrovia. And again at certain point in time in Voinjama - I mean, in Vahun I met him in a dungeon.
Q. You met him in a dungeon?
A. Yes.
Q. In Vahun?
10:44:37 A. In Vahun.
Q. What was he doing in a dungeon?
A. After the death of Superman, I met Colonel Sherrif and one other boy called Bomb Blast.
JUDGE SEBUTINDE: Mr Witness, the question to you was,
10:45:01 "What was he doing in a dungeon?"
THE WITNESS: He was placed there under punishment.
MR ANYAH:
Q. For doing what?
A. That was the accusation 50 levied against him. He was in
10:45:15 the dungeon for disciplinary measures.
Q. Mr Witness, you are just making all of this up, are you not?
A. I am not making up. These are things I saw.
Q. Sherrif Parker was not injured in Kono and transported to

Monrovia. That's a lie, right?

A. He was not injured in Kono, but in Voinjama, Liberia. He was injured in Voinjama, Liberia, and flown into Monrovia. He remained in Monrovia for some months.

10:45:46 MR ANYAH: Madam Court Officer, can you assist me, please. Your Honours, I apologise, I again do not have copies, but I will have the Court Officer show counsel opposite and then the Bench the document I'm about to put to the witness.

PRESIDING JUDGE: I just want to be clear. You're
10:46:12 referring to Sherrif Parker and the witness is referring to Colonel Sherrif. I just want to make sure we're talking about the same person.

MR ANYAH: Madam Court Officer, could you hold on, please, one second:

10:46:21 Q. Mr Witness, I have been asking you about Sherrif Parker. This is the person you have told us you know, correct?

A. Yes, Colonel Sherrif.

Q. Is he also Sherrif Parker? His name is Sherrif Parker, right?

10:46:35 A. Yes.

MR ANYAH: Can you show counsel that, please:

Q. Mr Witness, the document you are going to be handed - and I will ask that the Court Officer put it on the overhead. Mr Witness, if you don't mind moving to the overhead projector
10:49:40 and Madam Court Officer will assist you. Mr Witness, the first page says, "Witness to Truth, Report of the Sierra Leone Truth and Reconciliation Commission, Volume 2". If you flip over to the next page again you have the title or the caption of the report, then over to the next page some other copyright

information about the report and then over to the next page. This is page 49 of Volume 2 of the Sierra Leone Truth and Reconciliation Commission. Do you see that, Mr Witness?

A. Yes.

10:50:48 Q. At the top it says, "Senior RUF Battalion Commanders and Influential Ground Commanders". Do you see that, Mr Witness?

A. Yes.

Q. You start with the first name of Denis Mingo, alias Superman. Do you see that?

10:51:00 A. Yes.

Q. Peter Borbor Vandi?

A. Yes.

Q. Morris Kallon?

A. Yes.

10:51:11 Q. Komba Gbundema. We just spoke about him, true?

A. Yes.

Q. Boston Flomoh, alias Rambo?

A. Yes.

Q. Momoh Rogers, yes?

10:51:22 A. Yes.

Q. Isaac Mongor, true?

A. Yes.

Q. Abubakarr Jalloh, alias Bai Bureh, yes?

A. Yes.

10:51:35 Q. Monica Pearson, true?

A. Yes.

Q. Sherrif Parker, alias Base Marine. Do you see that, Mr Witness?

A. Yes.

Q. Sherrif Parker, the same Sherrif Parker we've been talking about, right?
A. No.
Q. Mr Witness, is it the same Sherrif Parker we've been talking about?
A. No, Base Marine I spoke about first.
Q. Yes.
A. We had other Colonel Sherrif, Sherrif Parker.
Q. Mr Witness --
A. Sherrif was in Liberia. He went on a Liberian mission and got wounded. He was in Congo Town for some months before he was flown back to Vahun and he got wounded on Voinjama operation. When he recovered he was again sent to Vahun. In Vahun he was put in dungeon.
Q. You have said that.
A. That's different from Base Marine.
Q. Mr Witness, you have --

PRESIDING JUDGE: Mr Witness, answer the question.

THE WITNESS: Yes, sir.

PRESIDING JUDGE: The question is was this the same Sherrif Parker we've been referring to; the one named in that list?

THE WITNESS: No, no. This Colonel Sherrif who got wounded in Liberia is different from Base Marine, whose name I am saying is Sherrif Parker.

MR ANYAH:

Q. Mr Witness, I have the question I asked you. It's on page 42, starting at line 16. The question was, "Was Base Marine his only name?", the answer, "That was the name I knew him by, Base Marine. He was a bright boy"?

I N D E X

WITNESSES FOR THE PROSECUTION:

TF1-516 7386

CROSS-EXAMINATION BY MR ANYAH 7386



Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

FRIDAY, 18 APRIL 2008
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr Simon Meisenberg Ms Doreen Kiggundu
For the Registry:	Ms Rachel Irura
For the Prosecution:	Mr Nicholas Koumjian Ms Shyamala Alagendra Mr Alain Werner Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Morris Anyah
For the Office of the Principal Defender:	Mr Silas Chekera

Town?

A. Well, it was Mosquito who called and that was after we had returned and through monitoring we came to understand that the jet 448, because that was how they used to call it, it was moving to come and bombard Koidu Town as ECOMOG were en route to enter there.

Q. Could you explain your answer, please. You said it was Mosquito who called and that was after we had returned. After you had returned from where?

A. We left Koidu Geiya to go to Koidu Town.

Q. What do you mean by, "Through monitoring we came to understand that the jet 448", what does that mean?

A. Well, on the radio set we had a continuous monitoring of all activities, but on our arrival in Koidu Town Superman later called Bomb Blast, that is Hassan Papa Bangura, and he went to meet him at Dabundeh Street. He said that he had got a call from Mosquito that ECOMOG were on their way, that they were advancing towards Sewafe.

Q. Did he explain how Mosquito knew that, that ECOMOG were on their way?

A. Yes, he said he got information from Liberia that he had monitored from Liberia that the ECOMOG forces were moving now, that the 448 was moving, because we later understood that it was from Liberia that the ECOMOG Alpha Jet was moving from. He said that they were moving to come and bombard Koidu Town. So he said we should prepare to go and destroy the Sewafe bridge.

Q. Witness, do you know who in Liberia Mosquito got this information from, or how he got this information?

A. Well, all what he said, he said he got it from President

Taylor. He said he got information from President Taylor that the ECOMOG forces were moving and that they were advancing to capture Koidu Town.

Q. What is 448?

11:20:17 A. That was the Alpha Jet, because that was the code that we used on the radio set when communication was going on. They will say that the 448 had left, so all the areas that monitored, that was what they will understand.

Q. Who would say the 448 has left?

11:20:35 A. That was what Mosquito said, that he had got information from President Taylor that the 448 had left and it was coming to attack positions in Koidu Town.

Q. Was it only on this occasion that you heard communication relating to 448 and the way you described it?

11:21:03 A. Well, actually when we went to Koidu Town we never used to have jet raids, but it was at the time that it started and it was through monitoring and at any time we monitored he would pass the word that the 448 had left.

Q. Who would pass the word that 448 had left?

11:21:30 A. Well, it was through monitoring and whenever Superman got it he would send it to SAJ Musa in Koinadugu and he also will send it to the other bases about the 448 and each and everybody will disguise. Everybody will leave the town and go to the bush.

Q. And this information relating to 448, did it only come from

11:21:57 Liberia?

A. Well, that was the only source through which we got information about the ECOMOG movement. That is, the movement of the 448, the movement of the jet.

PRESIDING JUDGE: I am not entirely clear on that answer.

I N D E X

WITNESSES FOR THE PROSECUTION:

TF1-334 7974

EXAMINATION-IN-CHIEF BY MS ALAGENDRA 7974

SCSL

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

MONDAY, 21 APRIL 2008
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr William Romans Ms Doreen Kiggundu
For the Registry:	Ms Rosette Muzigo-Morrison Ms Rachel Irura
For the Prosecution:	Mr Nicholas Koumjian Ms Shyamala Alagendra Mr Alain Werner Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Morris Anyah
For the Office of the Principal Defender:	Mr Silas Chekera

was taking the lead?
A. D company took the lead and Tito too was leading, so the brigade stopped by and it was at the rear, but they took some men from B and C company to take the lead because we had information
11:33:57 that there was a military strategic point there.
Q. What was your role in this advance into Karina?
A. Well, I joined the advanced team. I was together with Bazzy to advance on Karina.
Q. Did the troops advance into Karina?
11:34:23 A. Yes, my Lord. The troops advanced to Karina, but to our surprise we did not meet any military check point nor military presence, but indeed we attacked. Myself together with the troops, we entered and attacked Karina.
Q. Witness, what was the first thing that happened when your
11:34:49 troops entered Karina?
A. Well, the first thing that happened was that I was with Bazzy when we entered a house where we met six to seven young girls and young women, so they were crying and when we entered the house they were crying. Bazzy said we should execute them,
11:35:20 but the girls said that we shouldn't execute them. They said they are ready for us to take them along, but Bazzy said no. He said we should close all the doors and set the building on fire, so we set the building on fire. They were screaming in there and they were there until they died in there. So myself, Bazzy and
11:35:38 the CSO, we moved forward.
Q. Witness, do you know why is it that these girls were not captured and they were executed instead?
A. Well, we had had orders from above that we should demonstrate in Karina and in that demonstration we should kill,

A. Well, they are had the Gbethis. They were within that area. They and the Kamajors, they were within that area.

MS ALAGENDRA: Your Honours, Gbethis is spelt G-B-E-T-H-I-S:

12:20:21 Q. Witness, who are the Gbethis?

A. Well, this was an auxiliary force that the SLPP government also formed to fight against us, those of us who were in the jungle, to fight against the RUF and the SLA who were in the jungle.

12:20:40 Q. What happened during this attack?

A. During this attack we repelled the Kamajors and the Gbethis and we captured two of them and we brought them to Gullit and Gullit ordered their execution and we executed them. We decapitated them and then we placed - we displayed their heads on

12:21:20 sticks in Mandaha. Also the troops were now - the troops divided. Some of our men ran away and it was during that time that we lost Money Milk, Guitar Boy and the radio communicator and a few of them ran away. And whilst we had repelled the attack we tried to trace these people, but we did not see them.

12:22:02 Q. Witness, when you say, "We decapitated them", who is we?

A. Well, like I said, the troop which was a mixed troop, the SLA and the RUF who were in Mandaha, after we had repelled the Gbethis and the Kamajors and we captured two of them and it was an order from Gullit asking for us to execute them. Then we

12:22:32 executed them and displayed their heads.

Q. Did you participate in this execution?

A. No, I did not participate, but I was present when it happened because it happened in the presence of the whole brigade.

MS ALAGENDRA: Exactly. That's what I heard, but I just wanted the record to be clear that he did not mention the name Keita.

JUDGE SEBUTINDE: Is there a name?

12:25:28 MS ALAGENDRA: Yes, it is spelt on the record as K-E-I-T-A.

JUDGE SEBUTINDE: I don't see it. What page, what line are you referring to?

MS ALAGENDRA: It is 66. Maybe it is a different font. Page 66, your Honour.

12:25:43 JUDGE SEBUTINDE: Yes, yes. Radio communication man. Guitar Boy and the radio communication man.

MS ALAGENDRA: I just wanted that to be clear, that there was no name given.

PRESIDING JUDGE: It is page 65, line 22 on my record and I

12:26:03 am sure Madam Court Attendant will note it and will be picked up later. Thank you. Please proceed, Ms Alagendra:

MS ALAGENDRA:

Q. Witness, where did your troop move after this?

A. Well, our troops left towards Gbendembu.

12:26:29 MS ALAGENDRA: Your Honours, that is spelt G-B-E-N-D-E-M-B-U:

Q. Where is this, witness, Gbendembu?

A. Gbendembu is within the Bombali District.

Q. Did anything happen on the way to Gbendembu?

12:26:52 A. As far as I can recall, Gullit captured some civilians, I think about three of them, so Gullit called one of our men who was called Lansana Conteh but I have forgotten his aka and he said he should amputate about three of them and then he wrote a note.

A. That too is within that Bombali District, around the Sanda area.
Q. Did you go anywhere after Matiti?
A. Yes, from Matiti we went towards Mateboi.
12:39:08 MS ALAGENDRA: That is spelt M-A-T-E-B-O-I, your Honours:
Q. Witness, where is Mateboi, in which district?
A. That too is within the Bombali District, around the Sanda area.
Q. Did anything happen on your way to Mateboi?
12:39:30 A. The only thing that happened, a password went as we were approaching, which was "check back", "back clear", when they say there was enemy threat at the rear, so the troop stopped. So Gullit called the operation commander, that was Hassan Papa Bangura, and called Junior Sherrif too, who was the deputy
12:40:04 operations. He said as we had had the information they should organise a troop that should go back and see as far as towards Matiti and Matinka area, to see if there was anybody following us and I too was appointed, Junior Sherrif and others. We went as far as Matiti, but we got to a village towards Matiti. We heard
12:40:43 some noise. We attacked, but we could not see any civilian, or anybody else. The people ran away and Gullit had ordered us while we were coming that if we saw any threat we should burn down the villages, so when we got to that place, when the people ran away, Junior Sherrif ordered that we should burn, so we
12:41:07 started burning from Matiti right up to towards Mateboi.
Q. Witness, I will take you back a little bit. Now, you have spoken about a password. Can you explain where this password came from?
A. This was a password that when we were advancing it was in a

distance, this was in Mansofinia, that was the password we were using: "Check back", "back clear". That is if you were not in the troop and we identified you, like for now if I said "check back" and you could not respond the "back clear", that means you
12:41:56 are an enemy force and you should be killed, but with this response, "check back", "back clear", then I will know that you are a member of our group. That was how the password was used.
Q. Now, you said that you, Junior Sherrif, went back and you burnt some areas. You said from - was it Matinka up to Mateboi?
12:42:38 A. I said from Matiti, Matiti. We were to go as far as Matinka, but a village close to Matiti we heard some sound, the village.
Q. Do you know the name of this village?
A. No, my Lord, I don't know the name of the village.
12:43:05 Q. And what did you say happened in this village?
A. Well, actually we made a counter attack, but the people ran away. We did not even shoot. They ran away. So we burnt down that village and we retreated to Mateboi.
Q. You have said that you started burning from Matiti right up
12:43:34 towards Mateboi.
A. Yes, my Lord.
Q. So can you be a bit more clear on that. What villages were burnt?
A. Like Matiti we burned it down. The village that was close
12:43:55 to it too we burnt that down. We burnt about three villages towards Mateboi, Matiti and two other villages.
Q. And what did you burn in these villages?
A. Since we had suspected some movement and there was threat, we burnt the houses. We burned the houses in the villages.

will know that indeed you have done it.

So he said the Ibrahim Bazzy Kamara who was second in command should lead the troops and Five-Five also went. You had Hassan Papa Bangura too. He was also part of that operation. Junior Lion and the others who were chosen, they all went on that operation, Captain Arthur. They all went.

13:19:35

Q. Did you go on this operation?

A. Yes, my Lord, I was part of the operation.

Q. What happened in Gbomsamba?

13:20:05

A. Well, we left Camp Rosos and we headed to Camp Rosos and we attacked Gbomsamba.

Q. I'm just going to stop you.

A. When we attacked --

Q. Your answer seems to have come out, "We left Camp Rosos and we headed to Camp Rosos and we attacked Gbomsamba." Can you just repeat that again, please?

13:20:21

A. I said we left. It was a mistake on my part. I said we left Camp Rosos and moved towards Gbomsamba.

Q. Did the group you were with arrive in Gbomsamba?

13:20:50

A. Yes, my Lord.

Q. Did the operation as ordered by Gullit take place?

A. Yes, my Lord.

Q. Do you recall what happened during that operation?

A. Well, during the operation we encountered some resistance from the ECOMOG force wherein the civilians in Gbomsamba ran away and indeed we pushed the ECOMOG forces and we captured the ground. We burnt down some houses in Gbomsamba and we got few ammunition from the ECOMOG forces and indeed we captured about five Nigerian soldiers and we executed them, after which we

13:21:12

retreated from Gbomsamba.

Q. Who executed these Nigerian ECOMOG soldiers?

A. Well, this was an order from Bazzy and he said they should execute them.

13:22:06 Q. Bazzy passed the order. Who executed them?

A. Well, it was - it was an SLA from amongst the two troops that went. I cannot recall the name actually, but he was a man from amongst the SLA that he asked to shoot them.

Q. Witness, in your testimony on Friday you spoke about the

13:22:39 distribution of ammunition that was received from Kailahun after the Koidu Geiya operation. Do you recall that?

A. Yes, my Lord.

Q. You also testified that at the time your group pulled out from Masingbi Road and moved to Tombodu, that ammunition which

13:23:04 was distributed was still with the group. Do you recall that?

A. Yes, my Lord.

Q. By this time can you tell the Court anything about that particular set of ammunition that was distributed?

A. Well, this ammunition were the ones that we were using,

13:23:33 because since we left Freetown we did not actually have ammunition with us. So it was this ammunition that we got later that reached us in Kono that we were using. As were coming on the way this was the ammunition we were using to attack.

Q. And when you say "as we were coming on the way", coming on

13:23:54 the way to where?

A. Well, the various areas that I had named before from Mansofinia to Kamagbengbe, Karina, Mandaha, Gbendembu, we came up to Rosos and as we went along with the operation it was that ammunition that we had. We never had any other supply. The one

that we brought from Kono was what we were using.
Q. Witness, what happened after the operation in Gbomsamba?
A. Well, we retreated to Rosos and we were warmly received by Gullit and he was very much happy because we brought some
13:24:49 logistics like rice, tomato, salt, pepper. All of the things that we were short of in the camp, we were able to get them and we brought them.
Q. Did anything happen after the group arrived in Camp Rosos and after you were received by Gullit?
13:25:17 A. Well, the only thing is that Gullit received the troops and then we explained to him exactly how we demonstrated according to his order what we did in Gbomsamba.
Q. What, if anything, happened after this?
A. Well, the only thing that happened was that later Arthur
13:25:45 came after the operation. He came from Mateboi and he said he went on patrol and he discovered a mic that we would use on our sets.
Q. Witness, let me take you back a little bit. When I was talking about the ammunition just a minute ago your answer - the
13:26:14 last answer in relation to this issue you gave was, "The one that we brought from Kono was what we were using"?
A. Yes, my Lord.
Q. Can you remind us again what was the ammunition you brought from Kono?
13:26:32 A. Well, this was the supply that we received when Mosquito called us to go and clear Koidu Geiya. And then this ammunitions came from Kailahun, according to Mosquito he said they came from Liberia, and those were the ammunition that were distributed to us when we came back to Koidu Town to push the ECOMOG forces in

Kono.

Q. Now you were talking about a boy who said he came - he went on patrol and discovered a mic. Who is this boy you are talking about?

13:27:19 A. No, I was talking about Captain Arthur. At that time that we were at the headquarters in Rosos when he came and met the operations commander and said he has the mic, because at that time we were just monitoring now, because the man who was on the radio had actually ran away since Mandaha, so the mic that we 13:27:48 were now using to monitor was not working, so Arthur went and discovered this mic in Batkanu and then he brought it to Commander Bomb Blast, after which Bomb Blast took it to Gullit and then it was handed over to the radio man that we had who was Jalloh and then he tried to fix it up and then when he fixed it 13:28:19 he resumed communication.

MS ALAGENDRA: Your Honours, for the record Jalloh is spelt J-A-L-L-O-H. Also, your Honour, I have just got my eye on the clock, if this is an appropriate moment?

PRESIDING JUDGE: Yes, indeed, Ms Alagendra, this is an 13:28:37 appropriate time. We will adjourn until 2.30. Mr Witness, we are going to take the lunchtime adjournment. We will resume court at half past 2. Please adjourn court.

[Lunch break taken at 1.30 p.m.]

[Upon resuming at 2.30 p.m.]

14:29:41 PRESIDING JUDGE: Ms Alagendra, when you are ready we will proceed.

MS ALAGENDRA: Your Honours, just two brief issues. Back to the record again. Your Honour, again it seems to have come through as "Yeaten clock". It should be "eye on the".

PRESIDING JUDGE: I am not sure where that one is, Ms Alagendra. Could you help me?

MS ALAGENDRA: Just before we ended, your Honour, where I said I had my eye on the clock.

14:30:18 PRESIDING JUDGE: Oh, yes, indeed. I see it. Yes.

MS ALAGENDRA: And, your Honour, there is a spelling that I told the Court I will get back on.

PRESIDING JUDGE: Yes, indeed.

MS ALAGENDRA: Sanda Tendaren, which is S-A-N-D-A T-E-N-D-A-R-E-N.

14:30:30 Your Honours, with that I will proceed with the examination of the witness, if I may?

PRESIDING JUDGE: Yes, please do so.

MS ALAGENDRA:

14:30:46 Q. Witness, just before we broke for lunch you were telling the Court about a microphone that was found on an operation in Batkanu by Captain Arthur and that the mic was fixed up and after it was fixed you said he resumed communication. Also you told the Court that the name of the radio man with the group at the

14:31:26 time was a Jalloh?

A. Yes, my Lord.

Q. Can you clarify when you said "he fixed it" and "he resumed communication", who is the "he" that you are referring to, witness?

14:31:47 A. I was - I spoke about the radio man. After he had fixed the mic, Gullit resumed communication with the other commanders.

Q. Do you know which other commanders communication was resumed with?

A. Well, as far as I know he resumed communication with - he

I N D E X

WITNESSES FOR THE PROSECUTION:

TF1-334 8057

EXAMINATION-IN-CHIEF BY MS ALAGENDRA 8057

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

TUESDAY, 22 APRIL 2008
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr William Romans Ms Doreen Kiggundu
For the Registry:	Ms Rosette Muzigo-Morrison
For the Prosecution:	Mr Nicholas Koumjian Mr Alain Werner Ms Shyamala Alagendra Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Morris Anyah
For the Office of the Principal Defender:	Mr Silas Chekera

came there and I saw that my family house had been burnt down on Guard Street. So I asked the family who was the commander that came there and if they did not tell the commander that I was part of the troop that entered. They said it was Captain Blood who
16:21:30 was assigned to Bazzy and he was the one who burned down the house and they said he said he did not want to know, because the orders that were given to us, be you RUF or STF, they said, the orders that were given to us was - and even when they told him that I was one of those of them who came, he said no, he did not
16:21:53 want to know, it was the orders. Then I asked him what route did he take. They told me he went towards Guard Street and I went there, I realised that Blood had already captured about seven men and he decapitated them. I can recall that. It happened on Guard Street and everybody ran away. So I had nothing to
16:22:17 question him about, neither to do any other thing to him, because he was attached to Bazzy and that happened during the second week of January, 6 January, I saw it with my own eyes.

Q. Witness, the seven men that were decapitated, who were they, do you know?

16:22:40 A. Well, these were all young men who were captured by the man in that area. When I went there I saw that he had captured them and he was saying that these were collaborators and that they were working with the Nigerians, so he executed them and he decapitated them.

16:22:58 Q. Were you there when he was decapitating them?

A. Yes, my Lord. When I left where my family house was on Guard Street, because they told me that he had gone ahead and when I moved to meet him, because he was still on the same Guard Street, when I met him there I saw that he was doing this action.

But I had nothing else to do to him because that was an order that came from above: That when we get to Freetown we should burn down and do killings.

Q. Can you remind us who that order was from?

16:23:37 A. Well, it was Gullit who gave the order before we entered Freetown, so this was one of the orders that he told me that he executed.

Q. Do you recall anything else that happened during the second week of January 1999?

16:24:02 A. Well, what I also recall that happened during the second week was that we had a call from RUF Rambo in which he said that they were preparing reinforcement to come and reinforce us, because at that time now we had started getting some threats from ECOMOG. He said, well, the SLA Rambo whom we referred to as Red

16:24:38 Goat, who was alongside with them, they were now advancing together with Superman and others and he said he was going to lead some men to come to Freetown to reinforce us. So Gullit gave him a location that we were going to receive them in Allen Town and he said the manpower was on their way coming to

16:25:07 reinforce us in Freetown, so that happened and Gullit chose some men --

Q. Witness, I will ask you to pause at this point. How do you know about this communication?

A. Well, this communication took place just after we started

16:25:29 receiving threats from ECOMOG and when Gullit called back to the rear. He called Rambo, who was the RUF commander, and he told him that now that we have pressed on, we have also started getting pressure from ECOMOG so we need reinforcements and it was the time that Rambo said that he had moved with Issa, they have

I N D E X

WITNESSES FOR THE PROSECUTION:

TF1-334 8184

EXAMINATION-IN-CHIEF BY MS ALAGENDRA 8184

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

WEDNESDAY, 23 APRIL 2008
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr Simon Meisenberg Ms Doreen Kiggundu
For the Registry:	Ms Rosette Muzigo-Morrison
For the Prosecution:	Mr Nicholas Koumjian Ms Shyamala Alagendra Mr Alain Werner Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Morris Anyah
For the Office of the Principal Defender:	Mr Silas Chekera

are we on?

A. Well, this was almost during the third week of 6 January when we entered. That was now the third week.

Q. Now, when you recaptured State House at this time --

10:33:51 PRESIDING JUDGE: I am a little unclear. The third week of 6 January, what does that mean?

MS ALAGENDRA:

Q. Witness, can you be a bit clearer?

A. The third week of January.

10:34:06 Q. Of which year?

A. 1999.

Q. This time when you recaptured the State House, how long did you stay in the State House?

PRESIDING JUDGE: Have we got to a stage where he

10:34:28 recaptured State House?

MS ALAGENDRA: Yes, your Honour.

PRESIDING JUDGE: He said, "We moved and we undertook another advance."

MS ALAGENDRA: "And recaptured State House."

10:34:36 PRESIDING JUDGE: Oh, I see. I apologise. I see it clearly now. I withdraw that comment.

MS ALAGENDRA:

Q. Witness, how long did the troops stay in the State House this time?

10:34:47 A. Well we did not stay in State House for a long time, but we captured there and we were there on the ground and later we had an announcement over the international media and that was Mosquito again that went over air. He said he was not ready for any peace or ceasefire that the government wanted to establish

and that now he was giving order to the commander Gullit, who was in Freetown, to start burning strategic positions in Freetown and to capture civilians. He said they should start burning strategic areas in Freetown and to capture civilians. He said he
10:35:43 was not going to accept any ceasefire.

After that announcement he also called Gullit on the radio set and he told him that the government was about to fool around the troops and the movement. According to him the government was just trying to prepare themselves to reorganise themselves to
10:36:07 flush us out of Freetown, and he said from now onward Gullit should start moving with his men around to burn Freetown and burn down strategic areas so that there would be no government and there will be nobody for the government to rule. You will have nowhere to sit and rule.

10:36:27 Q. How do you know about this communication?

A. Well, like I said, the one was over international media that we had, and the second one was at the State House after we had recaptured there when Gullit came and he went on the set and Mosquito gave him these orders in confirmation to what was said
10:36:52 over the international media.

Q. When he said there will be nobody for the government to rule, did he explain what that meant?

A. Well, he said by burning down strategic areas, that is government offices, and by capturing people in Freetown they
10:37:14 would not have anybody to rule.

JUDGE SEBUTINDE: Ms Alagendra, what international media is the witness referring to exactly?

MS ALAGENDRA:

Q. Witness, you said before this radio communication that

Mosquito spoke over the international media. What international media are you talking about?

A. This was the BBC. He went over the BBC. Mostly he used two stations, the BBC and the RFI. Mostly it was through there that the news came up.

Q. Did Gullit respond?

A. Well, from that stage Gullit ordered commanders --

Q. Witness, I will stop you there. My question is did Gullit respond to Mosquito during this communication?

A. Yes, my Lord.

Q. Can you just tell us what his response was, please?

A. Gullit said, "Yes, sir, I will do according to your wish. Just as you have given me order, I will also order the men now to start the operation to burn down and capture people in Freetown."

JUDGE SEBUTINDE: Ms Alagendra, I'm lost. The witness just testified that this was a broadcast over the BBC. What communication are you talking about?

MS ALAGENDRA: Your Honours, he testified that after the broadcast there was a communication. That's what he was testifying about.

JUDGE SEBUTINDE: I understand.

MS ALAGENDRA:

Q. Witness, what happened after Gullit responded to Mosquito?

A. Well, after that Gullit ordered senior commanders and he said to them that now we are going to start distributing fuel, petrol to the forces that were in Freetown and those were the ones he held, he leaded, so they started burning.

Q. "Those were the ones he held, he leaded", can you explain that?

I N D E X

WITNESSES FOR THE PROSECUTION:

TF1-334 8303

EXAMINATION-IN-CHIEF BY MS ALAGENDRA 8304

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

MONDAY, 28 APRIL 2008
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr William Romans Ms Doreen Kiggundu
For the Registry:	Ms Rosette Muzigo-Morrison Ms Rachel Irura
For the Prosecution:	Mr Nicholas Koumjian Ms Shyamala Alagendra Mr Alain Werner Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Morris Anyah Mr Terry Munyard Mr Lansana Kamara
For the Office of the Principal Defender:	

1997. Can you tell me, Mr Witness, to be fair to you, was this shipment somewhere about July 1997, or was it in October 1997 as I said? Which is it?

A. Well, like I have said, it was some months after AFRC took over. Probably you are correct that month October was the month the shipment came.

Q. Where did you understand these arms to have come from, Mr Witness?

A. Well, my Lord, we had so many talks. Some said it came from Ukraine, some said from Liberia, so people were giving different versions. Some said from Ukraine, some said from Liberia.

Q. Yes, but when you met with the Office of the Prosecutor less than a year ago, 8 May 2007 - it's in tab 13. Madam Court Officer, can you show him tab 13. This is the Defence bundle of documents. Mr Witness, I'm on page 5 of tab 13. The ERN number ends in 2140 and if you look at that page, Mr Witness, there's a paragraph that says, "Witness is aware of arms shipment that took place at Magburaka" airstrip, or "airtrip" as it is written there. Do you see that, Mr Witness?

A. Yes, my Lord.

Q. The paragraph reads:

"Witness is aware of arms shipment that took place at Magburaka airtrip. Witness was present on the only one shipment when he accompanied Colonel SO Williams to the airstrip who received the arms. The second shipment that was to arrive, the ECOMOG Alpha Jet was raiding the area. This made the second shipment to be cancelled. Witness is not aware where the shipment originated, but he was told by other soldiers that it

originated from Ukraine."

Do you see that, Mr Witness?

A. Yes, my Lord.

Q. Less than a year ago you said you heard from others it came from the Ukraine, correct?

A. Yes, my Lord. I think they left out Liberia. Some said from Ukraine, some said from Liberia, and that was what I said and I'm saying it in court now.

Q. Yes, that was my point. The Prosecution has no records of you saying the shipment came from Liberia. You're saying it in court now, yes?

A. Well it's for the Prosecution, but what I said - and I said it openly in the court before you brought this paper before me - I told you that there were discussions that people were saying they came from Liberia and some said from Ukraine. Those were the discussions people were having.

Q. And you're also telling us that you told the Prosecution on 8 May 2007 that Liberia was a source of these weapons. Is that your evidence, Mr Witness?

A. I said that was what we heard from among the fighters. Everybody was happy that these things were - Liberia has done well for us. Some would say, "No, this was Ukraine", so there was this controversy between us when everybody discussed, not that senior commanders that went.

Q. Can you explain how it is the Prosecution does not have a record of you saying Liberia was a source of these weapons in the interview notes of 8 May 2007?

A. Well, this is - they typed and wrote it and so it might be that they made a mistake, but I don't know. That is why I said

those who posed the question, they have that area. Like when I went there they - when I went they would type something.

Q. I see. This shipment of arms at Magburaka, Mr Witness, tell us what was received. What kind of shipment and arms are we talking about?

A. They came with some SMGs and some anti-aircraft where we also mounted and they came with they called them - they said laser to put down jets, but obviously they tested it and they knew that it was a fake and that it was not good enough. It was in Johnny Paul's place. So they planted in Johnny Paul's place, but the bombs were fake which they came with.

Q. Well, let's clarify a few things. What is SMGs first? I see the Chamber might have a query about that. What is SMGs, Mr Witness?

A. This was a submachine gun. It looked like an AK-47.

Q. You then said they came with some lasers that was a fake?

A. Well, yes, because all of us were happy that they had come with things that would put down the jet, but it was planted in Johnny Paul's place and it was tested and knew that it was fake and it was not useful. The bombs they came with that, they were already cold.

Q. When you say "Johnny Paul's place", where are you referring to, Mr Witness?

A. I was talking about Spur Road, where he was. There it was the place that it was planted.

Q. Do you mean during the junta period they took some lasers to Johnny Paul's place at Spur Road and tested the lasers in Freetown? Is that your evidence, Mr Witness?

A. Yes, it was there when the jet came to raid, because the

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WITNESSES FOR THE PROSECUTION:

TF1-334 8646

CROSS-EXAMINATION BY MR ANYAH 8651



Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

TUESDAY, 29 APRIL 2008
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr Simon Meisenberg Ms Doreen Kiggundu
For the Registry:	Ms Rachel Irura
For the Prosecution:	Mr Nicholas Koumjian Mr Mohamed A Bangura Mr Alain Werner Ms Shyamala Alagendra Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Terry Munyard Mr Morris Anyah

invasion of Freetown as directed by SAJ Musa: 1, instigated by the execution of these 24 officers; and, 2, to facilitate the reinstatement of the army. Yes, Mr Witness?

A. Well, that was the word that he told us. He said we should go and reinstate the army. He said we should go with these words, then we will get support from the people.

Q. We know what words he used. We are trying to get at the meaning of those words and at the time those words meant that was a reason, amongst others, to go and invade Freetown, yes?

12:05:05 A. Yes, my Lord.

Q. Yes. None of this had anything to do with the RUF, did it, either the execution of the 24 officers, or the reinstatement of the army?

A. It had something to do with them, my Lord.

12:05:28 Q. Tell us what it had to do with the RUF?

A. Well, in the execution you see the 24 officers, but you will see the names of other people, including Foday Sankoh who was in prison there, and then also, like I said, you have some names of political detainees who were there who were also part of

12:05:54 the AFRC, who had come together with the RUF and the SLA, that formed the AFRC. So it also had something to do with them.

Q. Mr Witness, the two documents I have just read to you are your own words and they focus on 24 SLA officers and their execution. Do you hear mention there of Foday Sankoh being in

12:06:18 jail as a factor for the Freetown invasion?

A. But what I am trying to say is that when this happened and when Mosquito went over the air, he commented and he said it. He said, "Our men will march into Freetown. We will ensure that our men March into Freetown, as long as they are executing our

Q. If we go from entry number 11 to entry number 12, to the next page entry number 13, to the next page entry number 14, to entry number 15, to entry number 16, entry number 17, entry number 18, entry number 19, entry number 20, entry number 21, entry number 22, entry number 23, entry number 24, we are now up to page 7 of the document, entry number 25, 26, 27, 28, entry number 29, entry number 30, entry number 31, entry number 32, entry number 33, entry number 34, entry number 35, entry number 36, entry number 37, entry number 38, entry number 39, entry number 40, we are now in September 2006, entry number 41, entry number 42, entry number 43, entry number 44, you can count up to entry number 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, all the way up to - I should have stopped on 58, entry number 58, page 15.

From entry number 11 through entry number 58 all payments made in the year 2006 and we don't have one record - one record of you having been interviewed for any of those dates. Do you understand what I am saying, Mr Witness?

A. Yes, my Lord.

Q. What were they meeting with you about for all these meetings and spending all of this money on you in the year 2006?

A. My Lord, just as I said, I was under their control. So any time I was at my house they will call me say Bobby, you come. We need this, or we need this, or maybe they can say we want this direction or that, so I would help. And they used to call me constantly and I was under their control. They had relocated me for my protection. I did not go anywhere. Any time they needed me, I will go there. They will call me say we want you to enlighten us on this, we want you to do this for us then I will

do it. But to say that I want to dispute the contents of this document, no, that's not what I am saying. Most of the times they will go and pick me up and when I will come back they will say, "No, we don't need you now" and I will return. They will
15:03:14 give me transport allowance and if I am there for some time, spend some time with them, they will give me money for meal.
Q. 40 something entries, about 47 I have counted, we don't have one interview note from any of those 47 events. Shall we take one, for example, and look at it. Let's look at entry
15:03:35 number 13. See entry number 13, Mr Witness, top of page 4, it has there 8 June 2006. Do you see that, Mr Witness? Madam Court Officer could you assist him?
A. Yes.
Q. Has there 8 June 2006. Category, information. Amount in
15:04:21 question, 15,000 leones. Let's look at the dates and the reason. Reason, "Paid for three days meals" and it gives the dates 6 June, 7 June and 8 June. This entry corresponds to 8 June. Let's flip back a page and see if you had anything to do with them on 7 June. No record for 7 June. What we see in entry
15:04:52 number 12 is that you are paid for breakfast for 6 June, 5,000 leones. Do you see that, Mr Witness?
A. Yes, my Lord.
Q. And when we flip the page to entry 13, on 8 June, despite the fact they paid you 5,000 leones for breakfast on the 6th they
15:05:24 give you money for three days meals, including 6 June, including 7 June when they are not even meeting with you at all, and then for the day in question 8 June. Do you see that, Mr Witness?
A. Yes, my Lord.
Q. Were they giving you money to feed you on days that you

were not meeting with them, Mr Witness?
A. No. As long as they called me to the office and I went there they will make transportation - provision for transportation. Whatever information I was called for, I was in
15:06:02 their hands. Whatever they needed, information or anything, I will go there. If they invited me I will honour their invitation.
Q. Yes, Mr Witness, I understand that, but you see what is happening. On 6 June they gave you 5,000 leones for breakfast.
15:06:25 On 8 June they are giving you money for three days meals including the 6th that they have already given you 5,000 leones for. Do you see something wrong with that, Mr Witness?
A. I don't see anything wrong with that. As I said, I will be at my house and they will say Bobby, get ready, maybe you will
15:06:46 come or we will come to pick you. I cannot dispute the fact.
Q. You remember when we started with your cross-examination on the 17th, I recall, or perhaps it was not the 17th, but whenever it was, some time last week, Thursday last, we started out with the document in tab 23. If you flip over one page you will see
15:07:13 that document. That is by the Witnesses and Victims Section, or rather if you flip over one tab. Do you see that it says that you were brought under the protection of the court - I am reading from paragraph 2 now of that document - on 14 March 2005? Do you see that, Mr Witness?
15:07:39 A. Yes, my Lord.
Q. The money the WVS, or Witnesses and Victims Section, spent on you is distinct and different from the money spent on you by the Office of the Prosecutor. Are you aware of that, Mr Witness?
A. Well according to the document, yes.

Q. So since 14 March all your expenses - and you see the categories in the document in tab 23, rent, child care, all of that was being taken care of by the Witnesses and Victims Section. What we are speaking about in tab number 22 are
15:08:17 payments by the Office of the Prosecutor and they are paying you twice for meals for the same day. Do you understand the records in entry number 13 and entry number 12, what they say, Mr Witness?

A. Yes, yes, yes.

15:08:54 Q. Do you understand that there is something unusual about paying someone 5,000 for breakfast on 6 June and then on 8 June you give him additional money for meals on 6 June which has just passed?

A. Well this document states it clearly, June 6, 7 and 8, and
15:09:26 in particular they knew that I had to go and they will engage me that day, the following day and the day following that. They will give me the money in advance, because they will say, "We don't want to be disturbing you every now and then to be signing documents". At times they will call me, they will want me to go
15:09:46 with them to see areas where we were fighting and I will go with them. Places like Hastings, I will go there and show the place to them. I am not denying this fact.

Q. Do you see the next entries for 12 June? They are entries 14, 15 and 16 on the same page we were looking at.

15:10:05 A. Yes, my Lord.

Q. Do you see for entry number 14 they gave you 5,000 leones on Monday, 12 June for lunch? Do you see that, Mr Witness?

A. Yes, my Lord.

Q. Now look at entry number 16, also pertains to 12 June,

Monday. They gave you another 5,000 for meals. Do you see that, Mr Witness?

A. Yes, my Lord.

Q. Same day, one payment for lunch and another payment for meals, yes?

A. Yes, because if I went there in the morning they will provide money for breakfast, they will go and buy it for me and if I will be there until lunch they will provide money for lunch. They did the buying. They will buy it and when they come they bring the document and I will sign.

Q. Twice paid for food for the same day.

A. That is what I have just told you. I said if I will be there in the morning they will provide breakfast. They will pay. In that courtroom it is that everything they bought there it is expensive. As long as I spent time there, they will provide feeding.

Q. Mr Witness, entry number 15 says you were paid 10,000 leones for transport and lost wages, reason "Transportation for witness to go home and report at the SCSLP" the following day, 13 June 2006. Do you see that, Mr Witness?

A. Yes, my Lord.

Q. What kind of work were you doing in the year 2006, Mr Witness?

A. Well, I was still with my church and apart from that I had some business run by my brother and my sisters. I helped that and I monitored that. Apart from that, as I said, at times the court will call me that somebody had come and they want to visit this and that area, so I will come there and go to the place and I will ask them to pay for my transport fare because I will not

go there taking money from my own pocket. At times they send vehicle for me, but when I will be returning they give me transport fare.

Q. My initial question was what sort of work were you doing. Are you saying you were employed by your church, Mr Witness?

15:12:34

A. Yes, my church employed me. I used to get salary from Flaming. Even where I am now, I get salary from that.

Q. And you said you were doing some business on the side through your family, yes?

15:12:58

A. Yes, and in fact I have a whole house and they pay rent to me and every year I get 3.5 million. Two apartments: the one downstairs 3.5 and the other one upstairs, where my brother was, they pay the money to me directly. My sister sends money for me every month. I will not tell you a lie.

15:13:24

Q. That is okay.

A. Okay.

Q. How much did you make on average between your church and all these other ventures on the average day in 2006?

A. Well, I would have some other businesses. I had some other

15:13:46

ways to get money. Every month I had other means to get money, apart from the church. The church used to give me 150,000 monthly. The pastor pleaded with me to accept that and I said, "Okay, no problem". Apart from that, I have my own investment. I have some money in the bank which was paid to me by the army.

15:14:07

I have the documentation. 5 point something million. I went and bought Treasury bearer bonds. I get interest from that.

Q. At this time, though, you were already living --

JUDGE SEBUTINDE: Mr Interpreter, what was that last thing you said?

THE INTERPRETER: Profit from that. I have - I bought Treasury bearer bonds.

MR ANYAH:

Q. Mr Witness, by this time, 12 June 2006, you were living in accommodation provided by the Special Court, correct?

A. Yes, my Lord, that is correct.

Q. You did not have to pay rent whatsoever, right?

A. Yes, my Lord.

Q. Yes. The Special Court was feeding you in the place where you were staying, right?

A. Well they were not feeding me directly, but I had my weekly allowance that they gave to me and I did not trust them. They asked me to be relocated and they used to give me allowance.

Q. When we look through these records and we see meals and breakfast, these sums being given to you they are in addition to the weekly allowance they used to give you when you were in this house, right?

A. No, as I said, this department that you are referring to, if they called on me and if I went there they will give me my transportation fare. That happened. Because there were times I would be in the church and they will call me. They will just say, "Pay and when you come we will refund your money".

Q. Mr Witness, let's not focus on transportation. Let's focus on the issue of feeding, meals. It is correct, is it not, that the Witness and Victims Section gave you feeding allowance while you were housed by them in Freetown, correct?

A. Yes, weekly allowances. Yes.

Q. And my point is separate and distinct from that whenever the Office of the Prosecutor would get you for interviews, or

meetings, they also gave you money for food, yes?
A. As long as I went there, they provided my feeding. As long as they invited me to the office and I went there, they provided my feeding and transportation cost.
15:16:48 Q. And that was in addition to what WVS was giving you on a weekly basis for food, yes?
A. Well I did not request for this, as I said.
Q. I didn't ask if you requested for it, Mr Witness. I didn't ask if you requested for it. It might be a gift, for all you
15:17:08 knew. I am just asking if it was in addition to what the Witnesses and Victims Section was giving you for food on a weekly basis?
A. No, no, when they invited me I will go there. They will go and pick me up and I will come. They will give me my
15:17:31 transportation cost. The food, they used to buy it. They will go and buy it. I didn't know how much they bought it and I will sign for it on the document.
Q. Yes, well let's break it down. When you would go to the Special Court premises you are telling us they would buy you
15:17:45 food, right?
A. Yes, my Lord, they will go and bring food from the canteen. When they will bring it they will say this is 5,000 and they will ask me to sign. Whatever, they will ask me to sign on a document and I did.
15:18:01 Q. On the dates when you did not go to the Special Court premises and you stayed in the house that was being provided for by the Witnesses and Victims Section you used to eat based on the allowance they gave you, right?
A. Yes.

Q. So the allowance you were receiving for food from the Witnesses and Victims Section was different from money spent on you for food whenever you went to the Special Court premises, right?

15:18:38 A. It was different. As long as they invited me to that office that you are referring to - not the WVS, this prosecution - if the investigators wanted to see me they provided my transportation cost. When once they provided transportation they would bring the document and I will sign.

15:18:57 Q. Mr Witness, if you look at entry number 11 where we started with, 4 April 2006 - do you see that?

A. Yes, my Lord.

Q. And if you go all the way to the end of the page you see the page number is "Page 3 of 17"? Do you see that, Mr Witness?

15:19:32 A. Yes, my Lord.

Q. All of the entries from entry number 11 all the way to page 15 - actually, it is even worse. All the way up to page 16 of this document, entry number 63. From entry 11 through entry number 63. Entry number 63 speaks of the date 6 November 2007.

15:20:11 Do you see that, Mr Witness?

A. Yes, my Lord.

Q. For all of those entries, the dates between lines 11 and 63, none of those dates correspond to any interview dates of yours that we have records of. From pages 3 through pages 16, we

15:20:36 don't have any records of you meeting with them on any of those dates. And what the Chamber would like to know, I suspect, is what were you doing with them during all of these meetings? What was going on?

A. My Lord, just as I said, I will be at my house and they

will invite me. At times they will ask me to go and show them a particular place, or they will ask me - they will call me and ask me, "Do you know this person?", I will say, "No", or maybe they will want to get information from me or somebody else. I was in their hands. At times they will call me, or they will take me and ask me that I should take them to West Side. Maybe somebody else wanted to see the West Side. So, mostly that was why they took me. They would say they had a visitor who wanted to see West Side and I will say, "Okay, let's go. No problem". I will just take an excuse from my pastor, but I will tell them and say, "Be prepared for tomorrow. We will go to the place", and we will go there.

Q. Mr Witness, look at the entry in entry number 63. As of 64 - entry 64, 16 November, we know you were interviewed on that day, but the preceding entry, entry number 63, it says you were given the sum of 60,000 leones and the category is "Information". The reason you were given this money is "Purchase of information". What information were they buying for 60,000 leones, Mr Witness?

A. It was not to buy something. At times they will call me and they will tell me we want you to go to this and this place. Maybe it is in the provinces, I will ask them to give me transportation and I will go. If they wanted information from me, there were many areas, at times Karina and some other places, I would go there. I had taken people there who wanted to see some places and if you want to see places like those it will cost you money, it will cost you transportation. So they would give me the money.

Q. Why doesn't it say money for transportation. It says,

Q. Mr Witness, what do you say on the basis of having lived in Sierra Leone the average Sierra Leonean would make, or made, in the year 2006? Let me rephrase that. I withdraw that phraseology. If you took the average Sierra Leonean on the side in 2006 and you asked how much the man on the street made that year, would it add up to about 300 United States dollars, Mr Witness?

15:37:58

A. Well I cannot judge for people, because everybody has his own way of getting money. I cannot judge for even the least. I was not - some people are businessmen, so everybody had his own way of getting his living.

15:38:23

MR ANYAH: My colleague, Mr Munyard, just reminds me that I should make a formal request to the extent there are any records of interviews with this witness for the dates mentioned that we do not have, all of the year 2006, we would like to request them formally on the record.

15:38:47

PRESIDING JUDGE: Ms Alagendra?

MS ALAGENDRA: Your Honours, I was going to raise it in re-examination, but I can respond briefly. This witness testified in the RUF trial between 5 to 10 July 2006 and there was preparation work that was going on with this witness for that purpose. Unfortunately, we don't have a formal record of it.

15:39:02

MR ANYAH: Madam President, the Chamber will note that the dates I canvassed exceed and go beyond July 2006 into - they go into as far as December. I have records up to 6 December 2006. They start in April of 2006 and they go through December 2006. Several meetings in October of 2006, in September of 2006 several meetings and we have nothing from April through December 2000 and - we have nothing for 2006.

15:39:30

PRESIDING JUDGE: Ms Alagendra, you have heard counsel. He says that - the dates you have quoted are 5 to 10 July 2006?

MS ALAGENDRA: That was the date on which he testified in the RUF trial.

15:40:09 PRESIDING JUDGE: Yes.

MS ALAGENDRA: So, preparation work was going on before that.

PRESIDING JUDGE: Yes, and counsel has now raised the period after.

15:40:17 MS ALAGENDRA: Yes, your Honour, and in relation to that Mr Koumjian will address you.

PRESIDING JUDGE: Mr Koumjian?

MR KOUMJIAN: I don't have any personal information, but we recognise counsel has made the request for any interviews and we

15:40:30 understand the disclosure obligations.

PRESIDING JUDGE: Yes, and the disclosure obligations you will therefore as requested make the appropriate enquiries.

MR KOUMJIAN: I personally will double check what I know about any interviews of this witness and what I can find out

15:40:51 during the dates stated.

PRESIDING JUDGE: Very well.

MR ANYAH: Thank you. We appreciate the response and the self-undertaking to double check. Thank you, counsels.

Madam President, there are a number of documents I have put

15:41:10 to the witness that I have not requested to be marked for identification. With the leave of Chamber, I would like to do so.

PRESIDING JUDGE: Just before we move on to that, have we completed the questions relating to this United Nations

I N D E X

WITNESSES FOR THE PROSECUTION:

TF1-334	8784
CROSS-EXAMINATION BY MR ANYAH	8784
RE-EXAMINATION BY MS ALAGENDRA	8911

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

MONDAY, 5 MAY 2008
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr William Romans Ms Sidney Thompson Ms Doreen Kiggundu
For the Registry:	Ms Rachel Irura
For the Prosecution:	Mr Nicholas Koumjian Mr Mohamed A Bangura Ms Shyamala Alagendra Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Terry Munyard Mr Morris Anyah

bullets that it used were large. It was a chain and he hung it round his neck.

Q. What did he hang around his neck?

A. That is the bullets that were connected in the box and the box was underneath the gun and he used to tie it round his neck. Wherever resistance was, as he fires, as he shoots, that's how the bullets came out of the box.

Q. Thank you. Now you said that at Kukuna there was some fighting and after the fighting you - the commanders then came to you and said that you should move on to Colonel Eddie Town. Can you tell us how you proceeded from Kukuna?

A. When we left Kukuna, we went through some villages and we got to one village where we rested. The village where we rested, Kabila took me - at that time he had - he was able to get another gun that had two handles. You can hold it at the back and in front. He said, "I have taught you how to dismantle a gun, clean it and couple it up". He said, "Now I'm going to teach you how to shoot the gun". So he took me to a riverside. He said, "I will be doing the shooting in the river". So I went to the river and he said, "Hold on to this. Hold on to it tighter, because it will pull you", so I held on to it and he told me to shoot. He said I should point it into the water and I should put my finger into something and he asked me to shoot it and I shot it once and he called me that we should go to town.

Q. Now do you know why he asked you to shoot - to aim your shot into the water?

A. At that time he told me that, because he's taught me how to clean and dismantle a weapon, he said now he's going to teach me how to shoot.

Q. Yes, but you said that in the training that he gave you he told you to aim your shot into the water. Do you recall that?
A. During the training that he gave me he did not - he did not teach me how to shoot. He did not teach me how to shoot.
12:52:05 Q. Did you fire a shot from that gun?
A. I shot the gun.
Q. Where did you aim at when you shot the - when you pulled the trigger?
A. I pointed the gun in the water. I pointed the gun in the
12:52:26 water and that was where I shot it.
Q. Why did you have to shoot it into the water?
A. He said because his bosses were in town and he said because the place where we had fought was not too away from Kukuna he said he wouldn't want them to hear that were in that town. So
12:52:51 when we got into the - if they heard the sound they will come into that area. That was why he told me to point it into the water so that the sound will not be heard.
Q. Now after you had gone through the training, after that short process did anything happen?
12:53:16 A. Well, when we came to town, when we came to the village where his bosses were, the house where he had left his wife and his other boy, his friends were there. He went and brought out marijuana and he wrapped it for me and he asked me to smoke it. So I smoked it. I smoked the marijuana. There was some ground
12:53:40 nut there and I started chewing it. I did that until I started vomiting.
Q. Now were you the only one smoking marijuana?
A. Well, at that time his other friends, his other colleague fighters, also sat down smoking. I and - he gave me marijuana

I N D E X

WITNESSES FOR THE PROSECUTION:

TF1-143	8964
EXAMINATION-IN-CHIEF BY MR BANGURA	8964
CROSS-EXAMINATION BY MR MUNYARD	9048

EXHIBITS:

Exhibit P-100 admitted	8942
Exhibit P-101 admitted	8944
Exhibit P-102 admitted	8945
Exhibit P-104 admitted	8947
Exhibit P-105 admitted	8947
Exhibit P-106 admitted	8948
Exhibit P-107 admitted	8948
Exhibit P-108 admitted	8948
Exhibit P-109 admitted	8949
Exhibit P-110 admitted	8949
Exhibit P-111 admitted	8950
Exhibit D-19 admitted	8950
Exhibit D-20 admitted	8951
Exhibit D-21 admitted	8951
Exhibit D-22 admitted	8952
Exhibit D-23 admitted	8952
Exhibit D-24 admitted	8952
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Exhibit D-26 admitted	8954
Exhibit D-27 admitted	8954
Exhibit D-28 admitted	8955
Exhibit D-29 admitted	8955
Exhibit D-30 admitted	8956
Exhibit D-31 admitted	8956
Exhibit D-32 admitted	8956
Exhibit P-112 admitted	8969
Exhibit P-113 admitted	9040

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

WEDNESDAY, 7 MAY 2008
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr Simon Meisenberg Ms Carolyn Buff
For the Registry:	Ms Rosette Muzigo-Morrison Ms Rachel Irura
For the Prosecution:	Ms Brenda J Hollis Mr Christopher Santora Ms Shyamala Alagendra Ms Julia Baly Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Terry Munyard Mr Morris Anyah

A. Yes.
Q. What did they say?
A. They said Tejan Kabbah could not pay them so they are going to pay themselves.
09:51:52 Q. Did they explain how they were going to pay themselves?
A. That was where they stopped.
Q. Did anything else happen in Karina Town on this night?
A. Yes, because they went on clearing people's properties and they were beating up people.
09:52:24 Q. How long did the junta stay in Karina Town on this occasion?
A. After taking - they had taken all the properties, then they went.
Q. After the junta went, did anything else happen in Karina
09:52:47 Town?
A. Yes.
Q. What happened?
A. The other juntas came again. They came to the town.
Q. What do you mean by "other juntas"?
09:53:05 A. RUF, the soldiers.
Q. Witness, you have said "RUF, the soldiers". Can you clarify what do you mean?
A. Yes, sir.
Q. Please do so.
09:53:22 A. I don't understand.
JUDGE SEBUTINDE: Mr Interpreter, did the witness say "the RUF soldiers" or "the RUF and soldiers".
THE INTERPRETER: She said, "The RUF and the soldiers".
THE WITNESS: Yes, because some spoke Liberian dialect and

some spoke the Sierra Leonean dialect.

MS ALAGENDRA:

Q. When the RUF and the soldiers came back - I beg your pardon, came to Karina Town this time, how long did they stay?

09:54:06 A. They were there for about two weeks.

Q. During the two weeks do you recall if anything happened?

A. Yes, sir.

Q. What happened?

A. Well, when they came to the town they said the town chief

09:54:28 should lodge them. Then the town chief told them that he did not have any place to lodge them and then they said they would lodge themselves.

Q. What did they do after they said they will lodge themselves?

09:54:50 A. We had an upstairs building there where Dr Sherrif had his clinic. They broke into the place and entered there. They based there.

Q. Where exactly is this building, witness?

A. It is an upstairs building, a storey building. It's in

09:55:16 Karina Town.

Q. After the RUF and the soldiers based in this building, did anything else happen in Karina Town?

A. Yes, sir.

Q. What happened?

09:55:32 A. They went and took people's properties, they cleared people's properties in Karina and then they went to the other villages and took people's properties from there and they brought them.

Q. The people's property who was being taken, who was taking

these properties?
A. The junta. They went and took people's property.
Q. Witness, you told the Court that on this occasion the group that came to Karina Town was RUF and soldiers?
09:56:16 A. Yes, sir.
Q. And you say it was the junta who was taking the people's property?
A. It was the junta and the RUF.
Q. Whose property was being taken?
09:56:41 A. They took my sister's properties. They went to where the cows were kept in the farm and then they were taking people's cows and then taking them over.
Q. Apart from this, did anything else happen in Karina Town during the two weeks?
09:57:13 A. Yes, sir.
Q. What happened?
A. Well, my --
THE INTERPRETER: Your Honours, could the witness again clarify the gender of the sister's pikin.
09:57:25 PRESIDING JUDGE: Again, Madam Witness, the interpreter asks was your sister's pikin a girl or a boy?
THE WITNESS: She was a girl.
MS ALAGENDRA:
Q. And your pikin, witness?
09:57:47 A. Yes, sir.
Q. What gender was this pikin?
A. She was a girl.
Q. You were going to tell the Court something about these two girls. Please proceed, witness, and again I remind you not to

mention any names?
A. Yes, sir.
Q. Tell the Court if anything happened to these two girls?
A. Yes, sir, something happened to these girls.
09:58:28 Q. What happened?
A. My girl was around 13 years. She was raped. My sister's daughter, she was around the age of 12. She was also raped.
Q. Who had raped them, did you know?
A. Yes, it was the RUF and the junta, because they were mixed
09:59:01 living in the house there.
Q. How do you know these two girls were raped?
PRESIDING JUDGE: Madam Witness, would you like to take some water? Perhaps the WVS can help the witness. Would you like to take a break, Madam Witness? Would you like to take a
09:59:53 break now? I think in the circumstances the witness seems very overwrought and so we will take a brief break and allow her to compose herself and perhaps someone can report to us how she is. We will take a break until the witness feels better. Please adjourn Court temporarily.
10:00:24 [Break taken at 10.01 a.m.]
[Upon resuming at 10.22 a.m.]
PRESIDING JUDGE: Madam Witness, are you feeling better now?
THE WITNESS: Yes, I feel better now.
10:21:45 PRESIDING JUDGE: Good. You must take this at your own pace. No-one is rushing you. We will continue with your evidence now. Please proceed.
THE WITNESS: Okay, sir.
MS ALAGENDRA: Your Honours, on the part of the Prosecution

we would like to put on record that we had checked with WVS and what we were told was that the witness was not only willing to testify but she wants to testify, your Honour.

THE WITNESS: Okay.

10:22:25 MS ALAGENDRA:

Q. Madam Witness, we are going to continue from where you were talking about the two girls that were raped, your daughter and your sister's daughter, okay?

A. Yes, sir.

10:22:42 Q. When you say those two girls were raped, can you explain what you mean, witness?

A. Yes, sir.

Q. Please explain.

A. When the girls were captured, when they wanted to rape them 10:23:00 they placed them under gunpoint and they raped them. The raping that I am talking about is that they were damaged in the vagina and they were bleeding. I myself checked them and I saw the infection.

Q. Did anything else happen in Karina during these two weeks?

10:23:29 A. Yes, sir.

Q. What happened?

A. The people, the juntas, went back, but as they were going - they said as they were going they would come back to Karina.

Q. Did anything happen after they left?

10:24:03 A. Yes.

Q. What happened?

A. Well, I and my elder brother were outside late that day in Karina and at daybreak I came out and I saw fire - a big fire in the other village.

I N D E X

WITNESSES FOR THE PROSECUTION:

TF1-028	9132
EXAMINATION-IN-CHIEF BY MS ALAGENDRA	9132
CROSS-EXAMINATION BY MR ANYAH	9233



Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

THURSDAY, 8 MAY 2008
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr Simon Meisenberg Ms Carolyn Buff Ms Sidney Thompson
For the Registry:	Ms Rachel Irura
For the Prosecution:	Mr Christopher Santora Ms Shyamala Alagendra Ms Julia Baly Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Terry Munyard Mr Morris Anyah

but it was during the same month that the two of us went there.
Q. And what was he doing when he was in Peyama?
A. Well, he was deployed as a battalion commander. We all went there and we were keeping defensive.
14:37:02 Q. For how long were you in Peyama?
A. I was there for up to a month.
Q. And when you left Peyama, where did you go to?
A. Well, I went to Kailahun in Giema. I was with Sam Bockarie again.
14:37:24 Q. And are you able to tell us in what year you arrived in Giema in Kailahun?
A. Well, that was in '95. 1995.
MS BALY: And Giema is spelt with an N. It's N-G-I-E-M-A:
Q. So you arrived in Giema in 1995, is that so?
14:37:58 A. Yes.
Q. Do you know when? What month in 1995?
A. No.
Q. And you said you went with Sam Bockarie, is that right?
A. Yes, sir.
14:38:11 Q. Was the first time you ever met Sam Bockarie in Peyama?
A. Repeat that.
Q. You told us earlier that you had met Sam Bockarie when you were in Peyama. Was that the first time that you had met him?
A. No.
14:38:36 Q. When was the first time you had met Sam Bockarie?
A. Well, after phase two I met Sam Bockarie. That was in Zogoda. Then he left and came back. The two of us were detained in the same jail when he committed that crime.
Q. What do you mean by phase two?

A. Well, from 1991 up to '93 that was phase one. The war was in another phase starting from 1994.
Q. And how was it that these phases - what separated these two phases?
14:39:28 A. Well that first phase, when the Liberians came and went, that was the first phase when we were left alone. That was the other phase, because the war intensified. After it moved with - he called it - that was what the leader called it. He said that was phase two.
14:39:55 Q. I'm not going to ask you too many questions about this area, but you said you were detained in the same jail when he, that is Sam Bockarie, committed that crime. What crime do you refer to?
A. The soldier who he killed in Sierra Rutile. That was why
14:40:16 he was jailed.
Q. And why were you there? Why were you in the jail?
A. Well, I was charged with time factor. The leader called me and the time that I was supposed to have arrived I did not arrive at that time, so he changed me with time factor.
14:40:36 Q. How long did you spend in the jail?
A. I spent up to three days.
Q. Can I take you back, please, to when you went to --
MR MUNYARD: I'm sorry to interrupt and it may be my lack of knowledge of terminology, but before we move off that could
14:40:55 the witness explain what the offence of time factor is? I think, Madam President, from the look on your face it is my lack of understanding.
PRESIDING JUDGE: Well, we will have it properly recorded. What exactly do you mean by - you said you were supposed to

arrive and you did not arrive. Make that a bit clearer, Mr Witness.

THE WITNESS: Yes, when you are called and they say you should arrive today, when they say today and you arrive tomorrow after 12 that means it's the other day and you will be disciplined for that.

MR MUNYARD: Thank you very much.

PRESIDING JUDGE: Please proceed, Ms Baly.

MS BALY:

14:41:35 Q. Back at Giema you went there and you said Sam Bockarie was there as well, correct?

A. Yes.

Q. What was your position at that point, that is when you were in Giema?

14:41:52 A. Well, I went to Giema as a crack force commander when I left Peyama.

Q. What was a crack force commander?

A. Well crack force, those were people wherever an enemy wanted to infiltrate you were the people who would go there and

14:42:23 join with the others so that you would be able to put the situation under control. You hadn't any permanent assignment.

Q. What was Sam Bockarie's role when he was in Giema with you?

A. He went there and he joined me, because there was a problem there at that time. The enemies had advanced and so the leader

14:42:48 said we should join together to put the situation under control. We were there as senior officers.

Q. Who was the commander in the Giema area at that time?

A. Issa Sesay.

Q. For how long did you remain at Giema?

A. Well, I was in Giema up to the overthrow.
Q. And when you say "the overthrow", what do you mean?
A. When the AFRC overthrew the President of Sierra Leone.
Q. When you were in Giema, did you have occasion to meet with
14:43:37 Foday Sankoh?
A. Yes.
Q. And what was the nature of this meeting you had with Foday Sankoh?
A. Well, Foday Sankoh went to Abidjan to sign the peace accord
14:43:58 on our behalf. On his return, that was the time that I met with him.
Q. Were you the only person who met with him, or were there others who met with him at that time?
A. There were other people there. I was not alone.
14:44:19 Q. How many of you met with Foday Sankoh at that time?
A. Well, when he came at first he called for a formation. The soldiers with whom we were, officers and soldiers, we all assembled at the grounds for the formation.
Q. And what occurred at this formation?
14:44:45 A. Well he addressed us, told us about the peace that he had signed and he said he had done it in the interests of the movement, for all of us. That was what he told us at the formation.
Q. Did he tell you anything else about the peace that he had
14:45:07 signed?
A. Yes, sir.
Q. What did he tell you?
A. He said he has signed the peace on our behalf, but that does not mean the war has ended. He said during times of peace,

PRESIDING JUDGE: Mr Witness, the interpreter requires you to repeat the answer. Please pick up from where you said - the question was, "Where did you meet?" "At the ground." Continue from there, please.

14:47:47 THE WITNESS: Where he was staying, the EMG ground, where he always stays. Where he always stays, that was where we met.

MS BALY:

Q. Do you know what EMG stands for?

A. No, that was where the leader stayed. That was what we

14:48:06 always called it.

Q. And when you say "he stayed there", who are you talking about?

A. Foday Sankoh.

Q. When you assembled there, was Foday Sankoh present?

14:48:25 A. Yes, yes, that was his ground. That was where we met him. We came to him.

Q. And you said that it was the senior commanders. Can you tell us who was present at that meeting, apart from yourself and Foday Sankoh?

14:48:43 A. Well Mr Bockarie was there, Colonel Bockarie, that is Mosquito; Issa was there; Jungle was there; AB was there; FOC was there; Jackson Swaray was there; AB was there and other commanders; and I myself was also there.

Q. Now, you've referred to a person by the name of Jungle.

14:49:20 Did you know that person by any other name?

A. Well, that was his name. That was the name we knew. That was what we called him, Jungle.

Q. You've also referred to a person AB. Did you know what his full name was?

A. Well, it was Abubakarr. His name is AB.
Q. Abubakarr?
A. Yes, yes, yes.
MS BALY: A-B-U-B-A-K-A-R [sic]:
14:50:03 PRESIDING JUDGE: I think it's double R.
MS BALY: Thank you, your Honour, double R:
Q. And you've referred to a person FOC. Do you know what that person's full name was?
A. No, that was the name that I knew.
14:50:25 Q. Now this person, Jungle, had you ever seen Jungle before this meeting?
A. Yes, I had been seeing Jungle.
Q. Where you had been seeing Jungle?
A. Jungle, I saw him in Liberia since that time we were
14:50:49 pushed.
Q. Did you know where he was from?
A. In Liberia.
Q. And the person AB, what was his position?
A. Well, there was a security branch called IO. They reported
14:51:13 to the leader. He was heading that group.
Q. And the person FOC, what was his position?
A. He was the leader's bodyguard. He was one of his bodyguards.
Q. When you say "the leader", which leader? Who are you
14:51:34 talking about?
A. Foday Sankoh.
Q. And Jackson Swaray, what was his position?
A. He was a bodyguard commander. He was leading all of the securities.

Q. Now, at the meeting who spoke?
A. Well, Foday Sankoh spoke.
Q. What did he say?
A. Well in the first place we saw him hand over his satellite
14:52:14 to Mr Bockarie, Sam Bockarie.
Q. When you say "satellite", what is a satellite?
A. Satellite phone. Satellite phone.
Q. Did he say anything when he handed the phone - the satellite phone - to Sam Bockarie?
14:52:33 A. Well, in the first place he told us that we should take all orders from Sam Bockarie and at the same time he was going on a political tour. He said he was going to Libya and other areas. He said we should all take instructions from Bockarie while Bockarie should be taking instructions from Mr Ghankay. That was
14:52:57 why he gave him that satellite so that we would be having links.
Q. When you say, "He said we should all take instructions from Bockarie while Bockarie should be taking instructions from Mr Ghankay", who are you referring to? Who is Mr Ghankay?
A. That is the NPFL leader, Charles Ghankay Taylor.
14:53:23 Q. Did he say anything else when he was at the meeting?
A. Yes.
Q. What did he say?
A. Well, he introduced Jungle to us as Mr Taylor's representative for us there.
14:53:42 Q. Did he refer to Jungle in any particular way?
A. Well, he said he was the Pa's representative. They had been discussing that and so he was trying to introduce him to us. He said he was Charles Ghankay Taylor's representative, Jungle.
Q. Did Jungle say anything at the meeting?

A. Yes, he too buttressed what the Pa had said. He supported and he told us that he will do his level best to his ability.
Q. Was there anything else discussed at the meeting?
A. I think that is the most important thing that we discussed.
14:54:47 Q. Did Foday Sankoh say where he was going to go?
A. Yes.
Q. Where?
A. He said he was going to Libya.
Q. After the meeting, what did you do?
14:55:11 A. Well, all of us went to our various areas.
Q. Now, you said that you were in Giema until after the overthrow. What happened after the overthrow? Where did you go to?
A. After the overthrow we got an instruction from the same
14:55:40 Foday Sankoh, so I moved along with Sam Bockarie.
Q. And where did you move to?
A. At first I went to Pendembu.
Q. Where did you go after Pendembu?
A. I went to Daru.
14:55:57 Q. Where did you go after Daru?
A. We came to Benguema.
Q. And did you go anywhere after Benguema, or did you stay at Benguema?
A. That was where we were based. In the mornings we will go
14:56:20 with Mr Sam Bockarie to Freetown, we will spend the rest of the day there and we will return in the evening. That was what we were doing.
Q. Why did you go there? What was the purpose?
A. Where?

Q. Why did you go to Benguema? Why did you go to Benguema?
A. Well those who called us, that was where they told us about. That was where they lodged Sam Bockarie, because I was moving with him. That was where we were based. In the mornings
14:57:00 we would go to Freetown and in the evening we would return. It was our first base.
Q. And who were those who called you?
A. It was the AFRC.
Q. You would go to Freetown in the morning and what would you
14:57:17 do when you went to Freetown?
A. Well, we went there and sometimes we will go to the military headquarters at Cockerill. Sam Bockarie holds meetings with the senior men most times.
Q. What senior men?
14:57:39 A. Well those who made the coup, like Johnny Paul, SAJ Musa, Gborie and others.
Q. Did you yourself attend the meetings that Sam Bockarie went to?
A. No, it was just for the senior officers. The council
14:58:00 members.
Q. Whilst you were at Benguema, did you receive a different assignment?
A. Yes, sir.
Q. What was the different assignment that you received?
14:58:15 A. I was assigned to Bintumani Hotel.
MS BALY: Bintumani B-I-N-T-U-M-A-N-I"
Q. What were you assigned to do at Bintumani Hotel?
A. Well, that was an important area. It was a hotel. So Gborie requested me from Sam Bockarie, so I was handed over to

him to keep security there.

Q. Who was the person Gborie you've referred to?

A. Well, those were the men who overthrew. He was the first man who went over the air after the overthrow.

14:59:12 Q. What do you mean by he went over the air?

A. He spoke on the BBC Worldwide.

Q. Did you hear him speak on the BBC?

A. Yes.

Q. What did you hear him say?

14:59:33 A. Well, he said they have overthrown. He said they have overthrown. He said they have overthrown the regime. That is the SLPP.

Q. Did you take up your position at Bintumani Hotel?

A. Yes.

14:59:50 Q. For how long were you there?

A. I was there for a month.

Q. And then what happened after the month?

A. Well Mr Bockarie, that is Mosquito, he was given a mission. He requested me from Gborie and Gborie handed me over to him.

15:00:20 Q. What was the mission that you were requested for?

A. Well, he said the road - Johnny Paul said the road should be cleared up from Bo to Kenema, because at that time that road was blockaded by the Kamajors. He said I should join him for us to run that mission.

15:00:47 Q. And who were you supposed to be joining?

A. Sam Bockarie.

Q. And what were you to do?

A. Well, I was to join him as one of the officers to be with the men that we were to move with.

Q. Did you remain in Joru?
A. No, we went back to Zimmi.
Q. Did you stay in Zimmi?
A. No.
15:10:18 Q. Where did you go to from Zimmi?
A. We continued and went to Bo Waterside, where we were to stop.
Q. Did you stop in Bo Waterside?
A. Yes, that was where we stopped.
15:10:34 Q. Did you receive a new assignment in Bo Waterside?
A. Yes, we left some men there and then we went on a patrol with Mr Bockarie to Wai and those villages which are motorable and after three days we returned to Kenema and I returned with him.
15:11:04 Q. I'm going to ask you to say what you said again, please, because it hasn't come out on the transcript. You said you left with some men there, then we went on a patrol with Mr Bockarie to Wai and those villages which ..." Can you just continue what you were saying from "which"?
15:11:25 A. Yes, we continued to Wai, we went on a patrol there and returned.
Q. Returned where?
A. We returned to Bo Waterside.
Q. What did you do after you returned? Did you stay in Bo
15:11:48 Waterside?
A. No, I went with Mr Bockarie again.
Q. Where to?
A. To Kenema.
Q. Whereabouts in Kenema?

A. In Kenema he was based at NIC. That was where he was based.
Q. What was at NIC?
A. Well, it's close to the Bank of Sierra Leone. That was
15:12:19 what I saw them calling it, so we called it that too.
Q. When you say "we called it that too", what do you mean by that?
A. Well those of us like I and Mosquito and others, that was what all of us called it. Even the people we met there, that was
15:12:44 what they were calling it.
Q. Did it have another name?
A. Well, that was the only name I knew.
Q. What did you do when you were at this place, NIC?
A. Well, we did not do any other thing at that moment. We
15:13:09 were there waiting for another mission.
Q. Did you get another mission?
A. Yes.
Q. What was the mission?
A. We had a mission to go and clear Tongo.
15:13:26 Q. What do you mean by "go and clear Tongo"? What do you mean by the word "clear"?
A. That is wherever your opponents were, your enemies, when you dislodged them from there that means you are clearing that place.
15:13:43 Q. And the full name of this place Tongo, is that it's full name?
A. Yes, that is it's name. Tongo. Tongo Field.
Q. What district is Tongo Field in?
A. Kenema District.

Q. What was your particular role to be in the mission of clearing Tongo Field?
A. Well, I was appointed as a commander to head that mission.
Q. Did you accomplish that mission?
15:14:30 A. Yes, the mission went through.
Q. When you went to Tongo Field, did you remain at Tongo Field for any period of time?
A. Yes.
Q. For how long?
15:14:50 A. I was there for a month.
Q. What did you do during that month?
A. Well, we were there and we were defending the area and at the same time we put some mining activities in place. We were mining.
15:15:09 Q. What were you mining for?
A. Diamonds.
Q. Who was doing the mining?
A. Well, it was the civilians who were doing it whilst we were securing and defending them.
15:15:25 Q. What do you mean by "the civilians were doing it whilst [you] were securing and defending them"? What were you doing?
A. Because there were enemies there. Wherever you dislodged the enemies and the civilians were there, you have to set up defences. So, we had to do that.
15:15:55 Q. And what were you doing in relation to securing the civilians? How did you secure them?
A. We kept defences to ensure that no gunshot was there at the time that I was there. I was there to ensure that there was no shooting there and, since that time that I was there, there was

Q. Who was the commander in charge of Tongo Field at that time?

A. Well, it was Sam Bockarie who was the senior commander who was taking care.

15:30:37 Q. Was there any commander who was in charge of the mining?

A. Well, the mining we handed it over to one man called Mopleh.

MS BALY: That's M-O-P-L-E-H:

Q. This person Mopleh, what group did he belong to?

15:31:15 A. Well, they were in between us and the civilians who were controlling the mining. He did not belong to a particular group to say that he was in this group, or that group.

Q. You said that the mining for the government would be for two days. What would happen for the remainder of the days?

15:31:43 A. Well for the rest of the days it was free for all, soldiers and civilians. Whoever could mine for the other four days, you were free to do so.

Q. Are you referring to days of the week?

A. Yes, yes.

15:32:05 Q. So there were two days mining for the government and four days free mining, is that what you're saying?

A. Yes, yes.

Q. And what about the seventh day? What would happen on the seventh day?

15:32:23 A. There would be no work. That is a day that is reserved. Nobody goes to work.

Q. During the two days that civilians were mining for the government, what would happen to any diamonds that were found?

A. Well if they found any diamonds they would just see it, but

them, where were they taken to?

A. It was meant for the government. It was a government diamond.

Q. And where would the diamond go?

15:35:27 A. Well because at that time the AFRC were the bosses, so whatever diamonds we took from the civilians we would give to the AFRC.

Q. You're referring to "diamonds that we took from the civilians we would give to the AFRC". What would happen to those

15:35:54 diamonds that were given to the AFRC?

A. Well, we had somebody who kept the diamonds when it's accumulated.

Q. When do you mean by "when it's accumulated"?

A. Yes, it was not just a day that they did it. It was not a

15:36:24 day that somebody takes there - somebody who keeps their own diamonds.

Q. When the diamonds were taken, were they taken to any particular place at Tongo Fields?

A. Well, at first they would show them to me and I would see

15:36:46 them. The ones that were meant for the AFRC I'll give to that person who was to take care of them, and I would take them to Mr Bockarie and the person who was meant to keep them will keep them.

Q. When you say, "The ones that were meant for the AFRC I'll

15:37:03 give to that person", who was that person?

A. There was a man whom we called Mopleh.

Q. And then you said "... and I would take them to Mr Bockarie and the person who was meant to keep them will keep them". What do you mean by that?

A. Well every week there were two days for the government, they would excavate gravel for the government as the AFRC, so when they had the diamonds we will take it and bring those diamonds to Mr Bockarie.

15:40:00 Q. Are you referring here to RUF diamonds?

A. Yes, sir.

Q. What did you do, if anything, with the diamonds?

A. Like the first diamond that we had, we took that diamond and brought it to Mr Bockarie. That is Sam Bockarie, Mosquito.

15:40:28 Q. What did Sam Bockarie do with the diamond?

A. Well, he called me, Jungle, JR and Lion. We all assembled at his place.

Q. What was his place?

A. He was in a two-storeyed building in Tongo.

15:40:54 Q. This person JR, did you know what his full name was?

A. Yes, his name was Junior Vandi.

Q. And what position did he have, if any?

A. Well, he was a leader. He was Pa Sankoh's bodyguard and he attached him to Sam Bockarie.

15:41:22 Q. And the person Lion, did you know this person Lion by any other name?

A. No, that was the name I knew for him.

Q. And what happened when you went to this two-storey place, two-storey building, in Tongo? What happened to the diamond?

15:41:57 A. Well, we showed the diamond to Sam Bockarie. All of us were present and he thanked us a lot. That was the diamond. We counted those diamonds, parceled them and the diamonds were taken to Liberia.

Q. How did you parcel the diamonds?

A. Well, we put them - we checked them, put them in a paper, cellotaped it and we wrote the total on the envelope - on the paper, sorry.

JUDGE LUSSICK: I note, Ms Baly, this singular diamond has now mushroomed into diamonds plural.

MS BALY: Yes, your Honour:

Q. Can you tell us was it a diamond, or was it more than one diamond?

A. It was not one diamond.

15:42:50 Q. You said that you checked the diamonds. What do you mean by you checked them? What did you do?

A. Well, that's what I explained. I said we parceled them and we wrote the total on the paper.

Q. Can you remember what the total was?

15:43:13 A. Yes, sir.

Q. What was it?

A. The first one was 43 pieces of diamonds.

Q. After you parceled - packaged them and counted these 43 pieces, what happened to the package?

15:43:34 A. Well Mr Bockarie called Mr Taylor and informed him about the work that we have done, he told him about the total and he too told him that we should hand them over to Jungle who would in turn travel with them.

Q. And how did he talk to Mr Taylor?

15:44:11 A. Well, he sent a satellite. They spoke through a satellite. A satellite phone.

Q. Could you hear Mr Taylor's voice?

A. Yes, because a satellite phone is not like the other communication. When people are conversing you will know, and he

told us that he had contacted him so the two of them were talking.

Q. Did you hear what Mr Taylor said?

A. Yes, he thanked him a lot and he told him to hand over the diamond to Jungle who would be able to travel with it.

Q. Did he hand over the diamond to Jungle?

A. Yes, when we handed the diamond over to Jungle they gave the mic - they handed over the mic to Jungle and Jungle confirmed the total to him.

Q. Jungle confirmed the total to who?

A. To Mr Taylor.

Q. What did he do after he confirmed the total?

A. Well, he told him that he should move with it.

Q. Move where?

A. Liberia, because Foya was always the station.

Q. The station for what?

A. That was where the helicopter would pick him up to Monrovia.

Q. Do you know whether Jungle left Tongo Fields?

A. Yes, Jungle left with an escort. Mr Bockarie gave somebody, that is CO Lion, who escorted him up to Foya.

Q. Do you know where he went after Foya?

A. Well, Lion stopped there. I was there when a helicopter picked him up and Lion returned and met us in Tongo.

Q. So, you also went to Foya?

A. At that time, no, I was in Tongo.

JUDGE SEBUTINDE: Does the witness say the helicopter picked up Lion in Foya - in Tongo Field?

MS BALY: I'm just going to clarify that:

Q. You said, "Well, Lion stopped there." Where did Lion stop?
A. Lion escorted Jungle up to Foya, where the helicopter picked up Jungle to Monrovia.
Q. And where did Lion go?
15:47:11 A. Lion returned. He returned to Tongo. That was where he met us.
Q. Was there ever another occasion when RUF diamonds were handed over to Sam Bockarie?
A. Yes, during that month that I was there it happened twice
15:47:38 when we brought diamonds to Sam Bockarie.
Q. You've told us about one time. I want to ask you to tell us about the second time it happened. This time how many diamonds were involved?
A. Well, the second one we met - by the time Jungle came back
15:48:07 we had got 18 pieces. Among them we had a big one, which was not among the 43 that was first taken.
Q. So you had 18 pieces, including a big diamond. What did you do with the 18 pieces?
A. Well, it was the same procedure. When Jungle came the
15:48:32 diamonds were shown to him at Mr Bockarie's place, because he too wherever - when he was doing it he would have a witness and they will be around when he does the handing over.
Q. Who would have a witness?
A. He, Bockarie. He did not do it alone.
15:48:52 Q. Did you do anything to those 18 diamonds?
A. Yes, we parceled it just like we did the first one, we wrote the total on it and we followed the same procedure as the first one.
Q. Were there any calls made on this occasion?

A. Yes, it's the same way. Mr Bockarie informed Mr Taylor and he told him the total and Jungle too confirmed the total [indiscernible].

Q. Could you hear this particular conversation?

15:49:48 A. Yes, sir, all five of us were in the same place. He told us that he was calling Mr Taylor and they were conversing. They were talking.

Q. When you say all five of you, who was there? Who were the five?

15:50:06 A. I was there, Mosquito was there, Jungle was there, Lion and Junior Vandi, who was Sankoh's bodyguard attached to Mosquito.

Q. What happened after the calls to Charles Taylor?

A. Well, they explained the same thing to him that they have got so and so amount and that we've parceled it. Then he said

15:50:37 they should give the parcel to Jungle, so they thanked the man a lot that he should keep it up.

Q. Who thanked the man?

A. Mr Taylor.

Q. And which man did he thank?

15:50:54 A. Sam Bockarie.

Q. And was the parcel given to Jungle?

A. Yes, sir.

Q. What did Jungle do with the parcel?

A. He was given the same escort to the border.

15:51:14 Q. Did Jungle return after he left Tongo Fields on that occasion?

A. Well Jungle came, but he did not meet us in Tongo. By the time he came back my assignment had been changed.

Q. What did your assignment change to? What was your new

assignment?
A. Well, we came to Kenema. I and Mr Bockarie were now in Kenema. That was where we were based.
Q. When you say Kenema, whereabouts? Are you talking about
15:52:00 Kenema - whereabouts in Kenema?
A. Well, he was based at the brigade. That is the military headquarters. That was where he was based.
Q. And when you say "he was based there", who are you referring to?
15:52:13 A. Sam Bockarie.
Q. And where were you based?
A. Well, I was not based there at first. I was in Simbech. He made an appointment for me in Simbech and it was in the same town, but we were not in the same place.
15:52:40 Q. Can you just say that name again, that Simbech name?
A. Simbech. Simbech. It's a section in Kenema, Kenema Town.
Q. What was your assignment at Simbech?
A. Well, we were there keeping defence in Kenema. Sometimes if he wanted military operations, he would contact me.
15:53:16 MS BALY: Simbech is S-I-M-B-E-C-H:
Q. And when you say sometimes if he wanted military operations he would contact you, who would contact you?
A. Sam Bockarie.
Q. What rank did you hold at that time?
15:53:44 A. I was still a captain.
Q. Were there any occasions when you were contacted for military operations?
A. Yes, sir.
Q. What operations or what assignments did you receive? What

operations were you contacted for?

A. When we were in Kenema, at one time Kamajors came to Blama. He called me up, we assembled men and we went there and put that situation under control.

15:54:22 Q. What do you mean by "put that situation under control"?

A. Wherever your enemy was and you go there and capture that place, the mission had been accomplished. That means you've put the situation under control.

MS BALY: And Blama is the spelling that I have, B-L-A-M-A.

15:54:45 JUDGE SEBUTINDE: Who is the "he" he referred to?

MS BALY: Yes:

Q. Who was the "he" that you've referred to?

A. Repeat that.

Q. When you were contacted for this military operation, who

15:55:01 contacted you?

A. Sam Bockarie.

MR MUNYARD: I'm sorry to interrupt and it may just be me, but I'm slightly losing track of the time that we're in now. Are we still in the AFRC period, or have we gone beyond that? Could

15:55:30 that be clarified?

MS BALY: Yes, I'll do that:

Q. Mr Witness, you told us that you were in Tongo Fields for about a month. Do you remember saying that?

A. Yes, yes.

15:55:39 Q. What year was it when you left Tongo Fields?

A. It was 1997.

Q. Are you able to say when in 1997 you left Tongo Fields?

A. I cannot tell now. I can't tell now. I'm unable to tell now.

Q. And you had gone to Freetown after the coup? That's so, isn't it?
A. Yes.
Q. And after that you had found yourself in Tongo Fields, correct?
A. Yes, yes.
Q. So it was some time after the coup and after you left Tongo Fields that you found yourself in Kenema Town, is that so?
A. Repeat that.
Q. Your evidence so far in relation to the timing is that you went to Freetown after the coup?
A. Yes.
Q. You were in Freetown for some short time, correct?
A. Yes.
Q. And then you had your mission of clearing the road, correct?
A. Yes.
Q. And then you were in Tongo Fields for about a month, you said, after that?
A. Yes.
Q. And it was after you left Tongo Fields that you were based in Kenema Town, correct?
A. Yes, yes, that was in the raining season.
Q. Were you in Kenema Town when the ECOMOG intervention took place?
A. Yes, yes, I was at that time in Kenema when intervention took place.
Q. And for how long, just approximately, had you been in Kenema Town when the intervention took place?

A. Well, I was in Kenema for up to three to four months before the intervention took place.

MS BALY: I hope that assists:

Q. And you were telling us about one mission that you accomplished when you were based in Kenema Town. Did you receive any other assignments, or missions, whilst you were based there?

A. No, that was where we were until the intervention.

Q. You've told us that Sam Bockarie was at Kenema Town as well. Were there any other commanders based at Kenema Town when you were there?

A. Yes, commanders were there.

Q. Who were they?

A. Well like the resident minister, he was there. He was a soldier, Eddie Kanneh.

Q. What do you mean by "the resident minister"?

A. Well after the overthrow, anybody who was sent to a region to take control over that area was referred to as a resident minister.

Q. What group was Eddie Kanneh with?

A. AFRC.

Q. Were there any other commanders at Kenema Town?

A. Yes.

Q. Who?

A. Captain Demo Musa was there as the OC secretariat.

Q. What was the OC secretariat?

A. Well, that was a place established after the overthrow where the problems of the soldiers and civilians were looked into.

Q. And what - this person, Captain Demo Musa, what group was

Q. As a captain, did you ever yourself do any training?
A. No, no, I was not involved in any training.
Q. Why did you leave Kenema Town?
A. Well, that was during the intervention that took place in
16:03:35 Freetown. That was the reason why we left, because ECOMOG were advancing from the Bo Waterside end coming towards Kenema.
Q. And where did you go when you left Kenema Town?
A. Well, when I left Kenema we went to Daru.
Q. When you say "we", what did Sam Bockarie do? Was he with
16:04:09 you, or did he stay in Kenema Town?
A. All of us moved together. We all withdrew together.
Q. Did you remain at Daru?
A. No, we were there for some time and then later we moved.
Q. Where did you move to?
16:04:34 A. We moved to Baima. That is seven miles away from Daru.
Q. Baima 7 miles from Daru, is that so? Is that correct?
A. Yes, sir.
Q. And did you remain at Baima?
A. Yes.
16:05:10 Q. What was your position at Baima?
A. Well, at Baima I had an assignment there as battalion commander and promoted to a lieutenant colonel.
Q. Who gave you that promotion?
A. Mr Sam Bockarie, the acting leader.
16:05:45 Q. Acting leader of what?
A. RUFP.
Q. Why was he an acting leader?
A. Well the leader was not present and, since he was not present, he was acting. He was working as the acting.

PRESIDING JUDGE: Could I just clarify what is this RUFP? Mr Interpreter, did the witness say "RUFP"?

THE INTERPRETER: Yes, your Honours.

MS BALY:

16:06:20 Q. What was RUFP, please?

A. Well, I am sorry about the P. It should be removed from there. RUF, that is the Revolutionary United Front of Sierra Leone. The P later came, but at that time it was RUF.

Q. And you said that the leader was not present. Firstly, who

16:06:48 are you referring to when you say the leader was not present?

A. Foday Sankoh.

Q. And where was Foday Sankoh at that time, to your knowledge?

A. Foday Sankoh was in detention.

Q. How long did you stay in Baima for?

16:07:11 A. Well, I was in Baima just after the intervention and I was there up to 1999. The end of 1999.

Q. Where was Sam Bockarie based whilst you were based in Baima?

A. Well, Sam Bockarie was based in Buedu.

16:07:42 Q. And how far was Baima from Buedu?

A. Well, from Baima to Buedu is over 40 miles.

Q. At the time that you were based in Baima and Sam Bockarie was based in Buedu, did you have any occasion to visit him at Buedu?

16:08:16 A. Many times.

Q. Did you ever meet with him?

A. Yes.

Q. Where did you meet with him?

A. I met with him in Buedu Town itself.

I N D E X

WITNESSES FOR THE PROSECUTION:	
TF1-028	9258
CROSS-EXAMINATION BY MR ANYAH	9258
RE-EXAMINATION BY MS ALAGENDRA	9304
KARMOH KANNEH	9311
EXAMINATION-IN-CHIEF BY MS BALY	9311

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

FRIDAY, 9 MAY 2008
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr Simon Meisenberg Ms Sidney Thompson
For the Registry:	Ms Rachel Irura
For the Prosecution:	Mr Christopher Santora Ms Julia Baly Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Terry Munyard Mr Morris Anyah

out they will have it - those on paper, and after the main points were discussed they will have the AOB, that is any other business, and so if you had extra problems, target problems, if you had things that were disturbing you in your own area, like
10:05:41 personal things, the things that used to happen on the front line, shortages, shortages of ammunition. I spoke about shortage of ammunition in my own area and so many other men discussed things that were happening in their own areas, but the major items for which they called the meeting were those ones.
10:06:05 Q. You have referred to this particular meeting, this eight hour meeting, as "The first meeting we held". Was there a meeting - another meeting - after this first meeting?
A. Yes.
Q. How long after the first meeting was the next meeting?
10:06:34 A. Well, it did not take too long. It was within a short period, and it was the time after Mr Bockarie had travelled and returned that we held the meeting; after he had travelled to Burkina Faso and when he returned.
Q. How do you know that Mr Bockarie travelled to Burkina Faso?
10:07:05 A. Well, before he left he told us. He told us, those of us who were around. Especially those of us who were in the Kailahun District, some of the commanders, he told us that he was going to travel.
Q. And did he, as far as you know, travel to Burkina Faso?
10:07:35 A. Yes.
Q. How long was he gone for?
A. Well, that man he went - I think he spent up to a month before he returned.
Q. Did he tell you what he did when he was in Burkina Faso?

A. Well when he returned he did not actually convene a general meeting to tell us what he went for, but when he came the things that he brought that made us to actually believe that he went there because we had never received such items.

10:08:23 Q. What were those things that he brought?

A. He brought sufficient war materials: arms and ammunition, bombs, combats, boots and some other items.

Q. What quantity of arms did he bring?

A. Well I cannot estimate that now, because I was not present

10:09:01 when he arrived and before we arrived there everything was now stored in the ammo dump.

Q. Did you ever learn about what type of arms he brought?

A. Yes.

Q. What were they?

10:09:20 A. He brought AK-47s, he brought G3s.

Q. What are G3s?

A. It is an arm. The Nigerians call it Babangida. That is G3. He brought hand grenades. He brought mines. He brought RPG rockets. He brought the tubes - the RPG tubes. He brought G3

10:10:13 rounds and some other things, but for now those are the ones I can recall. The items were plenty. He brought combats and boots.

Q. What do you mean by combats and boots? What are they?

A. Well, that is what call somebody a soldier. The fatigues

10:10:45 that the soldier puts on are what is referred to as combat and the boots that they normally wear.

Q. Do you know whether Sam Bockarie went to Burkina Faso on his own, or with another person or other people?

A. Well according to him he said it was him and General

Ibrahim, because just as he told us in the first meeting it was the same thing that he told us later. He said he and General Ibrahim. Ibrahim Bah.

Q. Did he tell you at any stage what he had done in Burkina Faso?

10:11:41

A. Well he said he went and met with the President of Burkina Faso, because he went to him personally.

Q. And did he tell you what took place when he met with the President of Burkina Faso?

10:11:59

A. What happened?

Q. Yes, in the meeting with him and the President of Burkina Faso?

A. Repeat, repeat. I am not getting it clearly. I am not getting all.

10:12:24

Q. Did Sam Bockarie tell you what happened in this meeting that he had with the President of Burkina Faso?

A. No, he did not discuss that with me.

Q. Now, you said this second meeting that you held was after Sam Bockarie returned from Burkina Faso. My question is

10:12:52

approximately how long after he returned was this second meeting held?

A. Well just as he returned, because it was in December that he returned and at that time it was almost little beyond middle way December, and it was in the same December that we held the

10:13:21

meeting.

Q. And what year are we in?

A. It was in 1998.

Q. Where was this meeting - this second meeting - held?

A. At Sam Bockarie's house.

Q. Where was Sam Bockarie's house?
A. That is going towards Foya, Foya Road.
Q. What town was it in?
A. Buedu.
10:14:01 Q. Who was at the meeting?
A. Well, we were up to 12 in number present.
Q. Are you able to name the 12 who were present?
A. Well, I can try. I can try.
Q. Please do.
10:14:26 A. Well Mr Bockarie was present, Issa was present, Morris Kallon was present, Jungle was present, Eddie Kanneh was present, I was present, Major Francis was present, Matthew Barbor was present, Junior Vandi was present, Gbessay Gbobah who is normally referred to as Chucky was present and I think --

10:15:13 JUDGE SEBUTINDE: I am sorry, but could you repeat Chucky's name? Please repeat Chucky's name.

THE WITNESS: Gbessay Gbobah. Gbessay Gbobah.

MS BALY:

Q. Just before I turn to the spellings, can you recall if
10:15:32 anyone else was present?
A. Well, we were 12 in number that particular night that we were present. I don't know how many names I have made mention of, but we were 12 in number.
Q. Now, one person you mentioned who you have not mentioned
10:15:53 before is Major Francis. Was that his full name, or do you know his full name?
A. Well, that was how we used to call him. He was a Gambian, Major Francis.
Q. What was his position?

Q. The other person or another person that you have mentioned is Junior Vandi. Have you mentioned him before?
A. Yes.
Q. Did he have another name apart from Junior?
10:22:57 A. JR.
Q. And you gave some evidence about him yesterday, is that so?
A. Yes.
Q. And the final person you mentioned was this person who you knew as Chucky. I think you said his name - can you repeat
10:23:17 Chucky's actual name?
A. Gbessay Gbobah.
MS BALY: G-B-E-S-S-A-Y for the first name Gbessay. Gbobah, B-G-O-B-A-H [sic]:
Q. Where was Gbessay Gbobah from?
10:23:49 A. Well, he was RUF.
Q. Where did he come from?
A. He was a Sierra Leonean. He was born in Kailahun.
Q. Now what were the topics that were discussed at that particular meeting?
10:24:16 A. Well, firstly we discussed about trying to free the leader and in that case we were to re-attack Kono and go up to Freetown and then free our leader and take over power. We also discussed the disloyalty of SAJ Musa. We discussed that.
Q. In relation to this operation to trying to free the leader,
10:24:54 what leader are you referring to?
A. Foday Sankoh.
Q. You said that there was a plan to attack Kono and then to free the leader and to take power. I want you to explain in more detail what exactly this plan was.

A. Well, when Mr Bockarie came he called on us because there was no need for him to call all the officers again, so those of us who were closer to his location, he invited us. We came to Buedu and then he explained to us that he has brought ammunition, he has brought enough logistics so that we will be able to run any kind of mission. So he said we should now plan how to take the move and that the first target should be Kono, to Makeni, up to Freetown. And that the next target should be Segbwema and Daru, that is heading towards Kenema and to go to the southern province. So those were the things we discussed and the issue of SAJ Musa's disloyalty that he has been doing all along. That was also something we discussed.

Q. When you say the first target should be Kono, to Makeni, up to Freetown, what do you mean by that the first target was to be Kono?

A. Well, Kono is a mining area. In that whole country that is the place we know for high level productivity for diamonds, so we believe that if we were able to capture there first it would have been good for us. That was the reason why Kono - he said Kono should serve as the first target that we should capture.

Q. Were any particular commanders given the role of capturing Kono?

A. Well, yes.

Q. Who?

A. Well, Sam Bockarie told us that this plan was designed in Monrovia with Mr Taylor. He said it was designed in Monrovia so he only brought it to brief us, that this should be the way we should do things so that we will be able to succeed in the war.

Q. Who was it that was going to attack Kono?

A. Well, the commanders were there, Issa was there, Morris Kallon and Superman. They were the most senior men that were supposed to run this mission in those areas.
Q. When you say run this mission in those areas, which areas
10:28:34 are you talking about?
A. Kono.
Q. The plan was then to move on to Makeni, is that right?
A. Yes.
Q. What was to take place at Makeni?
10:28:49 A. Well, they should clear starting from Kono up to Makeni and those are towns that you cannot just jump over and go to Freetown, they were provincial headquarters, you have to pass through them first.
Q. What do you mean when you say, "They should clear"? What
10:29:16 do you mean by "clear"?
A. Clear in the sense - clear in the sense that when as you push forward you shouldn't spare any town, you shouldn't jump over any town, you shouldn't leave any town untouched. You have to pass through them all and make sure that they are under
10:29:41 control. That is what I mean by "clear".
Q. What commanders were given the role of clearing Makeni?
A. It was Issa who was the overall for that operation and Morris Kallon was his deputy and Superman was third in command.
Q. Then you said on to Freetown. Was anyone given the role of
10:30:23 moving on to Freetown?
A. Yes, they gave the mission to somebody.
Q. Who?
A. Well, Sam Bockarie sent the message to SAJ Musa even before they attacked Kono but he refused. He rejected the orders. He

said he cannot take orders from him, so there was a heated argument over the issue.

Q. When you refer to this heated argument, did it take place in this meeting?

10:31:06 A. You mean whether the argument took place during the meeting?

Q. Yes.

A. Yes, after the meeting he called him, but in fact the argument had started for a long time ago.

10:31:25 JUDGE SEBUTINDE: Mr Witness, we did caution you about saying "he called him". Please use names so that we can follow. Please repeat your answer.

THE WITNESS: Okay. Well, repeat the question.

MS BALY:

10:31:43 Q. The question was when you were referring to a heated argument I asked you whether the heated argument took place in the meeting that you have been giving evidence about?

A. After the meeting, but there had been arguments even before the meeting, before this mission there had been an argument. 10:32:07 Just at the time Sam Bockarie sent the message to all the stations, right from that time SAJ Musa was not happy about it. He was disgruntled right up to this mission time and after they had held the meeting. He sent the same order to SAJ Musa and he refused even before the Kono thing.

10:32:32 Q. I am going to come back to this issue about SAJ Musa in a moment, all right? One of the things you said was that the next target was to be Segbwema and Daru.

A. Yes.

Q. Who, if anyone, was given the role of taking Segbwema and

Daru?
A. I was.
Q. Now the second issue that you said that was discussed at the meeting was SAJ Musa.
10:33:21 A. Yes.
Q. What was it about SAJ Musa that was discussed at the meeting?
A. Well, Sam Bockarie told us that the complaint had gone up to Mr Taylor, that the man's complaints had been lodged about his
10:33:44 disloyalty towards the mission, and he too gave his own piece of advice just so that --
Q. Can I just ask you to pause there for a moment. Once again it's important that you use people's names. Sam Bockarie told you that a complaint had gone up to Mr Taylor, "That the man's
10:34:07 complaint", who is the man that made the complaint?
A. Sam Bockarie lodged the complaint to Mr Taylor against SAJ Musa regarding his attitude.
Q. What was it about SAJ Musa's attitude that he complained about?
10:34:30 A. He said he was a man who did not take any order from people. He was disloyal to the command.
Q. At the meeting was there any other discussion about SAJ Musa, apart from the fact that Sam Bockarie had made a complaint to Mr Taylor?
10:35:02 A. Yes, Mr Bockarie made us to understand that that man should not leave to tell the story and the only way we were to --
Q. What man?
A. SAJ Musa. SAJ Musa.
Q. SAJ Musa should not leave to tell the story. Continue from

there?

JUDGE SEBUTINDE: Not live. The record says "leave", but it is actually L-I-V-E, I imagine.

MS BALY: Yes:

10:35:34 Q. What did you say? Can you repeat your answer? You said, "Mr Bockarie made us to understand that that man should not ..." Can you continue from there?

A. He said we should go all out to ensure that that man should not live to tell the story.

10:35:54 PRESIDING JUDGE: Mr Interpreter, what word did the witness use?

THE INTERPRETER: Live to tell the story.

PRESIDING JUDGE: L-E-A-V-E?

THE INTERPRETER: L-I-V-E.

10:36:04 MS BALY:

Q. And just so it is clear, what man should not live to tell the story?

A. SAJ Musa.

Q. Did Sam Bockarie say anything else about SAJ Musa not

10:36:21 living to tell the story?

A. Yes, yes.

Q. Now, take it slowly and tell us what he said.

A. He said we should only be able to get him when there was a mission, when there was operation going on. He even made us to

10:36:43 understand that that was something he had been discussing with Gullit, that during any mission that man should not live. He should die because he was a traitor. He referred to him as a traitor.

Q. Did Sam Bockarie say how SAJ Musa was to die?

A. Well, in the military terms they say it should be during operations. You know, if they will mean arms. He should die during the battle. He should be shot.

Q. Did he say who should shoot him?

10:37:30 A. He just told us that he had spoken to Gullit and that the two of them had been discussing that even before Gullit went to where SAJ Musa was. That was what he made us to understand.

Q. He made you to understand that he had been discussing this with Gullit, is that what you are saying?

10:37:53 A. Yes, yes.

Q. Did he make you understand who was to do the killing of SAJ Musa?

A. It was the discussion that he had with Gullit. He did not specify who should do the shooting, but the discussion had been

10:38:13 going on together with Gullit.

Q. This particular meeting, how long did it go on for?

A. It was a very short meeting, just for three hours, because it was at night and we did not even want Johnny Paul to know.

PRESIDING JUDGE: Ms Baly, I am not clear from the record

10:38:41 when this meeting took place.

MS BALY: I think we actually have that. It is mid-December. He did give the evidence that the meeting took place in December of 1998 and he said around the middle, if I can just find it. I can clear it with the witness now:

10:39:12 Q. Mr Witness, I am going to ask you again when was it that this meeting - this second meeting - took place?

A. It was at night in December.

Q. December what year?

A. 1998.

Q. Are you able to say - and please tell us if you can't say - when in December the meeting took place, or when abouts?
A. I cannot recall the exact date now, but it was at night that we held the meeting. I cannot recall the date.
10:39:53 JUDGE SEBUTINDE: Ms Baly, the witness mentioned a phrase that SAJ Musa was disloyal to the command. What command? I would like to know.
MS BALY:
Q. What command was SAJ Musa disloyal to?
10:40:10 A. The RUF command.
Q. Was he disloyal to the RUF command generally, or was it some commander in the RUF specifically?
A. Well, I believe in the RUF if somebody was disloyal to Sam Bockarie's command then that should be that you are disloyal to
10:40:35 the RUF command because he was the head.
Q. Thank you.
A. Thank you too.
Q. This meeting - this three hour short meeting - was there anything else discussed apart from the plan to attack Freetown
10:40:54 and the SAJ Musa issue?
A. Yes.
Q. What?
A. Well, at that time even the leader who had his revolution was there. That should be the first target, to go to Pademba
10:41:18 Road and to free - to release the leader, and second we were to go to State House and overthrow the President and if possible, if we met him there, we should kill him.
Q. Just so it is clear, what President was to be overthrown and if possible killed?

A. President Kabbah.
Q. And what leader was to be released from Pademba Road?
A. Foday Sankoh.
Q. The person Jungle who you discussed yesterday, was he at this meeting?
10:42:02
A. Yes, yes, he was part of this 12 man meeting.
Q. Did Jungle speak at the meeting?
A. Yes, later, after the plan had gone on, Sam Bockarie spoke to Mr Taylor about the plan, how the mission was to carry on, and --
10:42:37
THE INTERPRETER: Your Honours, can the witness repeat his last answer?
PRESIDING JUDGE: Mr Witness, the interpreter asks that you repeat your last answer. Please pick up from the point where you said "... how the mission was to carry on". Continue from there.
10:42:48
THE WITNESS: They briefed President Taylor, the former President, about the plan how it was set. After that Jungle too buttressed the same topic to him, how the plan had been made, and he in turn thanked them and told them to carry on and that he said he would pray that the mission would be successful.
10:43:25
PRESIDING JUDGE: Just a moment. "Jungle too buttressed the same topic to him", who is him?
THE WITNESS: To Mr Taylor.
MS BALY:
Q. How did --
10:43:42
JUDGE SEBUTINDE: Ms Baly, the question you asked previously was did this man Jungle speak at the meeting and then the answer that follows doesn't answer your question.
MS BALY: I will go back to that:

Q. My question - and just listen carefully to the question - is I am referring to in the meeting, this three hour meeting, during the meeting did Jungle speak?
A. Yes.
10:44:12 Q. What did Jungle say in the meeting?
A. Well, in the first place Jungle himself told us about the material that Mr Bockarie had brought and that we should not fear this time round and that there was no force that could withstand us. That was what he said in the meeting and he said he had
10:44:39 discussed it with the Pa in Monrovia even before they came.
Q. And did he say what the Pa had said in Monrovia?
A. Yes, it was just what Sam Bockarie told us. He just spoke about the same issues Sam Bockarie had spoken about, that the Pa had said our first target should be Kono before we should
10:45:13 proceed. That was what he too explained.
Q. When you are saying "he", "he too explained", who are you referring to? Who was the "he too that explained"?
A. Mr Taylor.
JUDGE SEBUTINDE: Well, Mr Taylor was not in the meeting.
10:45:40 MS BALY: I know, your Honour:
Q. The questions I have been asking you are about what Jungle said in the meeting and you have told us that Jungle said he had some discussion with the Pa in Monrovia about the plan. I am going to ask you - my question is did Jungle say in the meeting
10:46:12 what the Pa had said to Jungle in Monrovia?
A. Yes, that is what I explained. I said they were the ones who came, so he too told us about the materials that had been brought for the mission and that the Pa - that they had discussed with the Pa how the mission should go on. That is Pa Taylor.

MR MUNYARD: I am sorry, but now I don't know who the "they" is. I said, "They were the ones who came". Can we please find out from the witness who he is talking about at this stage?

MS BALY:

10:46:54 Q. Now what you said a moment ago was, "I said they were the ones who came". Who are "they" that came?

A. Jungle. Jungle.

Q. So, Jungle is one person?

A. And Sam Bockarie.

10:47:14 Q. And Jungle and Sam Bockarie you have already told us were both at the meeting, is that right?

A. Yes, yes.

Q. Now apart from Jungle telling you that he had discussed the plan with the Pa in Monrovia, did Jungle say anything else at the

10:47:36 meeting? At the meeting?

A. Well, that is what he said. That is what he said.

Q. After the meeting, immediately after the meeting, what did you do?

A. After the meeting, I returned to my area of operation to be

10:48:09 able to start preparation for my own responsibility that was given to me so that I would carry it out.

Q. Before we go to that, this meeting you said was held at night. About what time in the night was the meeting held?

A. That meeting I will think it was 9 o'clock, or thereafter.

10:48:45 Q. It went for approximately three hours. Did it finish around midnight?

A. Yes, yes.

Q. On that night immediately after you left, or immediately after the meeting had finished, did you see Jungle?

A. After the meeting had concluded?
Q. Yes, immediately after.
A. Yes, yes. I saw Jungle.
Q. What did Jungle do immediately after the meeting?
10:49:34 A. Because that time was night all of us went to bed.
Q. You gave some evidence about five or ten minutes ago about Jungle --

MR MUNYARD: Can I ask my learned friend to be very careful not to lead. I am simply putting down a marker, that's all.

10:50:00 MS BALY: Thank you. I won't lead. I will turn to what he said. Just pardon me for a moment. Excuse me, I am just trying to find a certain place:

Q. You gave some evidence earlier when you used the phrase, "They briefed President Taylor".
10:51:21 A. Yes, yes, but the question that I heard just now was after, after the meeting. After the meeting and during the meeting are not the same questions. I spoke about after the meeting and after the meeting everybody went to bed. If you had told me during the meeting what everybody said --

10:51:39 PRESIDING JUDGE: Mr Witness.

THE WITNESS: Yes, yes.

PRESIDING JUDGE: Counsel has a different question. Listen to the question, please.

MS BALY:

10:51:48 Q. The question is: Who briefed President Taylor?
A. First it was Sam Bockarie. He held the phone and spoke to the Pa. He briefed him about the arrangement we had done about the mission and later Jungle himself went on the same phone and spoke on the same topic to President Taylor, that we had arranged

everything to run the mission.

Q. Where was this phone?

A. It was the same veranda at the back of Mr Bockarie's house. The veranda at the back. That was where the phone was.

10:52:39 Q. What type of phone was it?

A. It was a satellite phone.

JUDGE SEBUTINDE: Ms Baly, I am still unclear about this area. This witness, when you asked him what happened in the meeting, he then spoke about this testimony you are considering

10:53:04 and he says, "Yes, later after the plan had gone on Sam Bockarie spoke to Mr Taylor about the plan, how the mission was to carry on" and et cetera, et cetera. Now, this later, how much later was this after the meeting is what I would like to know and how this witness knew about this conversation I would also like to

10:53:28 know.

MS BALY:

Q. When you gave some evidence and Justice Sebutinde has just read out some of the things that you said about conversation with Charles Taylor by Sam Bockarie about the plan, where were you

10:53:53 when that conversation took place?

A. All of us were in the veranda where the meeting was held. I was at the veranda myself. I was part of the meeting.

Q. Did this conversation take place during, or as part of the meeting, or at the conclusion, or after the meeting?

10:54:24 A. About the time the meeting was to be ended. All of us, 12 of us were there.

Q. Are you saying the 12 of you were there when the conversation took place?

A. Yes, because the meeting had not ended yet so all 12 of us

were still there.
Q. Just so that it's clear, who was doing the talking on the satellite phone?
A. I said first it was Mr Bockarie.
10:55:10 Q. Just so it's clear, and I know you have gone over this, but just take it one step at a time, what exactly did Sam Bockarie say at that time on the phone?
A. He told him about the mission that had been discussed in Monrovia. He said he had come and put it to the senior officers
10:55:37 and that was the meeting that was going on and that the same plan he had given to him was the same plan they had come to discuss.
Q. Same plan that they had given to who?
A. Sam Bockarie.
Q. After Sam Bockarie spoke you said Jungle spoke.
10:56:05 PRESIDING JUDGE: Who gave the plan?
THE WITNESS: Mr Taylor. Mr Taylor.
PRESIDING JUDGE: Thank you.
MS BALY:
Q. After Sam Bockarie spoke, did anybody else speak?
10:56:17 A. Yes.
Q. Who?
A. Jungle.
Q. And what did Jungle say?
A. He repeated the same thing to Mr Taylor, because he was the
10:56:35 representative for him in the RUF, so he explained the same thing to him; that the plan they had discussed in Monrovia, they had come and put it to the senior officers and they had assured him that they would go ahead with the plan.
Q. How long did this conversation or did these conversations

take?
A. They did not take long. It was just short conversations, just as what I have explained. It was not a long thing. I did not, for example, look at my watch to see how many minutes or
10:57:21 hours, but it was just a short conversation.
Q. After the conversation is that when you went to sleep for the night?
A. Yes, all of us went to sleep.
Q. The next day --
10:57:41 JUDGE SEBUTINDE: Ms Baly, I would also like to know, and this is why I asked, how does this witness know about this conversation? I don't know how the satellite phone works but I can understand him listening to Bockarie and Jungle. How does he know who was on the other side?
10:58:00 MS BALY:
Q. Mr Witness, how do you know who was on the other side of the satellite phone who Sam Bockarie and Jungle were talking to?
A. Well, they told us that they were talking to Mr Taylor, that they were calling Pa Taylor. And when they called the
10:58:24 conversation was going on, we were not hearing what the other side, but when the other side was talking they were responding and the discussion was going on. They said it was Mr Taylor.
Q. During the actual talking that was going on did you hear Mr Taylor's name mentioned?
10:58:49 A. Yes, sir.
MS BALY: I hope that makes it clear how he knew:
Q. The next day what did you do?
A. Well, the next day he invited us again to go and see the armament that he had brought, the logistics that he had brought.

A. I moved and took them to my base at Baiima.
Q. What were the materials that Sam Bockarie had given you?
A. He gave me AK rounds and RPG rockets.
Q. Was there another subsequent occasion when you were
12:22:17 involved with obtaining arms and ammunition for the RUF?
A. Yes.
Q. When was this second occasion?
A. That was in 1998 still.
Q. When abouts in 1998?
12:22:48 A. Well after this mission, because this other one was around
March to April, it was not too long. It was a short time. That
was the time ULIMO and the LURD forces invaded Lofa.
Q. At the time that the ULIMO and the LURD forces invaded
Lofa, where were you?
12:23:21 A. I was in Baiima at my battalion.
Q. And how did you become involved on that occasion in
obtaining the arms and the ammunition?
A. The commander called me again - that is Mosquito - at the
same place, Buedu, and explained the issue to me, that that was
12:23:57 what the Pa had told him that those men had invaded his men at
Lofa County.
Q. Just pause there, please. When you say "that was what the
Pa had told him", the Pa had told who?
A. He had told Mosquito.
12:24:20 Q. And who had told Mosquito?
A. Mr Taylor.
Q. Now you said that, "those men had invaded his men at Lofa
County". Who were those men who invaded and who were his men?
A. The LURD forces.

Q. And who had the LURD forces invaded?
A. Charles Taylor.
Q. And what else did Sam Bockarie tell you?
A. So, he said we were to put men together and to go and help
12:25:02 to clear the enemy from that place.
Q. And what did you do when you were told to put men together and to go and help to clear the enemy?
A. Well, he gave me my own task that I was to go and prepare men in Kono and that Issa Sesay and --
12:25:30 THE INTERPRETER: Your Honours, can the witness repeat this.
PRESIDING JUDGE: Please pause, Mr Witness. You have to speak a little slower for the interpreter and he has asked you to repeat part of your answer. Go to the point where you said, "I
12:25:44 was to go and prepare men in Kono and that Issa Sesay", pick up from there, please.
THE WITNESS: I was to go and prepare manpower for that same mission and he said he had told Issa and Morris Kallon to do the same preparation in Kono.
12:26:08 MS BALY:
Q. Did you prepare manpower?
A. Yes.
Q. What did you do in relation to the manpower?
A. I brought them to Buedu.
12:26:22 Q. How many men did you bring to Buedu?
A. One platoon.
Q. How many in one platoon?
A. 62 in number.
Q. What did you do when you got to Buedu?

A. We waited for the troops. All the troops were brought together and we called a formation.
Q. After the troops came together and you called a formation, what happened then?
12:27:06 A. We divided the number into two groups and we divided them and told them that they were to enter at two flanks.
Q. Where were you to enter?
A. Well, Sam Bockarie and I were to enter by the Foya axis.
Q. Where were you entering into?
12:27:38 A. Foya. Foya.
Q. Where was the other flank to enter?
A. They too were to enter by Vahun.
Q. And did you and Sam Bockarie enter by the Foya axis?
A. Yes.
12:28:01 Q. What did you do?
A. We attacked the Foya Town.
Q. Who did you attack?
A. The LURD forces.
Q. Were you successful in attacking the LURD forces?
12:28:24 A. Yes.
Q. Where did the LURD forces go after you attacked them?
A. They went to Kolahun.
Q. And where did you go?
A. We chased them and we went to that same Kolahun.
12:28:43 Q. Where did you chase them to?
A. Voinjama.
Q. What happened when you got to Voinjama?
A. When we got there, that was their base. We fought against them for the whole day. Thankfully we were able to capture the

place.

Q. When you say you thankfully you were able to capture the place, what place did you capture?

A. Voinjama.

12:29:16 Q. What happened after you captured Voinjama?

A. We had an order from Benjamin Yeaten to chase the men right to where they had come from.

Q. Where had they come from?

A. They said they had come from Guinea.

12:29:39 Q. Did you chase them to Guinea?

A. Yes.

Q. What happened after you chased them to Guinea?

A. We captured a town that was called Bayalo in Guinea.

Q. What did you do after you captured the town?

12:30:11 A. We received order to burn the entire town and that we did.

Q. Who did you receive the order from?

A. From Benjamin Yeaten.

Q. What happened after you had burnt the entire town?

A. We withdrew back to Voinjama.

12:30:36 Q. And what happened after you got to Voinjama?

A. We passed the night there and in the morning we put our men together and we returned to Foya. Then we left the Liberians there.

Q. Where did you go?

12:30:56 A. Then Sam Bockarie took me to go to Monrovia.

Q. Did Sam Bockarie tell you why you were going to Monrovia?

A. He said Mr Taylor had invited him for us to go and receive morale booster.

Q. Did you go to Monrovia?

A. Yes.
Q. Who went to Monrovia?
A. I went and Sam Bockarie went too and one of his bodyguards called Magazine. All of us went.
12:31:42 Q. You, Sam Bockarie and Magazine. Did anybody else go?
A. Well, we were the ones who went.
Q. How did you get to Monrovia?
A. That same military helicopter with the combat colour picked us from Foya.
12:32:08 Q. And where did you go when you got to Monrovia?
A. We landed at a field that I did not know. That is in the Monrovia city.
Q. Had you been to Monrovia city before?
A. No.
12:32:37 Q. When you landed in this field that you didn't know, where did you go to from there?
A. A vehicle came to receive us and we drove together with Benjamin Yeaten and we went to Benjamin Yeaten's place, White Flower.
12:33:03 Q. Where did you meet Benjamin Yeaten?
A. Well, this helicopter that came, all of us travelled in it.
Q. Where did you meet Benjamin Yeaten?
A. Foya. Foya.
Q. Had he come in the helicopter?
12:33:26 A. Yes, yes.
Q. You went to Benjamin Yeaten's place at White Flower. What did you do when you went to --
A. Yes.
Q. -- his place at White Flower?

A. We saw that the number was more than the number of people and we knew it would not be sufficient if we decided to distribute it amongst everybody, so we had wounded soldiers and we decided that, well, let the money be used to buy drugs for the
12:41:01 wounded soldiers so that they would be treated.
Q. You said that the money - that Sam Bockarie had said the money was for a morale booster. What do you mean by a morale booster?
A. Well when you do something and somebody's happy for you,
12:41:27 he's appreciative, in military terms whatever he gives to you as compensation is what we refer to as morale booster.
Q. Was there any other occasion when you were involved in obtaining arms and ammunition --
JUDGE SEBUTINDE: Ms Baly, before you leave this subject,
12:41:45 what is it on this occasion that they were supposed to have done for Mr Taylor for which he was rewarding them?
MS BALY: Thank you. Thank you, Justice Sebutinde:
Q. What was it that you had done for which you received this morale booster?
12:42:04 A. The invasion that the LURD forces had done, when we had cleared them and those three big targets, that was the encouragement. A sign of encouragement for us.
JUDGE SEBUTINDE: What three big targets? I'm sorry, I don't --
12:42:24 MS BALY:
Q. You've given some evidence earlier about when you fought the LURD and just now you mentioned that you had cleared them and those three big targets. What do you mean by the three big targets?

A. Foya was one of the big targets, Vahun was another and Kolahun. In fact it was four, sorry. Kolahun was another and Voinjama, which was the main target.

JUDGE SEBUTINDE: And these are all places in?

12:43:05 MS BALY:

Q. Whereabouts are these places?

A. They were in Lofa County.

Q. And you gave some evidence not so long ago about fighting the LURD. Were these four places places that you fought the

12:43:23 LURD?

A. Yes, yes, yes, that was where we fought against the LURD forces first. The first target.

JUDGE SEBUTINDE: It's also not clear to me this ammunition that was given, what it was for.

12:43:43 MS BALY: I was coming to that:

Q. The ammunition that you were given when you were in Monrovia, do you know what it was for?

A. For us to bring it to our zone when we would be returning, because we captured a large cache of ammunition for arms during

12:44:07 that attack.

Q. When you say "for us to bring it to our zone when we would be returning", what do you mean?

A. The RUF zone where we were. RUF territory.

Q. And where had you captured this large cache of ammunition

12:44:28 for arms during that attack? What do you mean by that?

A. That was their main base, Voinjama, and we captured the whole ammo dump.

JUDGE SEBUTINDE: So these arms were to be brought to Voinjama, right?

MS BALY: No, your Honour, I'll clarify that:

Q. The arms that you captured, you captured from Voinjama. Is that so?

A. Yes, sir.

12:44:57 Q. And the ammunition that you got from Monrovia later and that you took back with you was to be used --

A. What?

Q. You gave some evidence that you got some ammunition in Monrovia from Charles Taylor?

12:45:24 A. Yes.

Q. What was that ammunition to be used for?

A. Already we had accomplished the mission. We had come to the base where we captured first, that is Foya. That was where they waited for us. It was for us to bring it to Sierra Leone, 12:45:51 that was why he gave it to us, because the mission had been accomplished there.

Q. And the mission that you're referring to is what mission that had been accomplished?

A. The four towns where the LURD forces had occupied, we had 12:46:11 already cleared the towns and they had returned to Guinea. That was the mission I was talking about its accomplishment.

Q. And it was during that mission that you captured the arms and ammunition from the Voinjama LURD base, is that so?

A. Yes, sir.

12:46:32 Q. And the ammunition that you got separately from Monrovia was also - was taken back to Sierra Leone?

A. Yes, sir.

Q. And what was it used for?

A. Well, at that time we were at war. That was not during

peace time. We brought it to our bases - our base. That is Buedu.

Q. And was it left at Buedu?

A. Yes, the ones that the commanders were able to see we left them there and the ones that we were able to take to our various targets we did.

Q. Did you take any of the ammunition?

A. Yes, I too took some with me.

Q. And what did you do with that ammunition?

A. I was on the defensive. Whenever ECOMOG would attack, I would go to repel them using the ammunition.

Q. Was there a third occasion when you yourself were involved in obtaining arms and ammunition for the RUF?

A. Yes, I was involved in another one again.

Q. When was this other one?

A. That was 2000, after the May incident that occurred in Freetown.

Q. What was the May incident that occurred in Freetown?

A. There was some problem between RUF and the Government of Sierra Leone.

Q. What was the problem?

A. Our men and the UN had some clash in the Northern Province and a lot of the UN personnel were captured. That was the problem that went right up to Freetown. Even the civilians and the soldiers, the government demonstrated against the RUF who were in Freetown because that was their own zone. So, that was the problem.

Q. And when abouts in May did this incident take place, if you know?

I N D E X

WITNESSES FOR THE PROSECUTION:

KARMOH KANNEH 9401

EXAMINATION-IN-CHIEF BY MS BALY 9402

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

TUESDAY, 13 MAY 2008
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr William Romans Ms Sidney Thompson
For the Registry:	Ms Rachel Irura
For the Prosecution:	Ms Brenda J Hollis Mr Christopher Santora Ms Julia Baly Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Terry Munyard Mr Morris Anyah

MR MUNYARD: Yes, certainly. It is 8 May and I am looking at pages 9356 onwards at the moment. That's not right at the beginning of it, but I just want to be - I was really concerned about, or interested in, the use of the word "buttressed":

12:16:54 Q. You gave a list of the people who were there and --

PRESIDING JUDGE: Are we now talking about the Giema meeting?

MR MUNYARD: Yes, yes. Giema is the first of the three meetings. I think Ms Baly and I - I hope we can agree that's

12:17:12 right. Just so everybody understands, there is Giema, then there is Waterworks and then the third meeting is at a later stage. But in any event Giema first, Waterworks second and then there is another meeting which must be at Sam Bockarie's premises because

12:17:48 the evidence is that he goes and shows them materials brought from Burkina Faso stored near to his house. So I think we are agreed on that:

Q. I just want to ask you and I think you did say about - that it was Foday Sankoh who said although he had signed for peace that you still had to be prepared for war, but I am interested in

12:18:09 the use of this word "buttressed". Now it certainly is in here, I had it a moment ago and now it's gone. Do you agree, Mr Kanneh, that you used the word "buttressed" at page 9359, yes - did Jungle say anything at the meeting, foot of page 9358, "Yes, he too buttressed what the Pa had said." Now why was there

12:19:01 any need for this man Jungle to buttress what the Pa had said?

A. Well, Jungle - that was the first day that the Pa presented him that when he was going to present - give the promotion to Sam Bockarie Jungle would become Mr Taylor's representative in the RUF, so that was the reason, he has got a new appointment. That

was the cause.

Q. So had you ever met Jungle before this particular date?

A. Yes, sir.

Q. And what was he before he was made Mr Taylor's representative?

12:19:50

A. Jungle and others came with the war. He was NPFL. They entered.

Q. Yes, so he has been with you for some time, but are you saying he has now become Mr Taylor's representative?

12:20:19

A. Yes, sir.

Q. And did Mr Taylor have another representative before Jungle?

A. No.

Q. So why did he suddenly need a representative in the form of Jungle?

12:20:39

A. Well I can't know that, because when the leader came from the peace accord he passed through there before coming, so I was unable to ask him about why he has made this man the Pa's representative.

Q. Did anybody --

12:20:59

JUDGE SEBUTINDE: I am a bit lost. Was it Foday Sankoh who made Jungle the Pa's representative?

THE WITNESS: It was Foday Sankoh who told us that he was the Pa's representative. Whether they arranged with the Pa or not I don't know, but he said that was the Pa's eye in the movement. Not Foday Sankoh's eye, but Mr Taylor's.

12:21:28

JUDGE SEBUTINDE: Jungle, that is, who was the Pa's eye?

THE WITNESS: Yes, yes, Jungle. Yes, sir.

MR MUNYARD:

Q. And this is right at the beginning of 1997, or the very end of 1996 depending on which version of - which account one takes?
A. Take the end of 1996.
Q. All right, we will. How were relations between the RUF and
12:22:28 Mr Taylor between the years 1993 and 1997?
A. Well as far as I know from 1992 - in the middle of 1992 up to 1996 there was no relationship between the RUF and Mr Taylor, as far as I know. From 1993 up to the time that Sankoh came with this topic, there was no communication. There was no
12:23:05 relationship between us and Mr Taylor.
Q. And what changed that situation, as far as you are aware?
A. Well it was the infiltration by ULIMO into NPFL territory, when it took the border from Lofa up to Robertsport. So, it cut off all communication between us and Mr Taylor.
12:23:39 Q. Well, cut off physical connections between you. That would not cut off personal connections between you and Mr Taylor, would it?
A. Yes.
Q. In fact personal communications between the RUF and
12:24:02 Mr Taylor were cut off as well as the physical connection, weren't they?
A. Well except maybe it is between him and the leader personally, but what I know that was happening openly during my own time, that is what I am trying to talk about. That was
12:24:29 cutting off now. We were not having any material, or any other thing that I knew about.
Q. Are you familiar with the series of operations Tap 10, Tap 20, Tap 40 and Tap Final? Do you know anything about those, Mr Kanneh?

Q. Now before that meeting had you been getting arms and ammunition from Liberia for free, in other words without having to pay for them?

A. Well, I personally had not gone alone to Liberia to get
13:15:00 ammunition. I usually moved with commanders. I never knew how the transactions went on, whether they bought them or they gave them just like that. So I can't know that.

Q. All right. I am going to move on, please, to the next meeting. This is the third meeting that takes place at Sam
13:15:24 Bockarie's house. Now this is a meeting that takes place after Sam Bockarie came back from Burkina Faso. That's right, isn't it?

A. Yes, sir.

Q. And when do you say this meeting occurred?

13:15:42 A. It was at night.

Q. All right. I am going to come on to the time of day, but, first of all, what time of year?

A. It should be around December.

Q. Right. At what hour of night --

13:16:09 JUDGE SEBUTINDE: Of which year?

MR MUNYARD: I thought he'd said.

JUDGE SEBUTINDE: He hasn't said. Mr Witness --

THE WITNESS: 1998.

MR MUNYARD:

13:16:23 Q. What time of night was this meeting?

A. Around 9 or 10.

Q. Well, you said when you were giving evidence earlier to the Prosecution that it started at about 9, lasted three hours and ended about midnight. Do you remember saying that?

A. Repeat that. Let me get it clearly.
Q. Do you remember telling the Court when you were giving your evidence to Ms Baly that this meeting started about 9, lasted three hours and ended about midnight?
13:17:09 A. Here? In this Court yesterday?
Q. Yes. And that's not actually right, is it? It started later and ended later, didn't it?
A. It started at 9 and when it ended we went to bed. That was what I made mention of here.
13:17:38 Q. Could it have started as late as 11 at night?
A. No.
Q. Page 44309, please, about halfway down the page we see a sentence that reads, "The following questions refer to the time after Sam Bockarie came back from Burkina Faso." Mr Kanneh, you
13:18:26 were asked a question, or it has been recorded at any rate that you were asked the question, "Was there another meeting at Sam Bockarie's house that took place at night?" Were you asked that question?
A. If at the time Sam Bockarie came whether there was a
13:18:48 meeting held in his premises?
Q. This is the interview of 1 November last year. Do you remember being asked, "Was there another meeting at Sam Bockarie's house at night?"
A. Yes, this is the meeting you are trying to talk about.
13:19:09 That is the meeting.
Q. And the answer that is recorded at the bottom of that page is, "Yes, it took place from 11 p.m. to 2 a.m." Did you say that?
A. Well, that was the time. The misunderstanding was with the

time, whether it is 11 or 9, if I said so then I'm sorry.
Q. So you agree that it did take place from 11 p.m. to 2 am?
A. Yes, sir. Let's take the 11, the one that I had said before.
13:19:55 Q. Right. So you think that the answer that you gave nearer to the time of these events is likely to be more accurate than the evidence that you have given in court. Do you agree?
A. If it's this particular one the time is 11 at night?
Q. Do you agree that the answers that you gave to questions
13:20:29 that were asked nearer to the time of the events you were discussing are likely to be more accurate than your evidence in court if there is a disagreement between --
A. No, no.
Q. Hang on, if there is a disagreement between the evidence
13:20:46 you give in court and the answers that you appear to have given nearer to the time of the events?
A. No.
Q. And it was after this meeting ended that you all gathered round on the veranda and a phone call was made to Mr Taylor, yes?
13:21:11 A. Yes.
Q. So at 2 o'clock in the morning some time in December of 1998 your colleagues decide to ring up Mr Taylor in Liberia and wake him up, if indeed he was asleep, and give him the news of this meeting? Is that what you were telling the Court?
13:21:40 A. Our colleagues? Repeat starting from that side. That our colleagues woke up Mr Taylor, please repeat that question, sir.
Q. Are you telling the Court that at some time after 2 o'clock in the morning on a night in December 1998 your group of commanders telephoned Mr Taylor to give him the news of the

decisions that were taken at that meeting?
A. It was not the commanders. It was Sam Bockarie. Sam Bockarie, yes, sir.
Q. All right, Sam Bockarie rang him at 2 in the morning to
13:22:28 tell him what had been decided, yes?
A. Yes, sir.
Q. What was Mr Taylor's job at this time, December 1998?
A. Mr Taylor was President of Liberia.
Q. Yes. Did Sam Bockarie discuss whether or not he should be
13:22:50 calling the President of Liberia at 2 in the morning, or perhaps it could wait until the next day? Was that discussed at all?
A. No.
Q. Did this telephone call take place at all, Mr Kanneh?
A. Yes, sir.
13:23:16 Q. Now this is the group of 12, isn't it?
A. Yes, sir.
Q. You told us on a number of occasions in your earlier evidence that there were 12 of you gathered together for this particular meeting, and were all 12 of you gathered on the
13:23:49 veranda for Mr Taylor to be given this information at 2 in the morning?
A. Yes, sir, it was during the meeting. All 12 of us were present, sir.
Q. You told us yesterday, or last week, that it was after the
13:24:18 meeting ended. Are you now saying it was during the meeting that this phone call was made?
A. We were not scattered. The meeting went - this call went on immediately after the meeting.
Q. How did you know it was Mr Taylor who Sam Bockarie was

talking to?
A. Well, he told us that he called President Taylor for him to give him details about the meeting.
Q. Well you wouldn't need him to tell you that if you were all
13:25:17 gathered round while he is talking to Mr Taylor, would you?
A. Repeat that.
Q. Your answer just now was, "Well, he told us that he called President Taylor for him to give him details about the meeting." Why would he tell you that he called President Taylor if you were
13:25:45 all standing there when the call was being made?
A. I did not say he told us that he called Mr Taylor. He said he is going to call, he is calling Mr Taylor. I did not say that he did say he had called Mr Taylor.
Q. Well actually you did, because I have just read from the
13:26:25 transcript the very words you used, page 91, line 6, "Well, he told us that he called President Taylor for him to give him details about the meeting." There is no need for him to tell you that he called them if you were all there, is there?
A. No, he said he was going to call.
13:26:57 Q. And who was it who called him? Who was it who called Mr Taylor?
A. Sam Bockarie.
Q. Anyone else?
A. Well he spoke with somebody else, but he was the one who
13:27:23 called him.
Q. And the somebody else he spoke to was who?
A. Jungle.
Q. And this is Jungle doing another bit of buttressing of what the first person had said, is that right?

A. Yes, sir. Yes, sir.
Q. Mr Kanneh, can you help us with this. Why was it necessary each time someone said something for Jungle to buttress it?
A. Well for us to have confidence about what was said about
13:28:04 Jungle, that he was the Pa's eye there. I think that was just it. That was just the reason.
Q. Well I am going to come back to this in a second, but I just before we break for lunch want to go through the 12 people who were there and we can see the participants on page 44310.
13:29:01 PRESIDING JUDGE: Mr Munyard, I regret that I don't think you will have time. We are just about at the lunchtime adjournment time.
MR MUNYARD: We will deal with it --
PRESIDING JUDGE: If you have 12 names it will take a
13:29:15 while, I suspect.
MR MUNYARD: I think there may be more than 12 names, your Honour.
PRESIDING JUDGE: Mr Witness, we are now going to take the lunchtime adjournment. We will break for one hour and start
13:29:25 again at 2.30. Please adjourn court until 2.30.
[Lunch break taken at 1.30 p.m.]
[Upon resuming at 2.30 p.m.]
PRESIDING JUDGE: Mr Munyard, when you're ready, please proceed.
14:31:18 MR MUNYARD: Thank you, Madam President. If you would bear with me for a second while I just adjust my LiveNote so that I can read it:
Q. Now, I'm going from my note, my handwritten note of your evidence the other day, Mr Kanneh, of Friday, of the people who

you said were at the meeting at Sam Bockarie's house in December 1998 where you said there were 12 of you. I will try to find it on the transcript as well to make sure that I'm accurate in what I'm saying. Now, these were the people that you listed that I
14:32:27 made a note of: Sam Bockarie, Issa Sesay, Morris Kallon, Jungle. Just pausing there with those four, is that right? Do you agree that these were four of the people who you said were at the meeting? Is that right?

A. Four who were in the meeting?

14:33:07 Q. I'm just going through the names of the 12 that you told us about on Friday and I just want --

A. Yes, the four that you've named were in the meeting.

Q. All right. Then Eddie Kanneh, yourself, Major Francis and Matthew Barbue. Are those four correct also?

14:33:41 A. Yes, sir.

Q. Then you said Junior Vandi, someone called Chucky, who is also known as Gbessay Ngobah.

A. Ngobeh.

Q. Ngobeh, sorry, and I thought my note was wrong because it
14:34:18 doesn't actually go up to 12, but in your evidence those were the names that you gave us on Friday and then you said, "We were 12 in number that particular number that were present. I don't know how many names I've made mention of, but we were 12 in number." Do you remember saying that on Friday?

14:34:43 A. Yes. There were 12 of us in the meeting.

Q. Yes. Well, let us have a look, please, at what was recorded by the Prosecution when you were telling them about this meeting.

A. But before going there I would like to say something.

MR MUNYARD: Madam President, I'm in the Court's hands.

PRESIDING JUDGE: Is it in answer to the question, Mr Witness?

THE WITNESS: Yes, sir. I want to ask something. I want to get some clarification.

PRESIDING JUDGE: What is the clarification you need?

THE WITNESS: I would like to know if the total went up to 12, because I was not counting when I was calling the names.

MR MUNYARD: All right. I can answer that:

14:35:50 Q. Mr Kanneh, what you said was that, "We were 12 in number", and you gave the names that you could recall. I don't think you gave a total of 12 names in your evidence on Friday, but you were giving the names that you remembered and what you said was this:

"Well, we were 12 in number that particular night that we 14:36:12 were present. I don't know how many names I have made mention of, but we were 12 in number."

Do you see? You may not have remembered all of them on Friday, but you did it make it very plain that there were 12 of you.

14:36:28 A. Yes, sir. That's what I said, because when I called out the names later I said "and others".

Q. I'm going from page 9419 of the transcript. Now, let's see what the Prosecution have recorded by looking at tab 3, page 44309. I'm starting here simply to establish that we're talking 14:37:16 about the right meeting. Halfway down the page, "The following questions refer to the time after Sam Bockarie came back from Burkina Faso." You were asked, "Was there another meeting at Sam Bockarie's house that took place at night?", and your answer, "Yes, it took place from 11 p.m. to 2 a.m." Over the page, "Who

was there?", and this was the answer that you gave then. We'll go through the answer and you can tell us if it's been correctly recorded, "Mike Lamin, SB [meaning Sam Bockarie], SYB Rogers, Gbessay Ngobeh" - have I got his name right or wrong? Gbessay
14:38:13 Ngobeh, sorry. "CO Lion, Jungle, Martin, Gaddafi (Foday), Issa Sesay, Jallow, Tom Sandi, Rashid Sandi, Junior Vandi, Sam Kolleh and Major Francis who was a Gambian."

Now, did you tell the Prosecution in November of last year that those 16 people were present at the meeting.

14:38:51 A. No, I spoke about 12 people and even yesterday I called SBY [sic] Rogers's name.

Q. I'm going to come back to SYB Rogers in a moment, but there's no mention of Morris Kallon in that list that we've just read out from the notes of your interview on 1 November last
14:39:22 year. Was he there, or wasn't he there?

A. Morris Kallon was there.

Q. There's no mention of Matthew Barbue there in that list. Was he present at the meeting, or wasn't he?

A. He was there, sir.

14:39:45 Q. There are, as I've said, 16 names listed there, not 12.

A. Well, in that meeting there were 12 of us.

Q. When this was read back to you did you correct it?

A. No, sir.

Q. Why not?

14:40:07 A. Well, I did not know whether it had gone beyond 12, but I know we were 12, so - and I called out 12 names.

Q. Two of whom don't even appear in this list that I've just read out to you from the notes of that interview. When it was read back to you did you not point out to them that Morris Kallon

and Matthew Barbue were there?
A. Well, I did not tell them that, but they were present.
Q. Sorry, you didn't tell them that Morris Kallon and Matthew Barbue were there? Is that what you're saying?
14:40:57 A. No, they were present in the meeting.
Q. Did you tell the Prosecution that in November last year?
A. Well there are some names in this list that I - I was not the one who gave them the names, but there was Morris Kallon and there was Matthew Barbue as well.
14:41:23 THE INTERPRETER: Your Honours, the witness has called a name that he's referring as --
PRESIDING JUDGE: Mr Witness, the interpreter did not hear a name clearly. Please repeat your answer. Pick up from where you said, "... but there was Morris Kallon and there was Matthew
14:41:38 Barbue as well." What was the other name you mentioned?
THE WITNESS: There was Morris Kallon and Matthew Barbue. I said he spoke about CO Lion and I did not mention his name for that 12 man meeting.
PRESIDING JUDGE: When you say you did not mention his name
14:41:59 are you referring to your interview with the Office of the Prosecutor, or are you referring to court?
THE WITNESS: Prosecution's office.
JUDGE SEBUTINDE: Mr Witness, are you saying CO Lion was not at the meeting?
14:42:21 THE WITNESS: Not at all.
MR MUNYARD:
Q. So out of this 16 we've got to cross out CO Lion, yes?
A. Yes, sir.
Q. Well, let's go through this list and see who you say was

there. Mike Lamin?
A. Yes, sir.
JUDGE SEBUTINDE: Mike Lamin was there?
THE WITNESS: Yes, sir.
14:43:06 MR MUNYARD:
Q. I'm just going to your evidence from Friday. Now I know you couldn't remember all the names, but Mike Lamin was a very top level commander, general, within the RUF, wasn't he?
A. Well he did not get that rank, general.
14:43:37 Q. Let's not worry about the actual rank. He was one of the most senior figures in the movement, wasn't he?
A. Yes, sir.
Q. Somebody who spoke very strongly?
A. Yes, sir.
14:43:58 Q. How is it that you'd forgotten that he was there when you were giving us this list of those on Friday?
A. When I called out the names, I don't think the names were even up to 20. Maybe those were the ones I left out. The names were not even up to 12 and that's why I said "and others". So, 14:44:26 those were the others.
Q. All right, let's go through. Mike Lamin was there. Sam Bockarie was there?
A. Yes, sir.
Q. SYB Rogers was there, or was he?
14:44:41 A. Yes, sir.
Q. Because you didn't mention him on Friday, I don't think. No, you didn't.
A. Friday I spoke about him.
Q. You might have spoken about him but when you were giving

the list of names you didn't include him, but we can include him in, can we?

A. Well --

Q. Don't worry about it, Mr Kanneh. We can include him in, can we? What about - you did mention, and I'm not going to try for a third time, the man you know as Chucky. You did mention him to the Prosecution in November?

A. Yes, sir, he was there.

Q. CO Lion we cross out. Jungle?

14:45:39 A. Yes, sir.

Q. You mentioned Jungle?

A. Yes, sir.

Q. Now, Martin?

A. Yes, sir.

14:45:51 Q. Was he there?

A. Yes, sir.

Q. He was there, all right. Gaddafi also known as Foday, was he there?

A. No.

14:46:04 Q. So, we cross --

A. No, sir.

Q. Who is Gaddafi, also known as Foday?

A. He was one of the battalion commanders who was at the Joru axis.

14:46:24 Q. Right, so he wasn't there. Issa Sesay, you mentioned him on Friday?

A. Yes, sir.

Q. What about this person Jalloh (MP)?

A. No, he was not there.

Q. Who is Jalloh (MP)?
A. He was a military police.
Q. Tom Sandi, was he there?
A. No, sir, at that time Tom Sandi was in Kailahun.
14:47:02 Q. Rashid Sandi, was he there?
A. Yes, sir.
Q. Junior Vandi, JR?
A. Yes, sir.
Q. Sam Kollie?
14:47:23 A. Yes, sir.
Q. Major Francis?
A. Yes, sir.
Q. What about Eddie Kanneh?
A. Yes, sir.
14:47:37 Q. He was there, was he?
A. Yes, sir.
Q. You mentioned him on Friday as being present, but you don't actually mention him to the Prosecution in November as being present?
14:47:56 A. I mentioned him. Maybe they did not write it.
Q. So they managed to forget that name, did they, when they were writing? As you were giving the list of names they've managed to lose that one, is that your evidence?
A. That they added and deducted, yes.
14:48:17 Q. All right. And then when it was all read back to you, what did you say about CO Lion, Gaddafi Foday, Jalloh and Tom Sandi being in the list of 16 when in fact they weren't there?
A. Well I don't know how they got it, but even myself I'm a little doubtful how these names are in this group - in this group

now.
Q. Why are you doubtful?
A. Because I mentioned 12 names and now I am seeing some other names in the list, so I'm surprised.
14:49:06 Q. But, Mr Kanneh, how could these names, CO Lion, Jalloh, Tom Sandi and Gaddafi Foday have possibly been written down by the Prosecutors who were interviewing you if you hadn't actually told them these names?
A. I cannot tell how they managed to write it, but even today
14:49:42 you asked me about some other names and I was not the one who gave them those names. It was a statement. Maybe they got the names from some other place.
Q. When they were interviewing you back in November last year, did they have other people's statements in front of them and were
14:50:03 they asking you questions based on what other witnesses had told them?
A. Never. That had never happened.
Q. So where could they have got these names from, apart from you?
14:50:20 A. Even you yourself there were questions that you asked me and you mentioned names that I had not given to them, so I don't know how you people would manage to get names like those. I don't know.
Q. Well, I can tell you I get them from what the Prosecution
14:50:41 wrote down as you were listing the names. That is where I get them from, do you understand?
A. Yes, sir, but I would like to know if they had said I mentioned 16 names, if that is what they wrote on the paper.
Q. Are you telling us that you had not appreciated until now

that that is exactly what they have said; that you mentioned those 16 names?
A. Well, I spoke about 12. All along I've been talking about 12 in my statements and even yesterday.
14:51:31 Q. We've been at this for the last 20 minutes. Are you saying that you didn't realise that the Prosecution got these names from you?
A. Yes, sir.
Q. And if it's right that these were the names you told them,
14:51:52 how is it that you told them the names of four people who were nowhere near that meeting?
A. Please repeat that.
Q. If they've got it right in recording these 16 names, how is it that you managed to give them the names of four people who
14:52:13 were nowhere near the meeting?
A. Well, I have not even accepted that I was the one who gave them those extra four names. The ones that I mentioned, I accepted to you that those were the names that I gave to them.
Q. You mean the ones that you mentioned in evidence and the
14:52:35 ones that you've agreed out of this list of 16, you accept that you gave those names?
A. No.
Q. I'm going to move on. Oh, I just want to ask you about one other person. Was Isaac Mongor at this meeting?
14:53:13 A. No.
Q. Are you quite sure about that?
A. Yes, sir, I did not see him.
Q. This is the meeting at which Sam Bockarie tells you about all these arms, ammunition and other items that he'd brought back

from Burkina Faso, yes?
A. Yes, sir. Yes, sir.
Q. And there was only one such meeting, was there, with these 12 senior figures from the RUF, plus Jungle?
14:53:53 A. Yes, sir.
Q. And this is the meeting at which SYB Rogers was present, is that right?
A. Yes, sir.
Q. Even though you didn't list him on Friday. Do you agree
14:54:15 that you didn't list him on Friday when you were giving the list?
A. I called his name.
Q. Did SYB Rogers have anything to say at that meeting that you can now remember?
A. No.
14:54:34 Q. Did anyone praise Sam Bockarie for what he had achieved in bringing back these materials from Burkina Faso?
A. Amongst us, the 12 people who were there?
Q. Well, yes, not amongst anybody else who wasn't there.
A. Well, even if that could have happened maybe it is just
14:55:15 because I cannot recall now. I am not saying nobody said that or did so, but I cannot recall now.
Q. Were any photographs produced during this meeting?
A. No, there were no photographs.
Q. When do you say it was that you saw the materials that he'd
14:55:41 brought back from Burkina Faso?
A. After the meeting, the following morning.
Q. The following morning. Did you see any photographs then?
A. No.
Q. And, let me suggest to you, any photographs of a hotel in

Burkina Faso where Sam Bockarie had stayed in the course of this trip?

A. No.

Q. Who did Sam Bockarie tell you he'd been to Burkina Faso with?

A. General Ibrahim.

Q. Did SYB Rogers say that he had been to Burkina Faso with Sam Bockarie?

A. If I said it or SBY Rogers said so? Please clarify that?

Q. Did SYB Rogers say that he had been to Burkina Faso with Sam Bockarie on that trip to collect materials?

A. Well, SB Rogers did not tell me that in that meeting. I did not hear that.

Q. Were you at the whole of the meeting from start to finish?

A. Yes, sir.

Q. Are you saying that you never heard SYB Rogers say anything at all about him being with Sam Bockarie in Burkina Faso on that trip?

MS BALY: I object to that question. That is not what the witness said. He said if it was said, he didn't hear it.

MR MUNYARD: Well, I think I'm entitled to ask the question in any event. I'm a bit puzzled at the objection. He can give whatever answer he wants.

PRESIDING JUDGE: Yes, I allow the question.

MR MUNYARD:

Q. Are you saying that you never - in fact, now I'm looking at it I did say "hear". I'm trying to read it, but I'm afraid I've got a piece of computer software blocking the line in question at the moment.

JUDGE SEBUTINDE: The question was, "Are you saying that you never heard SYB Rogers say anything at all about him being with Sam Bockarie in Burkina Faso on that trip?"

MR MUNYARD: Thank you, your Honour. It's just emerged from behind the blockage now.

14:58:38

THE WITNESS: No, I did not hear that.

MR MUNYARD:

Q. So is this the position: That you are completely unaware that SYB Rogers was on that trip to Burkina Faso with Sam Bockarie?

14:59:04

MS BALY: Your Honour, I object to that question. There's no evidence.

PRESIDING JUDGE: This is cross-examination, Ms Baly, and counsel is entitled to put a question and not only to put their case, but to test the credibility of the witness. I allow the question.

14:59:18

MR MUNYARD: I don't know why my learned friend puts the objection in that way because there is evidence. It may not have come from this witness, but there's a significant body of evidence, I would submit, that Sam Bockarie went to Burkina Faso with SYB Rogers and came back, addressed a meeting of the senior commanders and SYB Rogers heaped praise on Sam Bockarie's leadership and the two of them produced photographs of the hotel they'd stayed in:

14:59:37

Q. Now, have you heard all of that, Mr Kanneh, that I've just been suggesting?

15:00:02

A. Well, you've asked all of these questions and I've said I did not hear that, or see a picture.

Q. Thank you.

A. Thank you too.
Q. All right, so much for Burkina Faso. Let's move on to something else that you say was discussed at that meeting: SAJ Musa.
15:00:36 A. Yes, sir.
Q. What was discussed about SAJ Musa at that meeting?
A. Well, Sam Bockarie spoke about SAJ Musa in that meeting. At first he described him as a traitor. He said he was a man who did not take orders. That was the first thing he spoke about SAJ
15:01:14 Musa. He said the only way that he would get him was to be during an operation. He said that and he spoke about the discussion relating to SAJ Musa that was between him and Gullit. Those were the things that he said. Even if there are some others that I cannot recall now, but those were the most
15:01:46 important ones.
Q. All right. Well, let's have a look at the record, in tab 3, starting at page 4431, of what was discussed about SAJ Musa.
JUDGE SEBUTINDE: Could you please give us the page again?
MR MUNYARD: 4431, your Honour. Sorry, 44311:
15:03:07 Q. Question at the top of the page, "Was there discussion of SAJ Musa at this meeting?" Your answer is recorded as, "Sam Bockarie said", and then there's nothing that follows that but another question, "Did you talk about how to enter Freetown?", and then you discuss the plan for two flanks.
15:03:42 The next question:
"Q. What was Sam Bockarie's reaction when SAJ Musa died?
A. He was very happy because SAJ Musa was preventing RUF success."
Now, were you asked what was Sam Bockarie's reaction to SAJ

Musa's death and did you give that answer?
A. No. At that time Sam Bockarie had not died yet.
Q. No, Mr Kanneh, please listen to the question. The question was: In your interview in November 2007 were you asked the
15:04:33 question, "What was Sam Bockarie's reaction when SAJ Musa died?" Were you asked that question in that interview?
A. Yes, sir.
Q. And did you answer, "He was very happy because SAJ Musa was preventing RUF success"?
15:05:00 A. Yes, sir.
Q. Were you asked the question, "Who killed SAJ Musa?"
A. Yes, sir.
Q. And did you give the answer, "There was a race between Rambo and SAJ Musa to get to Freetown. There was a big explosion
15:05:24 and SAJ Musa was killed"? This is what you heard, but you were not there. Is that the answer that you gave to the question?
A. Big what between him and Rambo? Please continue from there. I did not get that clearly.
Q. All right. I'll do it in two stages, "There was a race
15:05:48 between Rambo and SAJ Musa to get to Freetown." Did you tell them that?
A. Yes, sir.
Q. So they've recorded that correctly?
A. Yes, sir.
15:06:00 Q. Did you go on to say, "There was a big explosion and SAJ Musa was killed"?
A. Yes, sir.
Q. And did you tell them that this is something that you'd heard, but you weren't actually there?

A. Yes, sir.
Q. Now, I just want to go through the rest of the notes of what you were asked and what you answered about that meeting. On the next page, 44312, there is no mention of SAJ Musa. I'm going
15:07:01 to come back to that page in due course. If we go over to 44313 the interview was resumed at 2.30 in the afternoon and further to the night time meeting at SB's house there are some more questions and answers on that page. They don't deal with SAJ Musa, but again I will come back to those. Over the page, 44314,
15:07:55 there is more on that page, but again it doesn't mention SAJ Musa. Then just for the sake of completeness, the following page, 44315, deals with what are called general questions and they don't deal, as far as I can see at any rate, with SAJ Musa.
Now, in the course of your evidence you told us that rather
15:08:41 more was discussed about SAJ Musa at that meeting, didn't you?
A. They spoke about SAJ Musa's issue in that meeting and the mission that was to be undertaken.
Q. Well, one of the things that you told us when you were giving answers to the Prosecution was that Sam Bockarie had said
15:09:09 a complaint had gone up to Mr Taylor about SAJ's disloyalty and he had given his own advice, "he" being a reference, I believe, to Mr Taylor. Can you remember saying that?
A. Yes, sir.
Q. Why didn't you tell the Prosecutors that when you were
15:09:35 being interviewed more than a year ago and asked detailed questions about what was discussed in this meeting relating to SAJ Musa?
A. Well, the statements that they take from people, I think people - we only respond to questions that are asked of you.

They did not ask me a question about that. It doesn't mean that if they did not ask me the question at that particular time, I would not say something about it at some other time.

Q. Mr Kanneh, you were asked a question on page 44311, "Was there discussion of SAJ Musa at this meeting?" You were given a completely open ended opportunity to tell the investigators, and Mr Santora then, all about the discussion concerning SAJ Musa at that meeting, were you not?

A. Please repeat.

15:10:52 Q. You were given an opportunity to tell the Prosecutors everything about the discussion concerning SAJ Musa at that meeting at Sam Bockarie's house when you were interviewed in November of last year, weren't you? I think I said it was over a year ago. November last year?

15:11:19 A. Well, it was not at SAJ Musa's place. It was at Sam Bockarie's place. I did not mention it at that moment because I did not recall it.

Q. How could you possibly forget? When they asked you, "Was there discussion of SAJ Musa at this meeting?", how could you

15:11:41 possibly forget that you had decided you should go all out to ensure that SAJ should not live to tell the story if in fact that was said at that meeting?

A. No. I did not say that they asked me the question and I forgot to answer the question, no. You said it was an open

15:12:10 question. That is what you've just asked me. That is what I've refused - I said they did not ask about SAJ Musa's issue. You are asking me now that why did I not answer about SAJ Musa's issue because they asked me to say everything that I knew about SAJ Musa, but they did not ask me about SAJ Musa and I said, "No,

I don't know". They did not ask me that.
Q. They asked you, "Was there discussion of SAJ Musa at this meeting?" Why didn't you tell them in answer to that question that, "We discussed the complaint that Sam Bockarie had made to
15:12:49 Charles Taylor about SAJ, Sam Bockarie made us to understand that SAJ should not live to tell the story and that we should go all out to ensure that SAJ should not live to tell his story"? Why didn't --

MS BALY: Your Honour, I object to that question and if I
15:13:14 could just indicate why I object to it. The question that Mr Munyard has been asking the witness about appears at page 00044311. The question is, "Was there discussion of SAJ Musa at the meeting?" The answer is, "[Sam Bockarie] said", then there's nothing further recorded and then there's a further question
15:13:44 which is a very defined question, "Who killed SAJ Musa?" So, they're the two opportunities he's had during that meeting to answer questions firstly about what he said and there's nothing obviously - it's obvious from the document "SB said" and then there's nothing there, but it doesn't follow that the witness
15:14:06 said nothing. Then the second question "Who killed SAJ Musa?" is so specific that that's the question he answered, not any further thing about discussion at the meeting. So it's a bit, in my submission, unfair to put to this witness that he failed to answer that question when we don't actually know what he said
15:14:28 because it's not recorded.

PRESIDING JUDGE: Mr Munyard, your reply?

MR MUNYARD: Your Honours, taking the question - the recorded question and answer at face value, and that's the only basis on which we can proceed, "Was there discussion of SAJ Musa

at this meeting?", and the answer, "SB said", nothing follows except another question about a different topic and therefore at face value the witness has said nothing else at that time. There is no suggestion by this witness that he told them all of this
15:15:17 and that they failed to write it down, or rather there's been none so far although I anticipate there will be, and so in my submission it's a perfectly fair question for me to put and explore. Equally, when we come to the specific question "Who killed SAJ Musa?", there again is the perfect opportunity to tell
15:15:41 the story about the plan, about how it was going to happen during an operation and all the other matters I haven't yet asked him about that arise from his evidence on Friday, the 9th.

PRESIDING JUDGE: I note that there is nothing on page 4431 that shows that what Sam Bockarie said that has subsequently been
15:16:08 adduced in evidence by this witness and, therefore, I consider that counsel for Defence is at liberty and is entitled to put the question he has put, so I allow that question.

MR MUNYARD: Thank you, your Honour:

Q. You see what you said on Friday the 9th, that's last
15:16:42 Friday, Mr Kanneh, you told us a great deal about SAJ Musa and what was discussed in the meeting about SAJ Musa and it starts on page 9425 at the bottom. Just after discussion of "What commanders were given the role of clearing Makeni?", that's line 21, "It was Issa who was the overall for that operation and
15:17:26 Morris Kallon was his deputy and Superman was third in command". "Then you said on to Freetown. Was anyone given the role of moving on to Freetown?" "Yes, they gave the mission to somebody". "Who?" "Well, Sam Bockarie sent the message to SAJ even before they attacked Kono but he refused. He rejected the

orders. He said he cannot take orders from him, so there was a heated argument over the issue".

Then a question from Ms Baly:

"Q. When you refer to this heated argument, did it take place in this meeting?

A. You mean whether the argument took place during the meeting?

Q. Yes."

15:17:57

THE INTERPRETER: Your Honour, the interpreters are kindly asking counsel to go slowly for the witness.

15:18:09

MR MUNYARD: I am sorry. I am sorry. I'm trying to go as quickly as I can, but it's obviously too fast. Do the interpreters require me to repeat any of that, or can we proceed?

THE INTERPRETER: Learned counsel, you can repeat all of that because you were going too fast for us.

15:18:27

MR MUNYARD: Oh, dear. All right.

PRESIDING JUDGE: Mr Interpreter, there must be some point where you've picked up.

THE INTERPRETER: Your Honours, we are interpreting from the Krio booth.

15:18:40

MR MUNYARD: Can I for these purposes not repeat that, but go to the point --

PRESIDING JUDGE: Perhaps paraphrase it, but ensure that the entire essence of the record is made. Put the issue, Mr Munyard.

15:19:02

MR MUNYARD: Yes:

Q. In your evidence on Friday you were talking about matters that were discussed in that meeting that we are now considering and you discussed, or you told us on Friday that the issue of

clearing Makeni was discussed, who was in command of the operation and you also said that Sam Bockarie had sent the message to SAJ Musa even before they attacked Kono but he refused. Do you remember saying all of that?

15:19:41 A. That Sam Bockarie sent a message to Sam Bockarie? No, I did not say that.

Q. I didn't say Sam Bockarie.

PRESIDING JUDGE: Counsel said to SAJ Musa.

MR MUNYARD: No, it's not me this time. Right.

15:19:54 THE WITNESS: Well the interpretation, the man who was interpreting said "Sam Bockarie. That is what I heard.

PRESIDING JUDGE: We understand, Mr Witness, but in fact counsel please put that part of your question again.

MR MUNYARD:

15:20:07 Q. That Sam Bockarie sent a message to SAJ Musa even before they attacked Kono, but he refused. Do you remember telling us that on Friday?

A. Yes, sir, even before the mission commenced.

Q. He rejected the orders, you told us. He said he cannot

15:20:30 take orders from him and so there was a heated argument over the issue, do you remember saying that?

A. Yes. Yes, sir.

Q. You were asked by Ms Baly, "When you refer to this heated argument, did it take place in this meeting?" Your answer was,

15:20:48 "You mean whether the argument took place during the meeting?", she said, "Yes", and your answer was, "Yes, after the meeting he called him, but in fact the argument had started for a long time ago." Then Justice Sebutinde asked you to explain who "him" means and the question is then repeated by Ms Baly, "The question

was when you were referring to a heated argument I asked you whether the heated argument took place in the meeting that you've been giving evidence about?", and your answer was, "After that meeting, but there had been arguments even before the meeting. 15:21:35 Before this mission there had been an argument just at the time Sam Bockarie sent the message to all the stations. Right from that time SAJ Musa was not happy about it." Do you remember saying that?

A. Yes, I said that, that he was not happy. It was from there 15:21:54 that the arguments started.

Q. Then Ms Baly asked you this, "Now, the second issue that you said that was discussed at the meeting was SAJ Musa. What was it about SAJ Musa that was discussed at the meeting?", and then you listed the following matters, "Sam Bockarie told us that 15:22:21 the complaint had gone up to Mr Taylor that the man's complaints had been lodged about his disloyalty towards the mission and he too gave his own piece of advice just so that ...", and you explained who you meant by the "he", there. "Sam Bockarie lodged the complaint to Mr Taylor against SAJ Musa regarding his 15:22:48 attitude. He was disloyal to the command." You told us that all of this was discussed at that meeting.

Then you were asked the question, "At that meeting was there any other discussion about SAJ Musa apart from the fact that Sam Bockarie had made a complaint to Mr Taylor?", and your 15:23:12 answer was, "Yes, Mr Bockarie made us to understand that that man should not leave to tell the story ...", is what it's recorded as saying, and you are asked, "What man?", and you say, "SAJ Musa".

There is then a question, "SAJ Musa should not leave to tell the story. Continue from there", and then Justice Sebutinde

intervenes to say, "The record says 'leave', but it is actually 'live'", and Ms Baly confirms that the word that we all heard translated was "live". In other words, she then asks you, "What did you say?", and you said (I'm looking at page 9428, line 8), "He said we should go all out to ensure that that man should not live to tell the story." The Presiding Judge then confirmed with the interpreter that the word - that what you'd said was "live" and not "leave". In other words, you discussed the murder of Sam Bockarie at that meeting, didn't you?

15:24:43 PRESIDING JUDGE: It's SAJ Musa.

THE WITNESS: SAJ Musa. We did not discuss about --

MR MUNYARD: I am sorry.

PRESIDING JUDGE: Just for purposes of clarity put that short question again, please.

15:24:57 MR MUNYARD: Yes, I am sorry. I'm looking at the transcript and not the LiveNote:

Q. You discussed the murder of SAJ Musa at the meeting at Sam Bockarie's house in December 1998, didn't you?

A. Yes, sir.

15:25:29 Q. Not only that, but you discussed the circumstances in which he should be killed, didn't you?

A. Yes, sir.

Q. Your evidence on Friday, continuing where I left off --

A. Yes, sir. Was:

15:25:45 "He said we should only be able to get him when there was a mission, when there was an operation going on. He even made us to understand that that was something he'd been discussing with Gullit, that during any mission that man should not live, he should die because he was a traitor. He referred to him as a

traitor."

Do you remember telling us that?

A. Yes, sir.

Q. Question from Ms Baly, "Did Sam Bockarie say how SAJ Musa was to die?" Answer from you, "Well, in the military terms they say it should be during operations. You know, if they will mean arms. He should die during the battle. He should be shot."

Do you remember telling us that on Friday?

A. Yes, sir.

15:26:45 Q. And you went on to say that this had all been discussed with Gullit and that Gullit did not actually specify who should do the shooting, but that that was the plan. Now, that was a very important issue that was discussed at the meeting in December 1998, wasn't it: The murder of a very senior AFRC

15:27:30 figure?

A. It was one of the important ones. Everything that we discussed was important. That was one of the important ones. It was not the only important agenda item. It was one of the important things that we discussed.

15:27:50 Q. So why didn't you tell the Prosecutors that on 1 November last year when they were asking you the very open ended question, "Was there discussion of SAJ Musa at this meeting?", or when they asked you the more specific question, "Who killed SAJ Musa?"

A. Well, I'd like to know if when they asked that question if

15:28:28 I - when they asked me to say anything that I knew about SAJ Musa, I don't know whether that question was even asked to me. Did I say anything on that paper that you have? I don't think that question was asked of me, that they asked of me if I knew anything about SAJ Musa I should say it. If that was asked of me

- I don't think I ever was asked the question. Maybe you should watch your paper again.
Q. Mr Kanneh, I'm looking at the paper right now. The question that I've last asked you about, that was put to you in
15:29:01 November, "Who killed SAJ Musa?", you did give a reply to that.
A. Yes, sir.
Q. You asked me just now, "Did I say anything on that paper that you have?", and the answer is --
THE INTERPRETER: Your Honours, can the witness repeat
15:29:27 that.
PRESIDING JUDGE: Mr Witness, the interpreter did not hear you properly. Please repeat your answer and speak more slowly.
THE WITNESS: I said I heard the question that they asked me of who killed SAJ Musa. I gave them the response. I gave an
15:29:46 answer. It's not a lie.
MR MUNYARD:
Q. Well, the answer that you gave doesn't include anything about SAJ Musa being shot during an operation, does it?
A. But I believe that even Ms Baly asked - she said, "When SAJ
15:30:21 Musa died, what did they say?", and I said they said a bomb exploded and that was how SAJ Musa died. That was the information that came from the front line, that he had died from a bomb explosion, but that was the plan that was already in place before.
15:30:37 Q. I'm not asking you what Ms Baly asked. I'm asking you about the questions that you were asked in November of last year. Has anybody ever suggested to you that somebody took advantage of the explosion at the Benguema barracks to shoot SAJ Musa, in the head I think?

A. That question is confusing.
Q. All right, I'll ask it again. Have you ever heard, from any source, that around the time of the explosion at Benguema barracks somebody actually shot SAJ Musa and that was what led to
15:31:30 his death?
A. No.
Q. Now, the plan that you've told us about in your evidence was that during an operation, a military operation, someone was to shoot SAJ dead. That's right, isn't it?
15:31:55 A. It should be during a military operation that he should die and he died during a military operation.
PRESIDING JUDGE: Mr Witness, that is not quite the question that counsel asked.
MR MUNYARD: I'll come back to it, as it were, by my next
15:32:19 question.
PRESIDING JUDGE: Very well.
MR MUNYARD:
Q. "It should be during a military operation that he should die and he died during a military operation", and that was the
15:32:32 plan that you tell us was discussed at the meeting in December 1998, wasn't it?
A. Yes, sir.
Q. The very thing that happened: That something happened to SAJ Musa during a military operation that led to his death, yes?
15:32:56 A. Yes.
Q. The record of the interview says, "There was a big explosion and SAJ Musa was killed. This is what the witness was told. He wasn't there." Who was it who told you what happened to SAJ Musa?

A. Well, they sent a message to Sam Bockarie and all of us monitored it.
Q. Right, who is "they"?
A. Rambo. After he had got to Waterloo then he gave this
15:33:35 information. They were in Masiaka when they got the information, they sent it, because the incident happened in Waterloo, Benguema.
Q. Well, I note, Mr Kanneh, that the record of what you told the Prosecution is as follows, "There was a big explosion and SAJ
15:33:55 Musa was killed."
A. The big explosion killed SAJ Musa, according to the message that we got. You would plan something and something else happened and I was not there, but that was the plan.
Q. Right, I'm going to move on through the rest of that
15:34:49 account that you gave in November of last year. Over the page, 44312, please. The first question you're recorded as being asked on this page is, "At this meeting did Jungle or CO Lion say anything about Charles Taylor?" Now, can you remember being asked that question?
15:35:49 A. I can remember Jungle's.
Q. Mr Kanneh, why do you think the Prosecutors asked you about Jungle or CO Lion --
A. Maybe --
Q. Hang on. Why do you think they asked you a question about
15:36:13 Jungle or CO Lion saying anything about Charles Taylor if you had not told them that CO Lion was present at the meeting?
A. No, I did not mention CO Lion. I only mentioned Jungle. I cannot recall mentioning CO Lion.
Q. Well, you can't recall mentioning CO Lion is different

from, "I did not mention CO Lion." Which one is it that you want these judges to believe: That you didn't mention him, or that you don't recall mentioning him?

A. I did not mention CO Lion.

15:36:58 Q. So when the question was asked at this meeting, "Did Jungle or CO Lion say anything about Charles Taylor?", did you say to them, "Well, hang on a minute, CO Lion wasn't there"?

A. Explain that again, I did not get it clearly.

Q. When you were asked the question, and this is the question

15:37:27 coming, "At this meeting did Jungle or CO Lion say anything about Charles Taylor?", why didn't you say to them, "Well, CO Lion wasn't there, he couldn't have said anything about Charles Taylor"?

A. Well, if they had asked if CO Lion and Jungle were there

15:37:50 together and if I heard the question I would have said no, CO Lion was not there, but they only asked about Jungle.

Q. I see.

A. So I explained about Jungle, that he was there.

Q. So they only asked about Jungle?

15:38:04 A. Yes, sir.

Q. They didn't ask you about CO Lion?

A. No, sir. Yes, sir.

Q. And they've invented - I'll try that one more time before I move on to something else.

15:38:14 JUDGE SEBUTINDE: If you could avoid speaking over each other. The record is completely messed up and I don't even think a replay is going to help you in this regard.

MR MUNYARD: Your Honour, I think you're right and I'll move on in that case. We'll leave that subject:

Q. Can I just ask you about something else at the foot of that page, please, 44312. You were asked this question, "During the meeting was there discussion about getting manpower support from Liberia?" Do you remember that, that question?

15:39:22 A. Yes, sir.

Q. And the answer that you are recorded as giving is this, "Jungle and Morris Kallon and Lion suggested that." Did you say that?

A. Well, the two men whom you have mentioned, I spoke about

15:39:49 them, but I did not mention Lion.

Q. Yes. Morris Kallon is not one of the 16 names that you listed earlier on, that we looked at on page 44310, when you answered the question, "Who was there?" So that would make 17 names if indeed you did say those first 16, wouldn't it?

15:40:37 A. Who is the 17th?

Q. Morris Kallon who has just appeared in this answer.

A. No, no. Even among that 12 people there is Morris Kallon's name and even the 16th name that you mentioned, there was Morris Kallon's name, and the 12 men that I called, Morris Kallon's name

15:41:05 is among them.

Q. The rest of the answer is as follows, "SB ...", that's Sam Bockarie, "... rejected this because of past problems when the NPFL came." Did you say that?

A. That he did not agree that a force would come from NPFL,

15:41:30 yes, I said that.

Q. Your answer is recorded on the LiveNote as, "That he did agree that the force would come from NPFL, yes, I said that". In fact the answer that's recorded here - here on the page of the interview notes - is that Sam Bockarie rejected the suggestion of

manpower support from Liberia. "Sam Bockarie rejected this because of past problems when the NPFL came."
A. Yes, sir, I said that.
Q. That is what you said?
15:42:17 A. Yes, sir. Yes, sir.
Q. And then it goes on to read, "SB ...", Sam Bockarie, "... was okay with ULIMO-K assistance."
A. He said he preferred ULIMO-K. He said he preferred them to the NPFL. That was what I mentioned.
15:42:44 Q. And were ULIMO-K still in existence in December of 1998?
A. No, at that time ULIMO-K was no longer in existence, but their members were still around.
Q. All right. So Sam Bockarie was basically saying that he did not want manpower support from Liberia, is that right?
15:43:36 A. From NPFL, yes, it's correct.
Q. And for NPFL in 1998 do you mean the Armed Forces of Liberia?
A. Yes, sir. Yes, sir. The Armed Forces of Liberia, Mr Taylor's troops.
15:44:05 Q. Thank you. So, Bockarie rejected the idea of support from Mr Taylor's troops?
A. Yes, sir.
Q. Over the page, please, 44313. Do you have that page there?
A. Yes, sir.
15:44:50 Q. "Resume interview - 1430", that's 2.30 in the afternoon. "Further to night time meeting at SB's house", and then some more questions were asked and the first is, "Was there any discussion about civilians?" Your answer was, "No discussion about civilians". Were you asked that question and did you give that

answer?
A. Yes, sir.
Q. Now, I want to ask you a little more about the ending of the meeting. You said to us, when you were telling us about this
15:46:02 earlier in your evidence, that you heard Sam Bockarie and Jungle speak to Mr Taylor on the satellite phone. How did you know it was Mr Taylor?
A. Well, before the discussion Mr Bockarie already told us that he was trying to call Mr Taylor.
15:46:52 Q. Before the discussion?
A. Before he called, sorry, he told us that.
Q. Well, you've never said that before. I'll tell you what you said earlier, "They told us they were talking to Mr Taylor. We were not hearing the other side. They said they were talking
15:47:18 to Mr Taylor"?
A. But that is the same question you have just asked me that I have answered. I believe it's the same.
Q. If they were talking to Mr Taylor, why would they need to tell you?
15:47:44 A. Well, we were in a meeting and before he called he told us that he was now trying to call Mr Taylor. We were in the meeting, I was part of the meeting, and he was supposed to tell us.
Q. And by what name did they call Mr Taylor? How did they
15:48:08 address him?
A. They called him Mr Taylor, or Ghankay Taylor.
Q. Well, just give us an example of when they would refer to him as Ghankay Taylor. Just tell us what you heard them say.
A. The time they called him Ghankay Taylor? It was many times

since the RUF started they would call him Ghankay Taylor, they would call him Mr Taylor, Charles Taylor. That happened many times.

Q. When they are actually speaking to him, you mean?

15:48:56 MS BALY: I object to that question. This witness has never said he was present when they were speaking to Mr Taylor.

PRESIDING JUDGE: Isn't there a reference to a phone call?

MR MUNYARD: That's what I'm talking about.

PRESIDING JUDGE: Yes, that he was present then.

15:49:16 MS BALY: He was during the phone call, yes, but that should be made clear rather than present for another conversation.

PRESIDING JUDGE: Well if there's any doubt, Mr Munyard, please --

15:49:29 MR MUNYARD: Well looking at the LiveNote, if I can pause it for a second --

JUDGE SEBUTINDE: We've been following the evidence regarding this one meeting and I understand this question to relate to that meeting and everything around that meeting and

15:49:42 that phone call on the satellite phone.

MR MUNYARD: Yes. Your Honour, if I can just illustrate that very briefly, I asked and this is page 127 last line, 25, "If they were talking to Mr Taylor, why would they need to tell you?" Answer, "Well, we were in a meeting and before he called

15:50:06 he told us that he was now trying to call Mr Taylor". I then go on to ask, "And by what name did they call Mr Taylor? How did they address him?" "They called him Mr Taylor, or Ghankay Taylor", and I then asked for examples of how they would actually use the name Ghankay Taylor.

So just for my learned friend's benefit, I was only asking about the conversation that he claims to have overheard on a satellite telephone with 12 other people on a veranda at 2 in the morning.

15:50:38 PRESIDING JUDGE: That's clear now, so please put your question.

MR MUNYARD: Yes:

Q. I want to ask you now a series of questions about different matters.

15:51:01 A. Yes, sir.

Q. Before I do there's one other matter relating to SAJ Musa that I want to ask you about and it is in tab 7, I think. Yes, it's in tab 7. This is the last time that you were interviewed by the Prosecutors here in The Hague and I'm looking at paragraph 15:51:52 3 of the proofing session on 23 April this year. Now, do you see there - well, sorry, I'll read it out to you, "SAJ Musa then left and went as far as Waterloo and he was trying to enter Freetown." Did you tell them that?

A. Yes, sir.

15:52:20 Q. "SB instructed IS ...", that's Sam Bockarie instructed Issa Sesay, "... to descend upon Masiaka and told them to keep the defensive ..." Did you tell them that?

A. Yes, sir.

Q. "... but SAJ Musa had gone on ahead and there was another 15:52:42 conflict between Musa and Bockarie." Did you tell them that?

A. Yes, sir.

Q. "He announced that he would take Freetown and that he would become president." Did you tell them that?

A. Yes, sir.

I N D E X

WITNESSES FOR THE PROSECUTION:

KARMOH KANNEH 9619

CROSS-EXAMINATION BY MR MUNYARD 9619

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

WEDNESDAY, 14 MAY 2008
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr William Romans Ms Sidney Thompson Ms Carolyn Buff
For the Registry:	Ms Rosette Muzigo-Morrison Ms Rachel Irura
For the Prosecution:	Mr Stephen Rapp Ms Brenda J Hollis Mr Christopher Santora Ms Julia Baly Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Mr Terry Munyard Mr Morris Anyah Ms Logan Hambrick

deal more about it on Friday. Did you tell the Prosecution more when you were first being interviewed, all this detail you gave us on Friday, when you were being interviewed about it in November?

09:52:39 A. Well, if I made any addition maybe they asked me this time about the death of BS more than that time, because even you, you had stopped elsewhere. And even when you give your statement now and later you will be asked why did this not happen so you will have to add or maybe deduct. It depends on the questions that

09:53:03 will be asked of you.

Q. Is what I have read out to you from that page all that you told them back in November about BS Massaquoi's killing or did you tell them more that hasn't been recorded?

A. The one that you've read is what I told them at that time,

09:53:33 the one that is on the document. Only that where there is some problem is where it states that Kpaka and that other man's escape was aided by that man, that was the contributing factor, I said no.

Q. I want to move on to something else, please. Again this is

09:54:01 the meeting in December 1998 at Sam Bockarie's house. You gave us evidence, again I think it was last Friday, about the Operation Free the Leader and you told us last week when you were giving this evidence that, "Sam Bockarie told us that this plan", that's in connection with free the leader, "Was designed in

09:54:37 Monrovia with Mr Taylor." Do you remember saying that?

A. Yes, sir.

Q. Did you tell the Prosecutors that when you were giving them a lot of detail about that meeting in the course of the interview in November?

A. Yes, sir.

Q. Well, let's look at the account that has been recorded. Page 44284, still on tab 3. Now we looked at some of this yesterday and I am not going to go into great detail, I am just going to go through the topics with you because they are set out in numbered paragraphs. I will summarise what is said in each paragraph, Mr Kanneh, and if I am not summarising accurately in the view of the Prosecution then I invite the Prosecution to tell me to add more of what is written down there.

09:56:17 Paragraph 48, this is the first note of what you were telling them. We went through yesterday that's the names of all the people who were at the meeting and you disputed yesterday that you had ever mentioned some of these being there.

Paragraph 49: "The witness states that Sam Bockarie had
09:56:42 arrived back from Burkina Faso with arms, ammunitions and uniforms."

Paragraph 50: "The witness states there was a discussion of a major offensive known as Operation Free the Leader. The first targets were to be Kono and Makeni, to be followed by
09:57:06 Segbwema and Daru. The final target was to be Freetown. The purpose of the assault on Freetown was twofold: To take power in Freetown and free the leader."

Paragraph 51: "There was discussion of a two flank entry into Freetown. There was to be a future meeting between Issa and
09:57:29 the other front line commanders to discuss this plan."

Paragraph 52: "The witness stated that Jungle advised them that Taylor instructed that there could be no success without money. That was why they were to hit the main mining areas first."

Paragraph 53 we read yesterday. This was where some of the people present suggested getting additional manpower from Liberia, but Sam Bockarie rejected that suggestion due to past problems that had occurred when many NPFL members came into
09:58:11 Sierra Leone, but Bockarie preferred ULIMO-K assistance.

Paragraph 54: "Pademba Road was to be the first target of the offensive on Freetown."

Paragraph 55: "The plan was to execute Kabbah and Foday Sankoh would become president."

09:58:34 Then the final record of what you told the Prosecutors in November about that meeting is:

"The witness stated that after this meeting Jungle spoke with Charles Taylor about this mission. The witness stated he heard this conversation take place on Sam Bockarie's satellite
09:58:55 phone."

Then there is a reference to Charles Taylor taking satellite calls directly. That's all you told the Prosecutors when you were going into detail about this in November, Mr Kanneh. No reference in there to the fact that this plan was
09:59:16 designed in Monrovia with Mr Taylor. If that's the truth, the evidence you gave last Friday, why didn't you tell the Prosecutors that important fact when they were interviewing you last November?

A. Well, the story is on this document that Mr Taylor was
09:59:42 involved in that mission. Just come where Jungle said the Pa had said nothing would go on without money, so we should hit the mining area. So that alone proves that the Pa was involved, that Charles Taylor was involved. And thinking about what Jungle said and he was the representative of the Pa.

Q. Let's look at handwritten note of that. It is on page 44312, same bundle. In fact, we looked at this yesterday as well, the first line of it:

"Q. At this meeting did Jungle or CO Lion say anything about CT?" Charles Taylor presumably.

"A. Jungle said that CT said that there would be no success without money. That is why we were to hit the main mining areas first."

Nothing in there about Jungle saying that CT had designed this whole plan, it was all his idea, is there, Mr Kanneh?

A. There is something. If somebody said you should hit the main important mining area, what do you understand about that word, that expression? If somebody says hit this and this mining area, an important mining area, that expression and plan, what do you think are the differences if there is a mission to go on and somebody advises that you should do this? What do you think is different from plan?

Q. Back to paragraph 51 on page 44284: "There was to be a future meeting between Issa and the other front line commanders to discuss this plan", the two flank entry into Freetown. Did that future meeting ever occur?

A. Well, at that time they had gone to Kono. They gave the instruction in Buedu, Kailahun District. So after giving out the instruction and when you go near the target you will have to tell the commanders. So I cannot tell you whether the meeting was held, but the mission went on and it worked. So I believe that the plan went on.

Q. So this future meeting never did occur. Is that what you're telling us?

PRESIDING JUDGE: That is not quite what he said, Mr Munyard. He said he didn't know. He said, "I cannot tell."

MR MUNYARD: Well, I will leave it at that:

Q. Moving on to something else, are you someone who is in the habit of reading or having read to you United Nations Security Council resolutions? Tell me if there is anything in that question that you don't understand?

A. I don't understand the whole question.

Q. Right. Have you ever heard of any United Nations - well, have you ever heard of the United Nations Security Council?

A. No.

Q. Have you heard of the United Nations?

A. Yes, sir.

Q. When did you first hear about the existence of the Special Court for Sierra Leone?

A. I heard it from about 2000.

Q. What did you hear from about 2000?

A. They said there was going to be a Special Court for Sierra Leone.

Q. Who is "they" who said this?

A. Well, I cannot get the particular person's name now, but I think it was on the radio, over the news.

Q. Yes, the BBC again presumably.

A. Well, it could be VOA, or BBC, or any other station that I cannot recall now, or FM.

Q. So you were in the habit of listening to these radio programmes, were you?

A. Yes, at that time if I met the news on, yes.

Q. What is COA?

I N D E X

WITNESSES FOR THE PROSECUTION:

KARMOH KANNEH	9745
CROSS-EXAMINATION BY MR MUNYARD	9745
RE-EXAMINATION BY MS BALY	9776
MOSES ZEH BLAH	9784
EXAMINATION-IN-CHIEF BY MR RAPP	9784

EXHIBITS:

Exhibit P-114 admitted	9781
Exhibit P-115A and P-115B admitted	9781



Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

WEDNESDAY, 21 MAY 2008
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr William Romans Ms Sidney Thompson Ms Carolyn Buff
For the Registry:	Ms Rachel Irura
For the Prosecution:	Mr Stephen Rapp Ms Brenda J Hollis Mr Nicholas Koumjian Mr Christopher Santora Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Mr Terry Munyard Ms Sanela Trzin

Q. Where did the delegation go to?
A. They used the road through Kenema and Kailahun District from Freetown and they crossed into Liberia.
Q. Do you know where in Liberia they went?
13:17:33 A. Yes, they went to Monrovia, the city. At that time I don't know whether it was at the house or the office of Mr Ghankay Taylor. That was where they met.
Q. Okay. So now you discussed the initial call to Charles Taylor after the seizure of power followed by calls to
13:18:02 other leaders of other countries. Then you've discussed this phone call that Johnny Paul Koroma spoke about prior to sending a delegation to Liberia and you've discussed the Iranian embassy phone call. Are you aware whether there were other communications between Johnny Paul Koroma and Charles Taylor
13:18:22 during the period that the AFRC was in Freetown?
A. Yes, the calls were many, but the other one that I can recall was pertaining to the arms shipment, that a delegation was supposed to go again headed by Mike Lamin and Sam Bockarie recommended one General Ibrahim in a meeting for arms and
13:18:53 ammunition, that he would be able to go and facilitate it. General Ibrahim came, but he did not come to the supreme meeting after he had been recommended. Then --
THE INTERPRETER: Your Honours, can the witness repeat this.
13:19:15 PRESIDING JUDGE: Mr Witness, the interpreter asks that you repeat. Take up your answer from the bit where you said, "General Ibrahim came but he did not come to the supreme meeting after he had been recommended." Continue from there, please.
THE WITNESS: After General Ibrahim had been recommended

that he will facilitate the arms and ammunition movement, in the evening we came to the lodge and met General Ibrahim. He had come two days after. We met him at the lodge to chairman. That was where I saw him and that was where I knew him.

13:20:05 MR KOUMJIAN:

Q. Was that the first time that you had seen this General Ibrahim?

A. Yes.

Q. Do you know what his nationality is?

13:20:20 A. At that time I did not know his nationality.

Q. Did you hear, or do you recall any second name, or was it just General Ibrahim that you know?

A. I only knew General Ibrahim. That was the name I knew for him.

13:20:38 Q. When you say you don't know his nationality, could he have been a Sierra Leonean? Do you know whether or not he was from Sierra Leone?

A. No, the way he spoke he had some Liberian English accent and he spoke some French too.

13:21:11 Q. After this delegation came did the delegation ever come to the Supreme Council? Or General Ibrahim, did he ever come to the Supreme Council meeting?

A. No.

Q. When you say a delegation was being sent, do you know again

13:21:27 where were they sent exactly?

A. The delegation that went to Liberia, from Liberia they went to other countries, Niger, Libya and Burkina Faso. That was the delegation headed by SYB Rogers, not the one headed by Mike Lamin. It was the delegation headed by SYB Rogers. From Liberia

they went to some other countries.

Q. Thank you for that clarification and I'm sorry if I'm confusing these two with my questions. I now want to ask you about the delegation where you mentioned Mike Lamin. Do you know where that delegation - if it was sent anywhere and where it went?

A. Well, the delegation that went, there was Fonti Kanu, Mike Lamin, General Ibrahim, but after that we went to Magburaka airstrip and the ammunition arrived with a soldier who had a uniform on in green with a black hat and the crown on the hat was a Burkina Faso crown. That was the insignia. And Lieutenant Colonel Fonti Kanu came and the ammunitions were off-loaded and a soldier also called Musa --

JUDGE SEBUTINDE: Mr Koumjian, you asked the witness if he knows where this delegation went. He has not answered that question. He is answering something else.

MR KOUMJIAN: Yes, thank you:

Q. Sir, you are getting a bit ahead of where I am and I want to take it slowly step by step, understand? We will go over the information you just provided, but first this delegation that you mentioned of Fonti Kanu, Mike Lamin and General Ibrahim. I want to ask you some questions about it. First of all, who was Fonti Kanu? The spelling I don't know if we need as I believe we have had it before.

A. Fonti Kanu was a lieutenant colonel in the Sierra Leone Army. I said that they went to Liberia with that delegation headed by Mike Lamin. They went to Freetown, Kenema, Kailahun and crossed into Liberia by road.

Q. Thank you. Can you explain to us that, when you discuss

sending this delegation at the Supreme Council you mentioned, what was the purpose of the delegation's trip, do you know?

A. Well that particular delegation, which was headed by Mike Lamin, that went to Liberia was to go and obtain some arms and ammunition. That was why Chairman Johnny Paul Koroma assigned Fonti Kanu to go and tell them the kinds of ammunition we needed at that time.

Q. Thank you. Was there any discussion of how the arms and ammunition would be paid for, or obtained?

13:24:52 A. Well he just discussed in the meeting that they will give a parcel, but they did not discuss what parcel it would be in that meeting.

Q. The word "parcel", does that have a meaning to you? When you say "parcel", what does it mean?

13:25:15 A. Well, it has a meaning. At that time we hadn't money, we only had diamonds, so I believe that that was what they meant by parcel. That we meant, that Johnny Paul Koroma meant.

Q. Now, you have indicated that this was - am I correct that this was discussed at a Supreme Council meeting, is that right?

13:25:39 A. Yes.

Q. How long after that meeting did the delegation go, if you know? Go to Liberia?

A. The delegation left - between 48 and 78 hours they left for Liberia.

13:26:02 Q. Do you know if any arms or ammunition ever arrived?

A. Yes.

Q. How long after the delegation left did the arms and ammunition arrive, if you recall?

A. Between one to two weeks the arms and ammunition arrived.

Q. How did the arms and ammunition come to Sierra Leone?
A. They came on a flight, silver coloured, and it landed at night around between 7 and 9. It was dark already. We used our vehicles and we parked them far away from the flight so that they
13:26:57 could provide light. The arms and ammunitions were dropped. At that time Lieutenant Colonel Fonti Kanu and a soldier who had on the Burkinabe uniform and crown came down the flight.
Q. Where was it that the plane landed?
A. Magburaka airstrip.
13:27:22 Q. Do you recall approximately when this was that the plane came to the Magburaka airstrip?
A. It was very fast.
Q. But can you give an approximate month of when this was?
A. I can't recall the exact month now, because it has taken a
13:27:49 while.
Q. Do you recall the Conakry Accord?
A. Yes.
Q. Was it before or after the Conakry Accord?
A. It was before the Conakry Accord.
13:28:11 Q. Do you recall if it was - how long approximately before the Conakry Accord this plane landed?
A. I think it was within a month before the Conakry Accord.
Q. Thank you. Were you present when the plane landed?
A. Yes.
13:28:37 Q. Can you briefly give us - I don't know if we have time, your Honours? Is this the time to break?
PRESIDING JUDGE: It is very close to the time for the usual lunchtime adjournment, Mr Koumjian.
MR KOUMJIAN: Yes, okay, thank you.

THE WITNESS: If it's painful, I will stand up.

PRESIDING JUDGE: Very well. Please let us know and we will facilitate that.

THE WITNESS: Okay.

15:23:30 MR KOUMJIAN:

Q. Mr Witness, if you need to stand up just pull the microphone closer to you and speak into the microphone. Sir, going back to the plane that landed, did you see any individuals getting off the plane?

15:23:47 A. Yes.

Q. Who got off the plane?

A. Fonti Kanu and one Musa, whom I later came to know at the lodge of Johnny Paul Koroma. He was in the military uniform.

Q. What else came off of the plane? Was anything unloaded

15:24:08 from the plane?

A. Yes. Arms and ammunition, large quantity.

Q. Can you recollect any types of arms or ammunition that you remember seeing taken from that plane at Magburaka?

A. Yes, yes: RPG bombs, stinger missiles, AK rounds, G3

15:24:46 rounds, mortar bombs and the stinger missile bombs.

Q. Were there any weapons?

A. No, I did not see weapons.

Q. What happened to what you remember coming off the plane?

A. The arms and ammunition were all in something like a net,

15:25:28 so they dropped it and the plane took off. Musa, Lieutenant Colonel Fonti came down --

THE INTERPRETER: Your Honours, can the witness repeat this?

PRESIDING JUDGE: Mr Witness, the interpreter needs you to

repeat your answer. Please start where you said, "It was in something like a net, so they dropped it and the plane took off." Please continue from there.

THE WITNESS: The net contained all of the ammunition.

15:26:03 PRESIDING JUDGE: I think I heard you say something about Musa and Colonel Fonti. Could you repeat that also?

THE WITNESS: Yes, Lieutenant Colonel Fonti Kanu came down and Musa; he hadn't any rank on him but he had a uniform and a crown from Burkina Faso.

15:26:25 MR KOUMJIAN:

Q. Okay, sir, to clarify a few things, you said Stingers. Can you tell the judges what a Stinger is?

A. The Stinger missile was what we were supposed to use for the jet, which this Musa from Burkina Faso had come to train some

15:26:47 of the security officers at Johnny Paul's place, that you put on your shoulder to shoot at the jet, so that we would be able to drop the jet, but unfortunately when he came the bombs were not functioning.

Q. Okay, first, Mr Witness, thank you, try to speak a little

15:27:12 bit slower because it's difficult for the interpreters sometimes to keep up with you. The Stinger missiles that were fired from the shoulder, do you know how they were supposed to find the jet? What they used to find the jet?

A. Yes, because during the training we too were there at the

15:27:33 lodge. You put it on your shoulder, then there is the trigger in front, you put it on your shoulder, then you aim at the jet. While the jet would be - while the jet would have passed then you are supposed to shoot from the back, then it would trace the jet. The heat that follows the jet is what the Stinger would trace to

meet the jet and put it down.

Q. Sir, you said this ammunition came in a net, or these arms and ammunition you said. How did that get off the plane? Was there a stairway on the side of the plane? How was the plane unloaded?

15:28:24

A. From the back. It opened from the back and everything came out and Lieutenant Colonel Fonti and Musa, all of them came out of the plane running from the back.

Q. Now, you said you learned about these Stingers, I believe you said at JPK's house, correct me if I'm wrong. Who was teaching you about the Stingers?

15:28:44

A. No, I didn't - I was not taught, but the security men for Johnny Paul Koroma, the chairman, some of his guys, his security men were taught. We stood by looking as to how things were happening.

15:29:06

Q. Who was doing the instruction on the use of a Stinger?

A. It was Musa.

Q. The Musa that you said came off the plane?

A. Yes, exactly.

15:29:22

Q. After the ammunition came down on the ground in the net, what happened to it, the arms and ammunition?

A. Well, after the plane had left, we rushed. Everybody took some and placed them in the vehicles fast, in order for us to leave quickly, to depart the airfield quickly.

15:29:47

Q. If you can just clarify one thing. You said that it was arms and ammunition and you've discussed a number of different types of rounds and Stinger projectiles. What are the arms that you're talking about as opposed to ammunition? What arms or guns did you see?

PRESIDING JUDGE: I didn't hear guns.

MR KOUMJIAN: He didn't use the word "guns", he used the word 'arms'.

PRESIDING JUDGE: I'm referring to your sentence, Mr Koumjian, and I didn't hear the witness use the word "guns".

THE WITNESS: Well, anti-aircraft rounds, AKs, G3s, mortar bombs, RPG bombs, Stinger bombs and the Stinger missiles, but no arms came. But in common we used to call them arms and ammunition.

15:30:41 MR KOUMJIAN:

Q. Okay, thank you. Now, sir, you've talked about being sent to Kono and you said only for a short time because of the intervention. Can you now tell us what happened with what you called the intervention, from your point of view where you were

15:31:09 at? Sorry, excuse me. Your Honour, may I strike that question because I've failed to follow through on something on Magburaka. I've been meaning to you, sir, where did you actually take the ammunition that was unloaded from the plane? Where did it go?

A. We drove down to Freetown and straight to the chairman

15:31:40 Johnny Paul Koroma's residence at Spur Road.

Q. And then what happened to the ammunition?

A. We brought everything and afterwards it was distributed to each and every one of us, including the RUF high commands.

Q. Okay, thank you. Now going on to the intervention. Where

15:32:04 were you when you first heard of the events that you've called the intervention?

A. Well, I was in Kono around the start of February. I cannot remember the right date. Then the handset that I had was not functioning, it can't get to Freetown at the time. So we got a

Exhibit P-127 admitted	10400
Exhibit P-128 admitted	10400
Exhibit P-129 admitted	10400
Exhibit P-130 admitted	10401
Exhibit D-33A admitted	10403
Exhibit D-33B admitted	10403
Exhibit D-33C admitted	10403
Exhibit D-33D admitted	10403
Exhibit D-34 admitted	10403
Exhibit D-35 admitted	10404
Exhibit D-36 admitted	10404
Exhibit D-37 admitted	10404
Exhibit D-38 admitted	10404
Exhibit D-39 admitted	10404
Exhibit D-40 admitted	10405
Exhibit D-41 admitted	10405
Exhibit D-42 admitted	10405
Exhibit D-43 admitted	10405
Exhibit D-44 admitted	10405
Exhibit P-45 admitted	10405
Exhibit D-46 admitted	10407
Exhibit D-47 admitted	10409
Exhibit D-48 admitted	10409
Exhibit D-49 admitted	10409

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

MONDAY, 2 JUNE 2008
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr Simon Meisenberg
For the Registry:	Ms Advera Kamuzora Ms Rachel Irura
For the Prosecution:	Mr Nicholas Koumjian Mr Christopher Santora Mr Alain Werner Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Terry Munyard Mr Morris Anyah

Q. Mr Kargbo, we are dealing with the second delegation. When the second delegation, who had gone you say to get arms and ammunition, came back, what did they tell you?
A. Well, when they came back they met us in Magburaka at that
13:21:57 time and they came on board a plane with the arms.
Q. How long after they had gone to Liberia did they return?
A. Within a week.
Q. So, they came back before the arms and ammunition came to Magburaka?
13:22:23 A. Some of them came on board the aeroplane.
Q. Who came on board the aeroplane?
A. I can recall Lieutenant Fonti Kanu and a guy who had on Burkina Faso military fatigue with head dress. They came down with the arms.
13:22:54 Q. Well the Burkina Faso man wasn't a member of the delegation that had gone from Freetown to Monrovia, was he?
A. He was not part of the delegation.
Q. No. I am asking you who went on the delegation and who came back on the plane and I also want to know who came back before
13:23:12 the plane?
A. SYB Rogers and others returned before the arrival of the aeroplane. Mike Lamin, Fonti Kanu and Musa were those who came on board the aeroplane.
Q. Right, so Mike Lamin doesn't come back until he lands with
13:23:36 that aeroplane with materials?
A. Yes.
Q. So put him on one side, when SYB Rogers comes back did he tell you what Mr Taylor had said?
A. By then he did not explain anything to the Supreme Council

Q. So everything on board was brought out in this net, yes?
A. Yes.
Q. And you actually saw that happen?
A. Everything was in a net, yes.
14:41:26 Q. Yes, you saw that happen, did you?
A. When the plane landed, yes, I saw it.
Q. You see Mike Lamin and two others get out of the plane and you see a net brought out of the plane. Who actually carried the net with all the materials out of the plane?
14:41:50 A. It was not carried by anybody. It was a large quantity. They opened the back and dropped everything, including the crews.
Q. Well when you say "including the crews", what do you mean?
A. I said the crews opened the back and they dropped the plane - sorry, they dropped the arms and ammunition that was in the
14:42:17 net. It was Mike Lamin and others who came down.
Q. And you're standing near the back of the plane to receive this, are you?
A. No, we were far off a little.
Q. Well, what was the point of you going there to get this
14:42:37 equipment with the likelihood of the ECOMOG jets overhead if you weren't right by the plane and ready to unload the equipment and go off with it? How close to the plane were you when this net of materials was emptied out of the back?
A. It happened very quickly. When the plane took off, we just
14:43:04 rushed and took everything and put them in our vehicles and took off.
Q. Right. And how many vehicles was this material put into?
A. I was unable to count the number of vehicles. I do not know the number.

I N D E X

WITNESSES FOR THE PROSECUTION:

SAMUEL KARGBO 10627

CROSS-EXAMINATION BY MR MUNYARD 10629

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

WEDNESDAY, 4 JUNE 2008
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr Simon Meisenberg Ms Doreen Kiggundu
For the Registry:	Ms Rachel Irura
For the Prosecution:	Ms Brenda J Hollis Mr Alain Werner Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Mr Morris Anyah

A. When I came, I went back to Koindu. I went back to my ground in Koindu where I was deployed.
Q. Now when you gave the letter to Jungle, did you say - because you said that Jungle said that he had spoken with Sam
16:22:00 Bockarie. Did Jungle say how he had communicated with Sam Bockarie?
A. Well, I want to believe they spoke through radio sets because just as I got there he told me that he was expecting me. He was not actually specific to say that it was I that he was
16:22:26 expecting, but he only told me he was expecting somebody because he had already spoken with Sam Bockarie. But I did not actually meet him talking over the radio set, or I did not even know what they discussed, but he told me he was expecting somebody.
Q. Mr Witness, when did you first meet Jungle?
16:22:49 A. That was my first time to meet him in person, but I had been seeing him before in the RUF territory. He had come there either once or twice in the RUF territory. But for me to meet with him, one on one to speak with him, was the time I took that letter to him in Foya Tenga.
16:23:12 Q. How did you know before that he had come before to the RUF territories?
A. Well, like mostly when Jungle entered the RUF territory he was not somebody that used - he did not enter in secret. Normally when he came to the RUF territory people will feel
16:23:45 relieved and they always feel that he is somebody who brings materials and they will say that he must have brought some materials. He was somebody who travelled frequently between the RUF and Charles Taylor. He was travelling between Charles Taylor and Sam Bockarie frequently. Everybody knew about that. We all

knew about it.

Q. Why were people feeling relieved when they saw Jungle in the RUF territories?

A. Because they will always feel that he must have brought some materials for us the RUF, because our major problem in the RUF was material, ammunition, arms and ammunition. That was our major problem in the RUF. So at any time we saw him, any time the RUF saw him, they will feel that he was coming directly from Charles Taylor because he was working directly with Charles Taylor. So at any time we saw him we will know that he must have brought some good information or materials for the RUF.

Q. When you said that Jungle was working directly with Charles Taylor, how did you know about that?

A. Well, just like I have said, my Lord, like in the RUF there were certain things that were open information, they were not hidden. Like the issue of Colonel Jungle was not a hidden issue and the securities close to Sam Bockarie would inform us at any time he entered. And even when there was pressure and when we got close to the securities they will explain to us. And even when that man would come with materials or any other thing that he brought, they will explain to us for us to grow our spirits so that we will be able to do our things. When we got the materials at any time we will be able to go and defend our grounds and we did not have any other means to get on to Charles Taylor.

Q. When you say that, "When that man would come with materials or any other thing he brought", who are you talking about, which man?

A. He, Colonel Jungle.

Q. When did he come with materials himself, Jungle, or any

I N D E X

WITNESSES FOR THE PROSECUTION:

TF1-577 10894

EXAMINATION-IN-CHIEF BY MR WERNER 10894

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

THURSDAY, 5 JUNE 2008
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr Simon Meisenberg Ms Doreen Kiggundu
For the Registry:	Ms Rachel Irura
For the Prosecution:	Ms Brenda J Hollis Mr Alain Werner Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Mr Terry Munyard Mr Morris Anyah

leave Guinea and they would change there. They would relieve the others who were there. Some would be coming and others would be going.

So when we had the reinforcement, when Colonel Harris and
10:57:07 others came with the manpower we bypassed them and set an ambush from where they were based on top of the hill to the riverside. So we suppressed them in an ambush. Each time they moved from the riverside to come to the hilltop we would allow them to pass through us. They were going to the riverside, they would fall
10:57:25 into our ambush, we would kill some of this them and run away.

That is what we did from June up to 24 December. Then they left the hillside, the hilltop, and came back down the riverside, but they did not cross over. They were deployed on the Sierra Leonean end under some mango trees. That was where they deployed
10:57:44 and up to now they are there. In fact that had become a problem between the Sierra Leonean government and the Guinean government because they are alleging that that was their place so they will never go across. So that's a diplomatic issue now. They are on that now for them to go over. Up to now as I am speaking they
10:58:00 are there.

Q. Thank you, Mr Witness. Now, Mr Witness, you told us about Rashid Sandy that you saw in this meeting in Buedu. Now when did you see Rashid Sandy again after that meeting?

A. Well, I saw Rashid Sandy in another meeting. I saw him in
10:58:33 two meetings. There was another meeting. When this pressure - as a result of this pressure, Sam Bockarie summoned a meeting of front line commanders, adjutants and clerks. We went there. Everybody explained the pressure that he was encountering on the front line. We went to this meeting and I met Rashid Sandy there

A. Chief of defence staff.
Q. And who was the chief of defence staff at the time of that meeting?
A. It was Sam Bockarie.
11:01:53 Q. And then you spoke about a GSO. What does GSO stand for?
A. GSO1. It was a unit that was for all combatants. He worked with the chief of defence staff. They made approvals of all deployment of soldiers, or approval for soldiers for promotion, or assignment. It was the GSO who prepared that,
11:02:27 signed and the CDS approved, or the GSO - the CDS sent instructions to him for him to make assignments for somebody, then he will do that, but those were not happening any longer. The adjutants and the clerks were promoting soldiers without the consent of those two personnel.
11:02:48 Q. Now, GSO1, was it known by another name at that time?
A. Yes, in fact we were not used to calling them GSO1. We were saying G1 in short. We called them G1 in short.
Q. Now, Mr Witness, I want to come back to the first meeting that you talked about and you said that Sam Bockarie summoned a
11:03:16 meeting for the front line commanders, the adjutant and the clerks. When did Sam Bockarie summon that meeting?
A. He called that meeting in Buedu in 1998. It was at that time that he called the meeting when we went and met him. So when everybody had explained his situation - in fact it was at
11:03:43 that time that he said that it looks like he himself should go, he himself should go and meet Charles Taylor to explain to him that that was the situation that was on the ground. By then that was - at that time we were approaching the end of 1998, October/November, around November, early November. It was at

that time. I can remember that time, because when he went it was not too long. He left CO Issa in charge as acting CDS. It was then that the 4th Battalion in Koindu, we received our promotions approved by CO Issa. At that time Sam Bockarie was not there.
11:04:25 He had gone to Liberia to meet Charles Taylor.
Q. Mr Witness, you said that, "At that time he said that it looks like he himself should go." Who said that?
A. Sam Bockarie himself, that he himself should go, after he had got all the situation reports from the various front lines,
11:05:00 like Koindu was serious, Kono issued there was an attempt on Kono, but they were unable to capture Kono because RUF had run out of ammunition. They were unable to get Kono and we still needed Kono. So he, Sam Bockarie, said he himself should go and meet Charles Taylor so that he would discuss with him to be able
11:05:21 to explain to him what the pressure was. It was at that time that Sam Bockarie went.
Q. And how do you know that Sam Bockarie in that meeting said that?
A. I was at the meeting. I myself was at that meeting when he
11:05:42 was saying that.
Q. Now, Mr Witness, you said that it was a front line commanders' meeting. Who else, if you can remember, was in the meeting?
A. Like there was one front line commander whom we called CO
11:06:06 Eagle. He was at that meeting. The 2nd Brigade commanders came, like Superman also came at that meeting. Hi-Rash too was at that meeting. Augustine Gbao was at that meeting. Front line commanders of the various areas also came at that meeting.
Q. Mr Witness, Eagle, who was Eagle?

A. Eagle was a junior commando. That was his nickname. He was a junior commando. He was a tall man. He was a front line commander.

Q. Now, you told us previously about another meeting, the
11:06:57 important meeting where there were Ibrahim and Jungle. Where was Eagle during that meeting?

A. Eagle too was at that meeting. I said it that so many commanders came, but I can't recall their names, but as I go along I can recall some of their names. But Eagle too was at
11:07:24 that meeting because he was an important man in the revolution.

Q. Thank you, Mr Witness. Now, you told us about another meeting which was chaired by Hi-Rash and which was to address the adjutant and clerks and then you said that there was a written document to the adjutant and clerks. How did you know about this
11:07:57 written document?

A. The written document - he prepared a memo, a written memo document, where he stated the rank and files. If somebody was in this position, this was the type of rank you should get. If you were this, this is the rank you should get. That was the type of
11:08:23 list he prepared and gave it to us, the adjutants, that this was what we should carry, that we should not promote anybody if that person had not attained that position. That is what I mean.

Q. And did you see that document yourself?

A. Yes, sir, he gave it to me. He gave me a copy.

11:08:45 Q. And who gave you a copy?

A. Hi-Rash gave me that copy. He came with another assistant. They came together at that meeting, when they summoned us to that meeting. We called him TTK. He too was an adjutant, but his name was Tamba T Karimu. We used to call him TTK for short.

in 1998. If any, which other meeting in Buedu can you remember?
A. Well, I can remember another meeting after Sam Bockarie had gone to Liberia and returned, around the time CO Issa gave us these promotions. At that time Sam Bockarie was not there, he had gone to Liberia. The time he showed me those diamonds, that he was going to the father to discuss with him relating to the situation about the Kono incident, to take Kono.

So when he returned at that time we were still in Koidu and when Sam Bockarie came he convened a general meeting at Waterworks, but I did not attend the meeting when I was in Koindu because at that time we were under some pressure from the enemies in Koindu, so I was not able to attend that meeting. But I went to Buedu the day after the meeting and I heard about the meeting and what the meeting was about. That's how I knew about it, what happened in Buedu, the meeting at Waterworks, Buedu.

Q. What year did that meeting take place, Mr Witness?
A. The meeting took place after we had this promotion, after my promotion, this November '98 promotion. That meeting, I think it took place in '99. Early '99, I think so, because it was after my promotion anyway, because at that time we were in Koindu when that meeting was convened.
Q. Now you said that you went there in Buedu and you said that you heard about the meeting. What did you hear about that meeting?
A. When I went - the day after the meeting when I went to Buedu, just as usual when I will go I will go to my wife that night and the following morning I went to the ground to CO Mosquito's place on his ground and I met his bodyguards Shabado with the others who were there, Ray. At that time Ray was in

Buedu. He too had come from Koindu and gone Buedu. When I went I met them there. They told me, "Abor, why didn't you come for the meeting?" I said, "You know that we had some problem there and I was part of the fighting." That was what I called problem. There was some pressure, those men wanted to advance and I said, "But we burnt down one of their war tanks from them, but we thought they would still attempt to advance on us so we were on a strong defensive, but we heard about the meeting so what was the meeting about?"

12:12:53 So Shabado, Ray and some other men explained to me that Master had come. They said he had come with ammo, a lot of ammo, and in fact he, Eddie Kanneh and others had come. One AFRC strong man who was called Eddie Kanneh, they said he came together with them. They said they went to Liberia to the father and the Pa - they crossed Liberia and they went to Burkina Faso and when they came from Burkina Faso they came back with a lot of ammunition and arms, and when they came back they were even drawing plans for --

THE INTERPRETER: Your Honours, can the witness slow down and repeat.

PRESIDING JUDGE: Mr Witness, you are going too fast again. You have speeded up. Please go back to where you said, "They came back with a lot of ammunition and arms and when they came back they were even drawing plans ..." Continue from there, speak slowly for the interpreter. Please proceed.

THE WITNESS: So Shabado and others told me that they had drawn a war plan in the meeting. A lot of people attended the meeting. They said almost all the front line commanders attended. He said, "You were the only people that we did not

see, but then we understand that you had some pressure on you." He said they had drawn a war plan to go and attack Kono and Segbwema, Bunumbu-Segbwema axis simultaneously and that they were arranging for those men to go their own ammunition. I said, "How about the meeting? Who were the people attending the meeting?" They told me that Colonel Jungle was present and in fact Eddie Kanneh and CO Mosquito were there, the two of them came from the mission, that's the trip that they made to Liberia and Burkina Faso. They said the two of them came back. They said Colonel Jungle was there, General Ibrahim himself was there and Abu Keita and some other Liberians. He said all of them were there. In fact he said Abu Keita was to be with us for the mission. They said they had come. He said --

MR WERNER:

Q. Just pause, Mr Witness. First you talk - once you spoke about the Master, that Master came. Who did you refer to when you said Master?

A. Sam Bockarie. I had said it once or twice here in this Court that we used to call Sam Bockarie Master, so any time I use Master I will be referring to Sam Bockarie. Then Father, we used to call Charles Taylor the Father. So at times - I am still used to calling him that way, that's why. So they said they had come and they had drawn the plan and there was a big offensive at hand in the 2nd and 1st Brigades. Then he said, "Maybe they will even have to call you for reinforcement."

PRESIDING JUDGE: Mr Werner, I think your witness has strayed far away from your question.

MR WERNER: Yes, thank you, your Honour:

Q. You mentioned Eddie Kanneh, you said he was an AFRC strong

man. What else, if anything, were you told about Eddie Kanneh at that time?

A. They said Eddie Kanneh and Sam Bockarie went to Liberia, right up to when they went to Burkina Faso and the two of them returned from Liberia into Sierra Leone, the two of them were in the meeting.

Q. Mr Witness, just try, if you can, to answer my question. What else about Eddie Kanneh himself? You said he was an AFRC strong man --

12:16:59 JUDGE SEBUTINDE: Mr Werner, the question you asked the witness was, "What did you hear about the meeting?" Now I personally am lost. All this evidence he is giving, is it a precursor to the meeting or is this something that happened in the meeting? There are like two big paragraphs, I don't know what they relate to. Certainly they don't appear to relate to the question you asked, "So what did you hear at this meeting?"

MR WERNER: Your Honour, the witness said that he was not at the meeting.

JUDGE SEBUTINDE: About the meeting.

MR WERNER: Yes, your Honour.

JUDGE SEBUTINDE: The answers he gives I do not think are related to what he heard about the meeting.

MR WERNER:

Q. So, Mr Witness, if you can set your mind to exactly what Shabado told you - Shabado and the other bodyguards told you about what happened in this meeting. Can you tell us just at that time when you went there what were you told about that meeting?

A. The bodyguards told me about the meeting, that Master and

others had come, Master and Eddie Kanneh - I meant Sam Bockarie, they had come from Liberia with a lot of ammunition. So they called up for a meeting and so all front line commanders and senior vanguards were there at the meeting. They welcomed them and they explained how they travelled, where they went and how they had come and even the materials that they brought. They explained that in the meeting.

12:18:26

Q. Just pause there, Mr Witness. Who explained that in the meeting, how they had travelled? Who explained that, according to what you were told?

12:18:41

A. It was Sam Bockarie who was giving the report about how their trip was, what they went to do and what they had brought. That's what he was telling me. He said but there were a lot of dignitaries present in a meeting, even SYB Rogers, the War Council chairman, was present. The front line commanders too were in attendance. Then the Liberian government representative. He said Colonel Jungle and General Ibrahim were in the meeting. All of them were in the meeting together with Abu Keita. They called the name of a man called Abu Keita. He too came from Liberia, this Abu Keita.

12:19:10

12:19:36

They said Sam Bockarie explained about how they travelled, what they brought, whatever transpired during the trip and SYB Rogers, the War Council chairman, thanked them in his address whilst he was addressing the meeting and some other senior officers also spoke, like Morris Kallon. CO Issa too spoke and thanked them and they drew a war plan, how they were to attack Kono and Bunumbu-Segbwema.

12:19:58

Q. Pause there. You said that you were told about what they had brought. What did you mean? What was discussed according to

what you were told? What was discussed in the meeting about anything being brought? Can you tell that again?

A. They brought arms and ammunition, RPG rocket, the bombs. They brought a lot of those for the missions that was consistent with the war plans that they had drawn for Kono and Kenema. Those are the materials. They said they brought a lot of them.

Q. Mr Witness, several times you said that they had drawn a war plan. What were you told about this war plan? How drew the war plan?

12:21:18 A. It was Sam Bockarie together with the other senior officers like Issa, Morris Kallon and others. They drew how the attack should go on, who should go to Kono and who should go to Kenema. They divided the officers and from that meeting everybody should go straight to his location where he had been assigned. You

12:21:45 should go with your materials and start your attack.

Q. Now you mentioned someone called Abu Keita. Who was Abu Keita?

A. Abu Keita was a Liberian fighter who came, whom they said came. They said he too was present at the meeting and they said

12:22:13 he, Abu Keita, was to be part of the mission to go and attack.

Q. Were you told anything about who had sent Abu Keita to Sierra Leone?

MR ANYAH: Objection.

PRESIDING JUDGE: Yes, Mr Anyah?

12:22:35 MR ANYAH: I am objecting to the leading in the question.

PRESIDING JUDGE: Yes, it is leading, Mr Werner. Rephrase it.

MR WERNER:

Q. Mr Witness, what, if anything, were you told about who had

sent Abu Keita to Sierra Leone?

PRESIDING JUDGE: It is exactly the same. It is leading. It implies somebody sent him. How do we know he didn't walk on his own.

12:23:00 MR WERNER:

Q. Mr Witness, what else were you told about Abu Keita, if anything?

A. Shabado and others told me that Abu Keita came together with Colonel Jungle and others, that he came for that fight. 12:23:17 That his axis was to go by Bunumbu-Segbwema end, 1st Brigade. That was his deployment area that he should go when he will go on the offensive, Abu Keita. He came together with Colonel Jungle and General Ibrahim according to Shabado and others. That was what they told me in Buedu.

12:23:40 Q. Now, Mr Witness, you said that those men had to go to their own ammunition, so you told us that Issa Sesay was in the meeting. If you know, where did Issa Sesay go after that meeting?

A. The 2nd Brigade was Issa Sesay's deployment. He should go 12:24:11 to the Kono end. They went to Kono, 2nd Brigade.

Q. And if you know, who else went to Kono to the 2nd Brigade?

A. Superman, he too was in Kono. All of them went there. PB Vandy - all of them went with the 2nd Brigade to attack Kono.

Q. Now, Mr Witness, if you know - you told us about several 12:24:55 meetings in Buedu. Who, if anyone, was in charge of taking the minutes of those meetings?

MR ANYAH: Objection. It is a compound question in the sense that counsel has to lay foundation as to each meeting and who was present and who took the minutes.

Q. Now, can you remember the date of the attack by the 2nd Brigade?
A. No.
Q. How long was it after the meeting you were told about by
12:35:01 Shabado that you did not attend at in Buedu?
A. It did not take long then they launched the attack, then the 2nd Brigade launched the attack. It did not take long.
Q. Now, Mr Witness, what if anything happened in the 1st Brigade after the 2nd Brigade successfully attacked Koidu?
12:35:34 A. Well, the 1st Brigade too we heard that they attacked Bunumbu Teachers College in the Kailahun District, Peje West. They captured it, they advanced and captured Segbwema. They captured there, they advanced and went to Komende Station and they captured it. They advanced. That is on the way to Kenema,
12:36:06 the route to Kenema. They went to Jumu Kafabu. Jumu Kafabu too attacked and captured. That too we heard.

MR WERNER: Now, your Honours, I believe that Segbwema is already in evidence.

PRESIDING JUDGE: Yes.

12:36:22 MR WERNER: Komende would be K-O-M-E-N-D-E:

Q. Mr Witness, can you help us with Jumu Kafabu?
A. J-U-M-U Jumu, Kafabu K-A-F-A-B-U. Kafabu.
Q. Now, Mr Witness, where were you yourself at the time the 1st Brigade attacked Segbwema, Komende and Jumu Kafabu?
12:37:01 A. I was still in Koindu. That was where I was.
Q. Now, again could you tell us in which district is Komende?
A. Komende is in the Kenema District.
Q. And what about Jumu Kafabu?
A. Jumu Kafabu too is in the Kenema District.

Q. Now what if anything - what else, if anything, were you told about this attack on these places by the 1st Brigade?
A. Well after they had reached Jumu Kafabu, when they attacked and captured it Sam Bockarie changed my assignment, I and Colonel
12:37:56 Harris. He moved us from Koindu and we went as reinforcement to join them for that mission to attack Kenema. It was at Jumu Kafabu that we met the 1st Brigade troops. That was where they were. We met them there. We passed through Bunumbu, Segbwema, Komende Station and then we went to Jumu Kafabu. That was where
12:38:20 we met them. We met - the entire town had been burnt down; the entire Jumu Kafabu. It was a fairly big town. They burnt the entire town, but it had a very big mosque. A very big mosque was there because it was a Muslim dominated area. It was only the mosque that was spared in the town. The entire town was burnt.
12:38:42 That was where we met them. From there we joined them and we attacked Kenema.
Q. When you said that they burnt the entire town except the mosque, who burnt Jumu Kafabu?
A. RUF 1st Brigade fighters.
12:39:02 Q. And at the time you were there who, if anyone, did you see in charge of that offensive for the 1st Brigade?
A. Well, that offensive I met CO Eagle there, this Abu Keita that I was talking about, in fact that was where I saw him, at Jumu Kafabu. That was where I saw him, that Abu Keita that we
12:39:33 were talking about, because we went together with Shabado and others. Shabado too went on that attack. All of us attacked Kenema. Eagle was there.
PRESIDING JUDGE: Mr Witness, pause. This is not answering the question put, Mr Werner.

MR WERNER: Yes:

Q. So I asked you who was in charge of that offensive. Do you know who, if anyone, was in charge, Mr Witness?

A. It was Sam Bockarie himself who was in charge of that Kenema offensive.

Q. But on the ground when you went to Jumu Kafabu who, if anyone, was in charge on the ground?

A. It was CO Eagle I met there as commander.

Q. Now what happened to you after that, Mr Witness?

A. All of us advanced together and attacked Kenema. We attacked Kenema twice, but we did not succeed in capturing Kenema. The attack failed. It was during this attack that we lost Shabado. It was then that Shabado died, during this attack, and some other few men.

So the troop withdrew and came to Jumu Kafabu and Komende Station. That was where we stayed. That was where we based. That was where the RUF 1st Brigade stayed and set a defensive.

Q. When you say that you tried to attack twice Kenema, are you talking about Kenema Town or Kenema District?

A. Kenema township, Kenema Town.

Q. Then you said that you went back to Komende and set a defensive there. So how long did you stay in Komende then?

A. When we withdrew and based in Jumu Kafabu and Komende, Sam Bockarie withdrew some manpower from us. It was Harris who stayed in charge of that area, that battalion. That same Colonel Harris with whom I went. He stayed in charge of the command. We were there until the first disarmament that took place in 2000, in the year 2000.

Q. Mr Witness, do you remember the month of July 1999?

I N D E X

WITNESSES FOR THE PROSECUTION:

TF1-577 11030

EXAMINATION-IN-CHIEF BY MR WERNER: 11030

CROSS-EXAMINATION BY MR ANYAH 11117



Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

TUESDAY, 10 JUNE 2008
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr Simon Meisenberg Ms Carolyn Buff
For the Registry:	Ms Rachel Irura
For the Prosecution:	Mr Nicholas Koumjian Mr Christopher Santora Ms Leigh Lawrie
For the accused Charles Ghankay Taylor:	Mr Terry Munyard Mr Morris Anyah

had done my shopping and I was moving around with Marzah, and it was the time that he came and when he came we made the trip to Burkina Faso.

Q. Okay, thank you. Mr Witness, you said "we made the trip to Burkina Faso", who did you travel to Burkina Faso with?

A. We were six in number: Myself, Sam Bockarie, Colonel Razak, Cisse Musa, Eddie Kanneh. We were six, including General Ibrahim, and that was the first time I knew him, General Ibrahim.

Q. What did you learn about General Ibrahim?

A. Well, I was made to understand that he was a Gambian by nationality, the way he spoke, and I was also made to understand that his boss was a personal friend of Foday Sankoh's and his boss was the one who accommodated Foday Sankoh in Ivory Coast. Those were some of the facts that I got from him and I experienced them and he also made me to understand that he was a man that had a wide range of experience in revolutions.

Q. What languages do you know that General Ibrahim spoke?

A. Well, I did not know whether he spoke any of the local languages in The Gambia, but he was somebody who spoke a very good French.

Q. What language did you speak to him in?

A. He also used to speak English. I used to manage to speak the Liberian English to him.

Q. You called him General Ibrahim. Did you learn what army he was a general in?

A. I only knew that it was in the Liberian army and even Colonel Marzah called him that way and even Pa Cisse Musa called him that way, General Ibrahim. So the same name they used to call him was what I also called him by, General Ibrahim.

Q. You've also mentioned Eddie Kanneh. Can you tell us what you know about the biography of Eddie Kanneh?

A. Eddie Kanneh was a man who was commissioned in the Sierra Leone Army as an intelligence officer that we referred to as MIB, 15:50:31 military intelligence, and he got his training in Cairo. He was a man who also spoke very good French and we were all in the same army until the time the AFRC took over and appointed him as resident minister of the Eastern Province. He was a friend of Sam Bockarie. He was a Mende by tribe.

15:51:10 Q. Thank you.

A. He was a Mende Mandingo.

Q. You've also mentioned a Colonel Razak and our spelling is slightly different than the pronunciation so I don't know if your Honours want me to spell it? Sir, what did you know about him?

15:51:37 A. Like I told the Court, he was an old struggler. He was one of the Special Forces who started the revolution. He was a man who used to limp. He limped a little bit and he had a problem with his right foot.

Q. Sir, how did you travel to Burkina Faso?

15:52:07 JUDGE SEBUTINDE: Mr Koumjian, before you move to Burkina Faso, the witness keeps referring to this word "revolution". He referred to it when he said Charles Taylor told him if he was loyal to the revolution and he's also referred to it when speaking of persons in Sierra Leone. I'm not sure I understand 15:52:28 what this term means, "revolution".

MR KOUMJIAN:

Q. Sir, did anyone - well first of all, Charles Taylor, did he in any way explain to you what he meant when he talked about the revolution?

A. No, sir.

JUDGE SEBUTINDE: Yes, but when the witness himself says so and so was a struggler in the revolution, what does the witness mean by the term "revolution"?

15:53:07 THE WITNESS: The revolution, what they were trying to say is that they were referring to the rebellious force, because through discussions I was made to understand that even Foday Sankoh was a member of the Special Forces and when President Charles Taylor launched his revolution he was also fighting

15:53:39 alongside him. It was when they had succeeded in Liberia that he was also giving support to establish a base in Foya, that was called Sokoto base, where some of the Special Forces were trained and who were later referred to as vanguard. Like I told you, the junior vanguards were referred to people like Womandia, Peter

15:54:17 Vandi, Francis Musa, Issa Sesay and Sam Bockarie, so that was what they referred to as revolution.

MR KOUMJIAN:

Q. Thank you. Sir, how did you travel to Burkina Faso?

A. It was by air. We took off from Roberts airfield. In the

15:55:02 morning hours Pa Cisse and I we slept in the same house, Sam Bockarie, Razak and Eddie Kanneh they also drove in their own vehicle and General Ibrahim was also driven in his own vehicle. We all met at the airport, because it was a special aircraft that was at the airport waiting and we did not go through any

15:55:57 protocols like going through immigrations, what or what not. We just came with the vehicles, we parked them closer to the track and we alighted from the vehicles. All of them alighted from their individual vehicles and we used the side steps of the aircraft and then we entered the flight, and on entering the door

closed, we rode on the runway and then the flight took off to Ouagadougou.

Q. Sir, did you ever see who was flying the plane?

A. Yes. When we got inside the aircraft, the aircraft did not just take off like that. I saw one of the pilots. He came to the back. He was a tall, white man. He had a beard, but it was not all over. He had a moustache and I was made to understand that he was a Russian. The way I managed to know that he was a Russian was through discussions that took place between him and his colleague, and I used to come across Russians and even in our army in Sierra Leone we had some amphibian tanks that Strasser bought from Russia. That was the reason why the ammo and tank division was opened in the army and they were the ones who used to train us. So, that was how I was able to identify him as a Russian. They were two. They were two in number. They were the only two people we met on board the train.

MR KOUMJIAN: Your Honour, for the record in describing the facial hair he gestured to his upper lip and to his chin area.

PRESIDING JUDGE: Have counsel for the Defence seen that?

MR MUNYARD: I didn't see it.

PRESIDING JUDGE: There is a bit of a screen.

MR MUNYARD: Well I can hardly see from here, but it will be different when I'm questioning.

PRESIDING JUDGE: Very well.

MR MUNYARD: I'm quite prepared to accept counsel opposite's description of it, even though I had my head down at the time.

PRESIDING JUDGE: The record will show [microphone not activated].

MR KOUMJIAN: I believe it was a moustache and goatee.

JUDGE SEBUTINDE: The witness used the word moustache, although it is misspelt.

THE WITNESS: Yes.

15:59:10 JUDGE SEBUTINDE: Yes, he used moustache.

JUDGE LUSSICK: Mr Koumjian, the witness said he was able to identify this person as a Russian and then he said, "They were two. They were two in number." Does he mean two Russians, or just two pilots?

15:59:28 MR KOUMJIAN:

Q. Sir, how many crew members did you see?

A. Both of them were the only crew on board the flight. There were no other people on board the flight. They were just two in number.

15:59:41 Q. You described one man as being tall with a moustache and a goatee. First of all, do you recall what colour hair this man had?

A. He had a golden coloured hair.

Q. And, sir, you said he was white. Was the other man a white

16:00:09 man, or an African man?

A. No, they were both white men. They were speaking to each other, the two of them. I think they were both the same people.

Q. Were they speaking English, or another language?

A. I am telling this Court that they were not speaking

16:00:42 English, and the reason why I knew that they were speaking Russian is I had said that Strasser bought amphibian tanks that we were using and the instructors who trained me as artillery officer were Russians so they were speaking Russian to each other.

Q. Sir, can you describe the airplane that you were on?
A. Yes, it had yellow, blue and red lines and at the tail it had something like - it had a logo that I will imagine it had something like a baseball logo at the tail of it. Although it
16:01:52 has taken a long time, but I can recall some of the things that I can use to identify it a little bit.
Q. Did the plane have seats for passengers, or did it not have seats for passengers?
A. It had seats for passengers. It had seats for passengers
16:02:26 and, even when we were now on board, we later ended up loading the ammunition boxes on the seats so that - and we fastened the belts over them. So after we had loaded on board the aircraft, some of the spaces - empty spaces - and some of the remaining seats were not loaded after the others had been loaded with the
16:03:13 ammunition boxes, so the remaining few seats, six in number, were not loaded at all. It was just on those seats that we sat.

MR KOUMJIAN: Okay. Your Honour, at this point I would like the witness to be shown some photographs. Perhaps the first one will be 21, already an exhibit in this case, 21A, 21B and 21D
16:03:53 if the Court Officer could bring those up.

PRESIDING JUDGE: Is that 21 in this bundle, or exhibit P-21?

MR KOUMJIAN: Exhibit P-21A, B and D.

PRESIDING JUDGE: Are they copied into this bundle, or not?

16:04:11 MR KOUMJIAN: They're not. I do have black and white photographs, but I think the screen will be a much better picture for your Honours to follow than the black and white copies I have. Starting with P-21B:

Q. Sir, do you recognise what's depicted? I see you're

I N D E X

WITNESSES FOR THE PROSECUTION:

TFI-539 11380

EXAMINATION-IN-CHIEF BY MR KOUMJIAN 11380

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

THURSDAY, 19 JUNE 2008
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr Simon Meisenberg Ms Doreen Kiggundu
For the Registry:	Ms Advera Nsiima Kamuzora Ms Rachel Irura
For the Prosecution:	Ms Brenda J Hollis Mr Christopher Santora Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Mr Morrris Anyah

Q. Who is Senegalese?
A. Well Senegalese when I knew him, at first when he went that evening that he arrived Bai Bureh told me that he was an STF and the STF whom I knew were the ULIMO fighters who were fighting
11:05:07 alongside the Sierra Leone Army in Sierra Leone. So, that was what Bai Bureh told me that Senegalese was STF. I surely knew him as a Liberian because he did not know how to speak Krio, he was speaking the Liberian English, and he said he was sent by Sam
11:05:55 Bockarie to come and join Superman with reinforcement, which was composed of 30 men, for them to go and attack - for them to launch the attack which Sam Bockarie had sent Superman to carry out, but when he got to Yomandu Superman was not there at the time. The next morning --
Q. I am sorry, before you go on --
11:06:20 PRESIDING JUDGE: Yes. Mr Santora, this is getting somewhat confused.
MR SANTORA: That is why I was --
PRESIDING JUDGE: Yes, "he joined the SLAs", "I told him we had arrived there." Did she tell Sam Bockarie, or Superman, or
11:06:39 who?
MR SANTORA: I am going to clarify that. I will clarify that portion first.
PRESIDING JUDGE: Yes, there is another series of "he"s thereafter.
11:06:48 MR SANTORA:
Q. Mrs Witness, I just have to ask you a few questions about some of the things you have just mentioned, okay? Now first of all you said, "Sam Bockarie had given him an order to move to Kurubonla." Who did Sam Bockarie give the order to?

A. To Superman.
Q. "... to go to Kurubonla where the SLAs, headed by SAJ Musa, where they were based. He said he should go and attack them." Who said - who do you mean when you said, "He said he should go"?
11:07:28 A. If I speak the Krio, I mean Sam Bockarie told Superman to go to Kurubonla and attack SAJ Musa's men.
Q. "And that very day I was on the set when he sent a message to enquire if Superman had left to go", who sent that message?
A. Sam Bockarie.
11:08:01 Q. And then, "Superman had left that very day. He went to Yomandu." Who left to Yomandu?
A. Superman left me at Superman's ground and went to Yomandu.
Q. Now, later on when you were saying - I asked you what happened when you got to Yomandu and you said:
11:08:34 "When I got to Yomandu, Superman was not there. He had already left for Kurubonla, but when I got to Yomandu I communicated with him that I and his other bodyguards have arrived in Yomandu." Who did you communicate with when you arrived at Yomandu?
11:08:51 A. Superman.
Q. And then, "When he went to Kurubonla, the instruction which Sam Bockarie had given him he did not carry out", who is the "he" you are referring to?
A. I am sure it was Sam Bockarie who instructed Superman to
11:09:22 carry out an operation in Kurubonla and Superman did not carry it out.
Q. And then you said, "He joined the SLAs." Who do you mean by "he" there?
A. I am still referring to Superman.

Q. "They moved from Kurubonla to Kabala", who is "they"?
A. Superman and his men and SAJ Musa and his men.
Q. Then you said, "When I got to Yomandu and told him we had arrived there", who did you tell you had arrived there?
11:10:08 A. I told Superman that I and his bodyguards whom he had requested for us to meet him had arrived in Yomandu.
Q. Now, later on you said you passed the night and the next morning - the next day, I am sorry, "In the evening, one Senegalese met us at Yomandu." You went on to say - when I asked
11:10:37 you who Senegalese was you said in your response, "He was speaking the Liberian English and he said he was sent by Sam Bockarie to come and join Superman with reinforcement." When you say, "He was speaking the Liberian English", who were you referring to?
11:11:02 A. You asked me - how you asked me who Senegalese is and I am talking about Senegalese.
Q. Did you yourself have a conversation with Senegalese?
A. I spoke with him.
Q. Can you just say what he told you in that conversation?
11:11:28 A. That is what I have just said. When I first got to Yomandu, when Senegalese got to Yomandu, Bai Bureh told me that Senegalese was an STF. Senegalese himself told me that he had come from Liberia and that it was Sam Bockarie who had sent him to join Superman.
11:11:59 Q. So do you believe Senegalese was an STF, or not?
PRESIDING JUDGE: Mr Anyah?
MR ANYAH: Objection. The witness said - I think she said Bai Bureh told her that Senegalese was STF. Counsel is asking her if she believed or not and I object to the form of the

question.

MR SANTORA: What is wrong with the form of the question?

PRESIDING JUDGE: She may have believed him, she may not have believed him. What is the nature of your objection?

11:12:39 MR ANYAH: She received the information from somebody and - well, I withdraw the objection.

PRESIDING JUDGE: At the end of the day whether she believed it or not doesn't go to the credibility of - sorry, does not go to whether he was an STF or not. What her belief is is

11:13:02 not relevant.

MR SANTORA:

Q. So, first you said you had a conversation with Short Bai Bureh and then you had a conversation with Senegalese. Do you believe he was STF, or not?

11:13:14 A. I did not believe that he was an STF.

Q. Why?

A. Because the STFs who joined the SLAs - I mean the AFRC and the RUF whom I saw and knew, they had taken a long time in Sierra Leone, they were speaking the Krio better, but Senegalese did not

11:13:54 speak a single Krio.

Q. Now, you said Senegalese himself told you that he had come from Liberia and that it was Sam Bockarie who had sent him to join Superman. Do you know where he came from in Liberia?

A. I did not know where he had come from in Liberia.

11:14:30 Q. And you said there was 30 men there as well. Who were these 30 men that you referred to?

A. The 30 men too were men who had arms and they were all Liberians. From what they spoke, the dialects they used, I did not know of in Sierra Leone.

Q. Did these men speak Krio, as far as you know?
A. No.
Q. Do you know where they came from?
A. I did not ask them individually, but their commander who
11:15:21 brought them, that is Senegalese, said they had come from
Liberia.
Q. Did you recognise the language they were speaking, or the
dialect?
A. I can still recall that there were some men among them who
11:15:53 were Kpelle, whom I saw and saw them talking with the STF, and
some of the Liberians who were still within the RUF who were
Kpelle I heard them talking the language.
Q. And do you know what language Senegalese spoke? Well, what
language did you speak with Senegalese in?
11:16:26 A. It was only Liberian English. I did not hear him speak any
particular language.
Q. Is there anything else you talked about in your
conversation with Senegalese?
A. I have already told you what Senegalese told me and it was
11:16:58 Senegalese and I in the group that we were, that is the signal
unit, which was composed of radio people or people dealing with
radio, that we went around with when we were leaving Yomandu to
go to Kurubonla.
Q. What happened after you met Senegalese in Yomandu?
11:17:41 A. We left Yomandu with Senegalese. I, Superman's bodyguards
and Short Bai Bureh's men who were in Yomandu whom he added on to
us, left Yomandu for Kurubonla. That was the next day, after
Senegalese and the others had arrived. The next day we left
Yomandu.

JUDGE SEBUTINDE: Mr Santora, I'm not sure, this message, who she was sending this message to. She keeps saying "them" and I'm not sure if it's the people in Freetown, or Sam Bockarie at the base in Buedu. I'm referring to page 76 from line 2 where 13:19:46 she says, "I switched on the set the first thing I did was to call Buedu", passed on an information to them and - okay, so it was Buedu that she was passing this information.

MR SANTORA: I will clarify it, your Honour:

Q. So when you arrived in Yams Farm you said the first thing 13:20:07 that you did was call the Buedu station and, "I passed on an information to them that we were now at Yams Farm." So who specifically did you send that information to?

A. When I called the Buedu station it was to Sam Bockarie that I sent the message.

13:20:31 Q. Now, later on you were describing a communication going to Sam Bockarie that "... the ECOMOG had dislodged the men who were in Freetown and that the State House had been recaptured from our men who were there." I want you to continue - well, first of all, can you just start again explaining this communication 13:20:57 relating to State House?

A. The communication that I'm talking about, whereby it was Gullit who sent a message to Sam Bockarie over the radio saying that the ECOMOG had pushed them out of State House and that fighting was going on in Freetown at that time. I monitored it 13:21:34 when he was sending that message to Sam Bockarie, and after he had sent the message to Sam Bockarie he first - Sam Bockarie first asked Gullit if Gullit and others still had the prisoners with them and he answered "Yes". And when he said that fighting was going on in Freetown, Sam Bockarie told him that if the men,

that is the ECOMOG, forced Gullit and others out of Freetown, they should burn the fucking place and that they should not spare anything. He said that verbally.

Q. And was there any response from Gullit?

13:22:56 A. He answered "Yes, sir" to him.

Q. Now, where exactly were you when you heard this communication?

A. I was at Yams Farm.

Q. And about how many days, if any, had passed when you heard

13:23:20 this from the point you reached Yams Farm?

A. Just a day.

Q. And can you describe the tone, if you recall the tone, of Sam Bockarie's voice when he sent this message?

A. He was angry as he spoke. He was speaking with power.

13:23:52 When he spoke, you knew that he was angry.

Q. Do you know what he meant when he said that they should not spare anything?

A. Well, if I can say what I mean, I am sure you too can say anything and nothing will result from it, be it property, a

13:24:31 house, be it a human being, anything, which means everything. That is what I mean. That is what I understood.

Q. Now, how long did you remain at Yams --

PRESIDING JUDGE: Just pause, Mr Santora. "You too can say anything and nothing will result from it, be it property, a house

13:24:59 ..." I'm not sure exactly what that means.

MR SANTORA: I will clarify:

Q. Mrs Witness, I asked you if you know what Sam Bockarie meant when he said that they should not spare anything and you answered:

I N D E X

WITNESSES FOR THE PROSECUTION:

TF1-584 12215

EXAMINATION-IN-CHIEF BY MR SANTORA 12215

CROSS-EXAMINATION BY MR ANYAH 12298

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

FRIDAY, 20 JUNE 2008
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr Simon Meisenberg Ms Doreen Kiggundu
For the Registry:	Ms Rachel Irura
For the Prosecution:	Ms Brenda J Hollis Mr Christopher Santora Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Terry Munyard Mr Morris Anyah Ms Megan Dorey

Q. Black Jesus was also imprisoned at Pademba Road, yes?
A. I don't know.
Q. Well, how do you know Black Jesus?
A. I knew him, but I never knew that he was at Pademba Road
10:03:36 because they never gave me a list that these are the names of people who had been sent at Pademba Road. If I know about Martin, it was because he was my colleague operator.
Q. Do you know where Martin Moinama is today, Madam Witness?
A. I don't know if he is alive. I heard that he died.
10:04:00 Q. Who told you he died?
A. The men who were in Freetown.
Q. Did you hear that from Foday Lansana, Madam Witness?
A. No. Foday Lansana did not go to Freetown.
Q. Well, let me ask you this: You said you heard it from the
10:04:31 men in Freetown, when exactly did you hear it from the men in Freetown?
A. Yams Farm.
Q. And were you at Yams Farm about the time of the 6 January invasion?
10:04:56 A. I was in Lunsar, but I went to Yams Farm after 6 January.
Q. So you heard after 6 January that the same Martin Moinama who had been released from Pademba Road Prison had been killed.
PRESIDING JUDGE: I think the witness said died. That, to me, includes natural causes.
10:05:24 MR ANYAH:
Q. Madam Witness, did you hear whether or not Martin Moinama had been killed?
A. Yes.
Q. What exactly did you hear?

A. Lately I understood that Martin was killed because of the testimony that he gave against Pa Sankoh and I cannot say that I asked anybody who killed him or not. No, I did not ask that. But the person who told me also told me that it was Sam Bockarie who ordered his killing.

10:06:12

Q. So if your sequence of events is correct, they released him from Pademba Road Prison and, if this rumour you heard is correct, at the request of Sam Bockarie he was killed, yes?

A. Yes, according to what the person told me.

10:06:46

MR ANYAH: Madam Court Officer, can we go to page 29 of tab 1. The relevant paragraph is 172:

Q. Madam Witness, this is what you told the Prosecution about Martin Moinama, October last when you met with them. The paragraph reads:

10:07:36

"The witness has heard of Martin Moinama, also known as the Cat, and he is late. The witness believes that he was killed before the intervention. During the Freetown invasion the witness did not hear any radio message about the Cat."

Madam Witness, why do they have you telling them that

10:08:06

Martin Moinama was killed before the intervention?

A. I can answer to that. The question was if I knew Martin and I knew him, and again they asked me when did I know that he was missing and I knew when he got missing and that was at the time when the ECOMOG took over Freetown and his wife stayed with

10:08:37

us and she told us that Issa arrested her husband and she was sure that he had been killed. That was what exactly I said. And I did not get any radio message about Martin, that he was taken to Pademba Road or not. I learned that from his wife, that he had died, because she herself did not see her [sic] after that

time, but later I learned that he died after 6 January.
Q. Madam Witness, you are now telling us Martin Moinama's wife stayed with you, yes?
A. Yes.
10:09:32 Q. She stayed with you and she told you what had happened to her husband, correct?
A. Yes.
Q. Indeed your answer just given in court - this is a reference to what you believed the Prosecution was asking you in
10:09:51 October last, you said:
"They asked me when did I know that he was missing and I knew when he got missing and that was at the time when the ECOMOG took over Freetown and his wife stayed with us and she told us that Issa arrested her husband and she was sure that he had been
10:10:15 killed."
This is what you've just said in court, yes?
A. Yes.
Q. When the ECOMOG took over Freetown, you're referring to the intervention in February 1998, correct?
10:10:31 A. Yes.
Q. Moinama's wife was staying with you at that time. She told you her husband had been killed, correct?
A. Yes.
Q. Then why are you telling us in court that during the 6
10:10:47 January invasion in 1999 Martin Moinama was one of those released from Pademba Road Prison by the RUF invading forces?
A. I have said it here that the people who released those people from Pademba Road and when they came back from Freetown it was from them that I learnt that Martin had been killed, but I

A. The question I cannot answer directly, because the ULIMO and the STF, I came to know them when they joined the AFRC. So I can't tell whether they had been in Liberia at a certain point in time whilst they were fighting there at the time ULIMO was
12:20:43 fighting there, whether they were fighting amongst that group. So all the STF who came, when they said they were ULIMO, I don't know. Maybe they were the ULIMO who were fighting against Charles Taylor.

Q. You don't know, but we do agree that they were ULIMO -
12:21:05 ex-ULIMO fighters, to be precise, right?

A. Like you have said it, I will take it that way.

Q. Well, it's not like I said it. Have you told the Prosecution they were ex-ULIMO fighters in a previous statement?

A. Yes.

12:21:26 Q. Now you said something in court that you did not believe that the men with Senegalese were STF. Do you recall saying that?

A. Yes.

Q. And why did you not believe that?

12:21:43 A. They asked me and I said the STF who joined the AFRC that I knew about were speaking better Krio because they had stayed long in Sierra Leone. They knew the names of so many towns and villages. But in the case of Senegalese, when they came together with the other men I did not hear them speak proper Krio. They
12:22:10 were speaking pure Liberian tongue. So I don't think they were part of the STF that I knew that I saw amongst the AFRC.

Q. But let's start with Senegalese. Senegalese, as far as you knew, was through and through an STF member, right?

A. No.

Q. Have you told the Prosecution before that he was STF?
A. I said Bai Bureh told me that Senegalese is an STF.
Q. You did say that, but you have also told the Prosecution that some of the STF you knew were Colonel Wallace, yes?
12:23:13 A. Yes.
Q. Also known as Sea Never Dry, yes?
A. Yes.
Q. You said there was a Colonel Ngallah, N-G-A-L-L-A-H, yes?
A. Colonel Ngallah, yes.
12:23:36 Q. You said there was a Major Koroma, K-O-R-O-M-O [sic], yes?
A. Yes.
Q. And then you told them Senegalese. "He was very tall and spoke Liberian and French." You included him amongst the STF, did you not?
12:24:01 A. I included him. That is when they came and joined us when we were at Koinadugu, he was together with the STF because they spoke similar languages and they ate the same food.
Q. Where did you first hear the name Red Lion battalion, Madam Witness?
12:24:33 A. At Koinadugu.
Q. And in what context did you hear that name?
A. Like I have said before, I met with the Red Lion battalion in Koinadugu because Superman and others had already been in Koinadugu and they asked me about the groups that were there and
12:25:01 they were the SLA, the STF and the RUF, and the particular Red Lion was mostly comprised of the SLA, even before the new Red Lion was formed at the time I was in Koinadugu.
Q. Well, let's leave the new Red Lion for a moment. Your evidence is that the first time you heard the phrase Red Lion

I N D E X

WITNESSES FOR THE PROSECUTION:

TF1-584 12328

CROSS-EXAMINATION BY MR ANYAH 12328

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

MONDAY, 23 JUNE 2008
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr William Romans Ms Sidney Thompson Ms Doreen Kiggundu
For the Registry:	Ms Rachel Irura
For the Prosecution:	Ms Brenda J Hollis Mr Nicholas Koumjian Mr Christopher Santora Ms Shyamala Alagendra Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Terry Munyard Mr Morris Anyah

A. We went to Hastings. There were no ECOMOG there. We occupied Hastings, both the airfield and the barracks, then we started advancing from Jui. When we went to Jui, ECOMOG was occupying one area of Jui while we were occupying the other side
12:55:55 in the barracks, the SSD barracks. RUF occupied the Jui SSD barracks. It was at that Jui we were told to man the checkpoints and so we manned the checkpoints at Jui, the main road.

Q. In that assignment at Jui, who was your commander - direct commander?

12:56:16 A. CO Kondewa, a Liberian NPFL fighter. An old NPFL fighter, CO Kondewa the late.

Q. Thank you. Now while you were in Jui, do you know where Superman was?

A. Superman was in Freetown.

12:56:36 Q. How long did you stay on the peninsula?

A. Why did they call peninsula? I don't understand.

Q. Thank you. How long did you stay in Jui?

A. I do not remember the actual time, but we stayed there for a long while and we were attacked by ECOMOG and we were flushed
12:57:05 out of there.

Q. When ECOMOG attacked you and you were flushed out, where did you go?

A. I went to Yams Farm near Hastings, very close to Hastings.

Q. How long did you stay at Yams Farm?

12:57:25 A. We were in Yams Farm for a long while. Hastings, Yams Farm, for a long while.

Q. Now during that time that you were in Jui, Hastings and Yams Farm, did you ever go to Freetown?

A. Yes, I used to go to Freetown to meet Superman and some of

my friends.

Q. During that period of time, did you receive any assignments from Superman to go anywhere else?

A. Yes.

12:58:08 MR KOUMJIAN: Madam Court Officer, the witness --

PRESIDING JUDGE: We have that under control.

MR MUNYARD: Madam President, as you announced you have that under control, publicly I would like to know what it is we have under control.

12:58:44 PRESIDING JUDGE: The poor old witness is very cold and we are getting him a jacket.

MR MUNYARD: I am very grateful.

MR KOUMJIAN:

Q. Sir, what was the - I see my LiveNote is still frozen, but

12:59:01 what was the assignment that Superman gave you?

A. Superman told us to go to Kenema District to meet Sam Bockarie.

Q. Now, did you go to Kenema?

A. Yes, we went to Kenema and we met Sam Bockarie. We went to

12:59:44 collect ammunition from Sam Bockarie, but when we got to Kenema Sam Bockarie told us that the ammunition have not yet arrived in Kenema and so he told us to continue the journey. He gave us a car. Salami was driving the car - the late Salami Kabbah - and he told us to go to Pendembu so that we will meet somebody there

13:00:08 that was called Jungle who was bringing the ammunition, but the car had a breakdown and so we went with another car to collect the ammunition.

We met Salami Kabbah - I mean Jungle and we met another man called Senegalese. He was a Liberian, a tall fellow. We met

him, we explained the situation to him and then Jungle told us to get civilians around so that they will transfer the ammunition into the other car, so when we assembled the civilians we asked them to transfer the ammunition to the car.

13:00:44 After that, Jungle decided to join us to come down to Sam Bockarie and meet him in Kenema. So after all, when we got to Kenema Sam Bockarie asked us to get some of the ammunition to be carried to Superman in Freetown. That was the assignment given to us by Superman.

13:00:59 Q. Thank you. Now, Mr Witness, do you recall what year this was?

A. Yes, '97. 1997.

Q. You said, "We went to Kenema". Without giving us all the names, how many of you were sent to meet with Mosquito, Sam

13:01:26 Bockarie, in Kenema?

A. We went with some men to escort the ammunition, but I can't recall the actual figure.

Q. Can you give us some idea of the ammunition that you transferred from Jungle's car and took to Freetown? Excuse me,

13:01:53 I think I have misstated the evidence. Is it correct, Mr Witness, that you transferred the ammunition from Jungle's car? Where did you take it to after transferring it from Jungle's car?

A. We went with two pick-ups with us, so we transferred the

13:02:09 ammunition from Jungle's own car. Jungle brought with him a big truck, so we transferred the ammunition from the truck to the two Land Cruiser pick-ups. Salami Kabbah was driving one of them and our own driver.

THE INTERPRETER: Your Honours, the second name called by

the witness was not clear to the interpreter.

PRESIDING JUDGE: You called two names, Mr Witness. One was Salami. What was the other name, please? Repeat it.

THE WITNESS: Jungle.

13:02:35 PRESIDING JUDGE: I think, interpreter, are you referring to the two drivers?

THE INTERPRETER: Yes, your Honours.

PRESIDING JUDGE: The second driver, Mr Witness?

THE WITNESS: The driver for Sam Bockarie's car that he

13:02:51 gave us from Kenema was Salami Kabbah. The other driver was Popay Jay [phon]. I did not actually know his actual name, but the first driver was Salami Kabbah.

MR KOUMJIAN:

Q. Is that first name you are saying Papay, like father Papay?

13:03:13 A. Popay Jay [phon]. It was just a nickname, but I don't know. I don't know his actual name.

Q. So when you got the ammunition and put it into the pick-ups, where did you go?

A. We travelled back to Kenema and we turned the ammunition

13:03:38 over to Sam Bockarie.

Q. What was the type of ammunition that you had received from Jungle, do you recall?

A. Yes, we received GMG rounds in boxes, AK-47 rounds and RPG rockets. Those were the ammunition we received.

13:04:04 Q. Who was Jungle?

A. Jungle was in the SSS in Liberia. He was a member of SSS in Liberia. He was a bodyguard to President Taylor, close protection unit.

Q. Was this the first time you had met him?

A. That was my first time to meet him.
Q. Did you get to know him later, or no?
A. I knew him later and he became my personal friend, a best friend of mine. He was just like an elder brother to me. I was
13:04:52 very close to him now. He was with me until his death.
Q. Do you know where Jungle had got the ammunition which you then transferred to Sam Bockarie in Kenema?
A. The first time I met him we did not discuss that much, but when I got to know him later he explained to me how he used to
13:05:19 get the ammunition that he crossed with from Liberia. He told me that he used to take the ammunition from - sometimes the President used to send him to get the ammunition from White Flower, the Executive Mansion, to take it to Sam Bockarie and that was not his first time to cross over with ammunition.
13:05:47 Q. Now, Mr Witness, after you took the ammunition to Sam Bockarie, what became of the ammunition, if you know?
A. Sam Bockarie just got outside and looked at the ammunition and he told us not to delay. He said we should take the ammunition immediately to Superman in Freetown because they heard
13:06:11 that ECOMOG will soon be attacking us in Freetown, so we took the ammunition to Freetown to Superman and we turned them over to Superman.
Q. Just so we are clear, when you said Jungle was in a position with the President - I am sorry, I see the answer was he
13:06:39 was a bodyguard to President Taylor. Thank you. What did you do then after receiving this order from Sam Bockarie?
A. I don't understand that question.
Q. After Sam Bockarie told you to take the ammunition to Superman, what did you do?

A. We took the ammunition to Superman. We took the ammunition to Superman in Freetown.

Q. Now, you have mentioned Jungle. Do you know his real name?

A. Yes, Daniel Tamba.

13:07:28 Q. Did Jungle tell you whether he took anything back - you say he would take ammunition to Sierra Leone. Did he say whether he would take anything back to Liberia?

A. Yes, when I got to know him better later we were very close. Like he used to explain to me. He used to say that he

13:07:48 was the person that was serving as liaison between Sam Bockarie and President Taylor. He used to take diamonds to President Taylor and he will in turn give him ammunition to take it to Sierra Leone. Jungle told me that personally. But because he said he had a personal problem with Sam Bockarie - he used to

13:08:06 explain all of these things to me. Jungle was having personal problems with Sam Bockarie before his death.

PRESIDING JUDGE: Pause, Mr Witness, please. Mr Munyard.

MR MUNYARD: Madam President, I am having difficulty keeping up with the witness and I would point out that it seems

13:08:21 to me that even on the LiveNote that we are being broadcast from Madam Court Officer's desk there is a gap, because we have gone from some of the evidence - there was then a gap, he gave more evidence and then there was a question by Mr Koumjian that appears on line 13 of page 89 on my page. "Mr Witness, after you

13:08:44 took the ammunition to Sam Bockarie did Jungle tell you whether he took anything back?" I think that there is a gap there that the evidence hasn't actually been recorded. I know it will all be rectified in due course at the end of the day, but we are all struggling now with this rather faulty form of LiveNote. The

THE WITNESS: When Bockarie used to call on Benjamin Yeaten's satellite phone he used to complain and say, "Oh, my boy, I am straining here. Please, can you help me talk to Benjamin Yeaten. I want to talk to Benjamin Yeaten". And
13:13:35 sometimes I will come to Jungle and say, "Oh, brother, your boy is grumbling over there. He too is straining there now". I said what goes around comes around and sometimes he would say, "Oh", and that was the time he started explaining to me. He was grumbling and I used to say that is fine for him because he told
13:13:54 me the same thing, because when he came over he started side lining me, that was the same thing I used to tell you. I said to him that he should be patient. That was what I used to tell him.

JUDGE LUSSICK: Mr Witness, you seem to have ignored everything the Presiding Judge told you. You are speaking much
13:14:12 too fast. Not only the interpreter can't keep up with you, but the shorthand writers can't keep up with you as well and we are missing sections of your evidence. Now I would prevail on you to speak reasonably slowly. Nobody can possibly keep up with you at the pace you are going.

13:14:33 THE WITNESS: Okay.

MR KOUMJIAN:

Q. Mr Witness, we will come to these events that you are talking about later. Right now I am asking you about 1997 and this trip to Kenema. You mentioned somebody named Senegalese.
13:14:49 Who is Senegalese?

A. Senegalese was one of the Special Forces for President Taylor.

Q. You said that when you went to Kenema that Sam Bockarie was there. Do you know what was going on in Kenema at that time?

A. Yes, Sam Bockarie was based in Kenema at that time and he was supporting mining in Tongo. He was taking care of the mining in Tongo at the time.

JUDGE SEBUTINDE: Do we have a time frame for this period, Mr Koumjian?

MR KOUMJIAN:

Q. When was it that Sam Bockarie was in Kenema?

A. '97. 1997.

Q. And are you talking about the time before the AFRC coup, or after the AFRC coup?

A. At the time we were running the government along with the AFRC, alongside the AFRC.

Q. How did you know about the mining in Kenema, in Tongo?

A. I knew about the mining because I had personal friends that used to go to Tongo, like Charles Gebeh who was the overall armoury commander for the RUF at that time. He used to come from Tongo, boys who were bodyguards to Issa Sesay --

THE INTERPRETER: Correction, interpreter: "Boise [phon] who was the personal bodyguard to Issa Sesay".

PRESIDING JUDGE: We are just correcting the record, Mr Witness. Do you have that finished, Mr Interpreter?

THE INTERPRETER: Yes, your Honour.

PRESIDING JUDGE: Mr Witness, pick up again. You were saying, "He used to come from Tongo" and you then said something about who were the bodyguards.

THE WITNESS: I said a personal friend of mine, Charles Gebeh who was the overall armoury commander for the RUF used to come from Tongo. He used to come from Tongo, Charles Gebeh, and he was a bodyguard to Issa Sesay who was called Boise, I have

JUDGE SEBUTINDE: Mr Koumjian, you didn't give us a time frame for the Gbarnga visit. The whole idea of getting arms and ammunition from there, or ammunition, we need a time frame, please.

15:55:03 MR KOUMJIAN:

Q. Mr Witness, do you recall the month that you went to Gbarnga? Let me start this over. First, Mr Witness, do you recall what year it was that you went to Gbarnga?

A. Yes, I remember. It was in '98.

15:55:24 Q. Do you recall, Mr Witness, if it was dry season, or rainy season?

A. I think it was some time around the starting - the beginning of the rainy season.

JUDGE SEBUTINDE: In which country? Rainy season of which

15:55:43 country?

MR KOUMJIAN:

Q. Mr Witness, are the rainy seasons different in Liberia and Sierra Leone?

A. No, they are the same, the same. They are the same.

15:55:53 Q. So when you say the rainy season you are talking about the rainy season in what country, or countries?

A. In both of the countries, Sierra Leone and Liberia.

Q. Can you remember what month it was? If you can't, just tell us you cannot remember.

15:56:17 A. I can't remember the month.

Q. Did you take the ammunition to Superman?

A. Yes.

Q. Was there any operation after you took ammunition to Superman?

A. Yes.
Q. Did that operation have a name?
A. Yes, yes.
Q. Can you tell us what was the name of this operation?
15:56:49 A. Yes, Fitti-Fatta.
Q. What was the objective, the goal, of the Fitti-Fatta mission?
A. To just go on the rampage and retake over Koidu Town.
Q. By the way, when you came back from Gbarnga to Buedu was
15:57:15 there anybody with you that hadn't been in your group that left Sierra Leone?
A. I don't understand.
Q. I'll try again. It wasn't very clear. You said you went with a number of people to Gbarnga - to Foya and then Gbarnga.
15:57:34 Were all the people you went with Sierra Leoneans? You mentioned Eddie Kanneh and some others.
A. Yes.
Q. When you came back did you come back only with Sierra Leone people, or was there anyone else with you?
15:57:50 A. Yes, Liberians were with us.
Q. Do you recall the names of the Liberians that were with you when you went back to Buedu from Gbarnga with the ammunition?
A. Yes. Jungle, Daniel Tamba, Sampson.
Q. Thank you. Was the Fitti-Fatta mission successful in
15:58:17 taking Koidu?
A. No.
Q. First of all, what were you using to transport the ammunition to Superman?
A. Escorted us to the crossing point at the Moa River. From

whether you were able to carry any weapons to SAJ Musa and, if so, what were the weapons?
A. We carried a lot of weapons. We carried mortars, GMG, some RPGs that were captured, we took them along with us, and some other light weapons like pistols, AK-47s, we took them along with us.
Q. So these weapons that were handed over to SAJ Musa, do you know if they stayed with the SAJ Musa forces after the attack on Mongo?
16:24:52 A. Yes.
Q. Do you know if these weapons stayed with SAJ Musa forces after he left Kurubonla?
A. Yes.
Q. These weapons and ammunition that were captured in Mongo, they were captured using ammunition from where, Mr Witness?
A. The ammunition that we brought along from Gbarnga, Kono, I took some to Komba Gbundema in Wordu, it was the same ammunition that we were to use to attack Mongo Bendugu.
JUDGE SEBUTINDE: Where is Gbarnga, Kono?
16:25:48 MR KOUMJIAN: I believe those were two separate --
Q. Mr Witness, you said you took ammunition from Gbarnga and then you said Kono. Can you describe the route.
A. Yes, the ammunition that we collected from Gbarnga in Liberia, the President's farm, it was the same ammunition that we took along to Kono, Superman's ground, and Superman gave some of the ammunition to Komba Gbundema in Wordu and it was that same ammunition that we took to Kurubonla after the meeting. It was the same ammunition that we used to attack Mongo Bendugu.
Q. And it was in this attack that the ammunition and weapons

were captured from the Guineans and taken to SAJ Musa?
A. Yes.
JUDGE SEBUTINDE: It would also be helpful for us to have a time frame for the Mongo Bendugu attack, please.
16:26:42 MR KOUMJIAN:
Q. Mr Witness, I know it's difficult for you to get the exact times, but let's work together to try to get some idea. What year was it that you attacked Mongo Bendugu?
A. It was late '98. The ending of the rainy season we
16:27:12 attacked Mongo Bendugu. '98, I think so.
Q. Can you give us an approximate time in months, or not, for the end of the rainy season?
A. I do not remember the month.
MR KOUMJIAN: Your Honours, actually this would be a
16:27:32 convenient time for me to break. I'm moving to a different topic.
PRESIDING JUDGE: Very well, Mr Koumjian. Mr Witness, we're going to adjourn for today. We will be resuming court again tomorrow at 9.30. I have to inform you that now that you
16:27:47 have taken the oath to tell the truth here in the court, you are not to discuss your evidence with any other person until all of your evidence is finished. Do you understand this?
THE WITNESS: Yes.
PRESIDING JUDGE: Please adjourn court until tomorrow at
16:28:02 9.30.

[Whereupon the hearing adjourned at 4.27 p.m. to be reconvened on Tuesday, 24 June 2008 at 9.30 a.m.]

I N D E X

WITNESSES FOR THE PROSECUTION:

TF1-584	12412
CROSS-EXAMINATION BY MR ANYAH	12412
RE-EXAMINATION BY MR SANTORA	12450
TF1-375	12462
EXAMINATION IN-CHIEF BY MR KOUMJIAN	12469

EXHIBITS:

Exhibit P-146 admitted	12459
Exhibit P-147 admitted	12459
Exhibit D-51 admitted	12460
Exhibit D-52 admitted	12460
Exhibit D-53 admitted	12460

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

TUESDAY, 24 JUNE 2008
9.30 A.M
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr William Romans Ms Sidney Thompson
For the Registry:	Ms Rachel Irura
For the Prosecution:	Mr Nicholas Koumjian Ms Shyamala Alagendra Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Terry Munyard
For the Office of the Principal Defender:	Mr Silas Chekera

zones. ECOMOG was on one side and we were on the other side.

MR KOUMJIAN:

Q. Thank you, that leads to my next question. In Jui were you - why were you unable to go through Jui. As you had mentioned earlier?

12:13:57

A. Jui was at that time one of the strong bases for ECOMOG, because in '97 they were based at Jui and Jui was very strong and it was one of the strongest bases. It was from Jui that they ran the intervention into Freetown, so ECOMOG was very strong at Jui.

12:14:24

Q. What ECOMOG forces were at Jui?

A. The Nigerian contingent.

Q. Was there any battle between your forces and the ECOMOG forces at Jui at that time before Rambo Red Goat was dispatched?

A. Yes.

12:14:49

Q. You talked about Rambo Red Goat going with a group. Can you tell us approximately how many men were in that group?

A. Yes, it can be estimated at roughly 60 to 65.

Q. Who were these men that were under the command of Rambo Red Goat?

12:15:21

A. Some RUF men, some SLA and some STF.

Q. How were they armed, if you know?

A. Everybody would be armed from his own commander. The STF were armed from General Bropleh, the RUF Issa Sesay and Superman, and the SLA Brigadier Mani and Colonel T at that time. So, they were well armed.

12:15:51

Q. And do you know where Rambo Red Goat's group went?

A. They entered the city into Freetown.

Q. Now, earlier you had mentioned a bridge. Where was that bridge?

Q. Thank you. How long were you at Yams Farm?
A. We were there I think for a week and we retreated.
Q. Now, you talked about these forces led by Bazzy and Gullit being in Freetown. Did you receive information about what was
12:18:55 going on while they were in Freetown in any way?
A. Yes.
Q. How did you learn about what was going on in Freetown?
A. At first they called and said that they had taken over the State House and, secondly, they called that they have got to
12:19:20 Pademba Road where the RUF and the AFRC were in jail that were captured by ECOMOG. The next time they called they said they had freed some of the men, including Gibril Massaquoi, and they reported that they had been attacked by different contingents, like the Guinean contingent, the Nigerian contingent and
12:19:48 different troops. That was the time that Sam Bockarie called. I heard Sam Bockarie talking over the BBC that any contingent that attacked his forces in Freetown he will command his forces to burn all the embassies down.
Q. Okay. Mr Witness, you began your answer by talking about,
12:20:09 "At first they called and they said they had taken over the State House." Just so we're clear, who was it that was calling and saying that?
A. Alfred Brown was the radio man and Gullit will always be in the radio room calling directly to Superman, calling Sam
12:20:29 Bockarie, and I was monitoring those calls directly. Alfred Brown, Gullit, Bazzy, sometimes Major CY.
Q. Do you recall these persons inside Freetown, aside from telling about their situation did they say anything else during these communications?

A. Yes, they were talking about burning down houses, putting motor tyres on the street and burning it and killing people. Those were all in the communication because they wanted to take over the Wilberforce barracks, but they said there was no way for them to do that so they were trying their best.

Q. How long did these forces stay in Freetown approximately, as far as you can recall?

A. I can remember two weeks.

Q. And what happened at the end of the time that they were in Freetown, do you know?

A. When they were retreating they started burning down houses, they abducted girls, so many girls who retreated with them, and they killed people whilst retreating. At that time ECOMOG was chasing them.

Q. Mr Witness, do you know why they had to retreat?

A. Yes, they said they went out of ammunition.

Q. Who did they say - to who did they say that they were out or running out of ammunition?

MR MUNYARD: I wonder if we could have a definition of who "they" are.

PRESIDING JUDGE: Yes, Mr Koumjian, who is the "they" in question?

MR KOUMJIAN: Thank you:

Q. Mr Witness, you said that, "They said they went out of ammunition." Who was it that said that?

A. Sam Bockarie called Superman to protect Benguema barracks, Gberi Junction and Waterloo, because Gullit called him and said that they were running out of ammunition. He, Gullit and his forces, were running out of ammunition and that they would need

the toe and given to the witness before or after the death of Superman, or at the time of death of Superman?

THE WITNESS: After the death of Superman, two days later.

JUDGE LUSSICK: So Philip Duo was the one that beat Superman down?

15:44:36

THE WITNESS: Yes.

JUDGE LUSSICK: He didn't shoot him, he beat him down, is that right?

THE WITNESS: Yes, he was the one that was able to knock him down and take the ring from his toe before they shot him.

15:44:45

MR KOUMJIAN:

Q. Again, Mr Witness, this is what Reflection told you?

A. Yes, Reflection.

Q. I just want to be clear about Benjamin Yeaten. Eventually you said Benjamin Yeaten told you some years later about the killing of Superman. Did Benjamin Yeaten indicate whose idea it was to kill Superman?

A. Yes, it was not --

THE INTERPRETER: Your Honours, can he repeat slowly.

PRESIDING JUDGE: Start again from the beginning, Mr Witness, and take it slowly.

15:45:01

15:45:30

MR KOUMJIAN:

Q. I believe you started by correcting me.

PRESIDING JUDGE: Yes, that is correct. It was not 2002. Repeat your answer.

15:45:43

THE WITNESS: After the death of Superman, 2001, early 2002, Benjamin Yeaten, when the war was getting intensified in Liberia, he told me that he regretted the death of Superman because when Superman was alive the rebels never used to overrun

I N D E X

WITNESSES FOR THE PROSECUTION:

TF1-375 12555

EXAMINATION-IN-CHIEF BY MR KOUMJIAN 12555



Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

WEDNESDAY, 2 JULY 2008
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr Simon Meisenberg Ms Carolyn Buff
For the Registry:	Ms Advera Nsiima Kamuzora Ms Rachel Irura
For the Prosecution:	Ms Brenda J Hollis Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Mr Terry Munyard Mr Morris Anyah
For the Office of the Principal Defender:	Ms Elizabeth Nahamya

A. It was in '97.
Q. And what happened while you were at Waterloo?
A. After we had withdrawn from Hastings for Waterloo, we were there when Sam Bockarie's group came from Kailahun and they met
13:06:34 us there.
Q. And when you say you were in Waterloo, in what area were you based?
A. We were based at where they were training the soldiers. They called there Benguema.
13:07:02 Q. And what happened when Sam Bockarie and his group came to Benguema?
A. Well, those of us who first went to Freetown and after we had been dislodged, that was where they met us. That was where they came.
13:07:22 Q. Do you recall any of the people in Sam Bockarie's group?
A. Sam Bockarie came along with Issa Sesay and others I can't recall.
Q. How long did you remain in Benguema barracks?
A. Well, we were there - after the junta - when the AFRC
13:08:03 government invited Mosquito that after they would have formed the government they would want Mosquito to serve in the government, but Mosquito said that he was not going to work with the government. So from there Mosquito returned to Kenema.
Q. And what did you do when Mosquito returned to Kenema?
13:08:33 A. I went along with him. We went together.
Q. And what were your duties when you were with Sam Bockarie in Kenema?
A. Well, at that time Mosquito knew that I was a Black Guard, so I was with him to keep security and to report whatever that

was taking place to him.
Q. And what happened after you went to Kenema?
A. When we got to Kenema he said that we should attack Tongo, Tongo Field, because the Kamajors were there. So we went and
13:09:18 attacked Tongo. All of us went, together with Mosquito. We captured Tongo and later he returned to Kenema.
Q. And did he tell you why he wanted to capture Tongo Field?
A. Yes, he said because it was a diamond area. We should not go - we should not just go and stay there, we should capture it.
13:09:45 Q. You said that Mosquito returned to Kenema. What did you do?
A. I stayed in Tongo.
Q. And what were your duties in Tongo?
A. I was there to - just so that if I got any information, I
13:10:12 was to send that information to Mosquito as security.
Q. While you were in Tongo, what activities were going on in Tongo?
A. Before Mosquito returned he appointed one person, whom they called Chairman, to head the diamond mining in Tongo.
13:10:42 Q. Who was this person Chairman?
A. This Chairman was a civilian, but that was what they used to call him, Chairman. So after Mosquito - after Mosquito and Eddie Kanneh had organised this mining, he was made head, that any diamond that they got were to be kept by Chairman and when
13:11:13 Mosquito came they were to give them to him. But when Mosquito and others returned and when the mining was going on, after they had got some diamonds the Chairman hid. After he had escaped, later Mosquito and others came back to Tongo. When they came back, after Chairman had escaped, Mosquito appointed another

Q. What happened after you went to Superman Ground?
A. When I had been at Superman's ground, later Sam Bockarie called Issa to go to Buedu, so I joined Issa Sesay and the two of us went to Buedu. He said we should try to recapture Koidu Town, so he was trying to go to Monrovia to meet the Pa, that is Charles Taylor, and that Issa Sesay was to stay in charge when he went. So we waited there until Mosquito went to Monrovia.
Q. Can you tell us when this was that Mosquito went to Monrovia?
15:32:00 A. This happened in October.
Q. Can you tell us what year this is?
A. It happened in 1998.
Q. You said that you went to Buedu with Issa Sesay. How long were you in Buedu?
15:32:29 A. We spent up to two months.
Q. And what happened then?
A. Later Mosquito came with a lot of ammunition.
Q. And what happened after he came with a lot of ammunition?
A. After he had come with these ammunition he said that the
15:32:57 Pa, that is Charles Taylor, had told him that we should try and capture Kono. He said we should try and capture Kono and other mining areas, so that we will be able to get diamonds and hence get more arms and ammunition. So he handed over these materials to Issa Sesay. Since then we moved to Koidu Town. Sorry, to
15:33:31 Superman's ground.
Q. You said he came back with a lot of ammunition. What kinds of ammunitions did he come back with?
A. He came with RPG bombs, he came with AK rounds, he came with GPMG rounds, he came with camouflage, he came with guns and

others that I cannot recall.
Q. When you say he came with camouflage, what do you mean?
A. That is the clothes that a soldier puts on. That is combat.
15:34:34 Q. How was this ammunition and the camouflage and the other things, how was it brought to Buedu?
A. It was a vehicle that brought them.
Q. And can you tell us the size of this vehicle?
A. At that time they were brought in a pick-up.
15:35:08 Q. You said that Mosquito gave Issa Sesay these materials. Why did he give Issa Sesay these materials?
A. He said we should try and capture Koidu Town and the other areas which were mining areas, because the Pa, Charles Taylor, had said we should try and get these areas in order to get more
15:35:44 diamonds.
Q. And what was Issa Sesay's role in this operation?
A. Issa Sesay was to go and organise commanders. He was to become the commander to organise - to organise so that they can fight and capture these areas.
15:36:15 Q. And you said you took these materials to Superman Ground. How did you transport the materials to Superman Ground?
A. Well, Sam Bockarie ordered - captured some civilians around Buedu and the surrounding villages to carry these arms and ammunition, so that was what they did before we departed.
15:36:53 Q. What happened when you arrived back in Superman Ground?
A. When we got to Superman's ground, Issa Sesay called a meeting. At this meeting he called, Morris Kallon was at this meeting, Akim Turay was at this meeting, Banya was at this meeting, Gassama Mansaray was at this meeting, and other people

I N D E X

WITNESSES FOR THE PROSECUTION:

TF1-567 12815

EXAMINATION-IN-CHIEF BY MS HOLLIS 12816

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

FRIDAY, 4 JULY 2008
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr Simon Meisenberg Ms Carolyn Buff
For the Registry:	Ms Rachel Irura
For the Prosecution:	Ms Brenda J Hollis Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Mr Morris Anyah

to be in control of the diamond business. That was the understanding I got.

Q. And how did you get that understanding?

A. I knew when we returned to Freetown. He himself told me.

12:19:18 Q. Now, you said that Foday Sankoh left out of RIA airport. Who accompanied him to the airport?

A. I myself accompanied him to the airport, together with some Liberian securities. He was escorted to the airport. We were there when they departed. From there we returned to the

12:19:50 guesthouse, I and Mosquito.

Q. When you reached RIA airport, did you see any securities around the airport?

A. Yes, I saw securities.

Q. Did you know who those securities were?

12:20:08 A. They were SSUs. SSU securities.

Q. You said that "they departed". Who are the "they"?

A. Foday Sankoh and Johnny Paul Koroma's group. All of them went.

Q. Now, you said that you and Mosquito went back to the

12:20:33 guesthouse after this departure. What happened after that?

A. When we returned to the guesthouse, Benjamin Yeaten came and collected Mosquito. He said they were to go and meet the Pa, Charles Taylor, to arrange about his return. So, they went and met Charles Taylor. Mosquito returned to the guesthouse and said

12:21:01 that the Pa had said he should try and return. The following day Mosquito and I and Benjamin Yeaten went to Spriggs field. When we went to Spriggs field to accompany Mosquito, we boarded the helicopter that was to take Mosquito. In this helicopter I saw Benjamin Yeaten - I heard Benjamin Yeaten saying, "Mosquito,

these materials have been given by my dad, Charles Taylor, because as my brother Foday Sankoh was going to Freetown you should be keeping security and so you should take along this ammunition to Buedu." So, from there we alighted the helicopter.

12:22:09 Q. Now when you were in the helicopter, what did you see inside this helicopter?

A. I saw AK - I saw AK rounds in the tins. We used to call them sardine tins which contained the AK rounds. I saw up to 15. I saw --

12:22:41 JUDGE SEBUTINDE: You saw what? 15 what?

THE WITNESS: 15 of those tins. Then I saw RPG bomb with the TNT. It was - they were in the helicopter.

MS HOLLIS:

Q. Mr Witness, when you say you saw 15 tins, what were in

12:23:06 these 15 tins if you know?

A. They contained the AK rounds.

Q. What kind of helicopter was this that these materials were in?

A. Well, this time it was a helicopter that had a camouflage

12:23:40 colour. It had a camouflage colour.

Q. And did you know whose helicopter this was?

A. Yes, Benjamin Yeaten told us that it was owned by his dad, Charles Taylor.

PRESIDING JUDGE: Ms Hollis, could we have a clarification

12:24:05 of what the witness means by camouflage colour please.

MS HOLLIS:

Q. Mr Witness, you have said that this helicopter was a camouflage colour. Can you describe to the Court what you mean by camouflage colour?

A. That is the colour - it's camouflage, just like a combat, just like a military uniform, that's what it was like.
Q. Can you tell us what colours were on this camouflage?
A. Green, black, dark brown. It was a mixed colour.
12:24:53 Q. You indicated that you then got out of the helicopter and what happened after that?
A. When we alighted the helicopter I returned to the guesthouse while Sam Bockarie and others went.
Q. Can you tell us who these others were that went with Sam
12:25:18 Bockarie?
A. Sam Bockarie went with his bodyguards.
Q. What happened with Benjamin Yeaten?
A. Benjamin Yeaten did not go. He too returned to his house.
MS HOLLIS: Your Honours, this next line of questioning
12:25:46 I am going to ask for private session. It has to do with a unique position - two unique positions in fact that the witness held which would be identifying and the information the witness received because of these unique positions in combination would also be identifying.
12:26:12 PRESIDING JUDGE: Mr Griffiths, you have heard the application for a private session.
MR GRIFFITHS: Well, I am in no position to object to it, your Honour, frankly.
PRESIDING JUDGE: Very well. Yes, we will allow the next
12:26:30 part of the evidence to be in private session. For purposes of the rules, I inform the public that the next part of the evidence will not be heard, it will be in what's called private session for reasons of security of the witness. I do not know how long it will take.

I N D E X

WITNESSES FOR THE PROSECUTION:

TF1-567 12935

EXAMINATION-IN-CHIEF BY MS HOLLIS 12935

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

MONDAY, 7 JULY 2008
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr William Romans Ms Carolyn Buff
For the Registry:	Ms Advera Nsiima Kamuzora Ms Rachel Irura
For the Prosecution:	Ms Brenda J Hollis Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Mr Terry Munyard

because Charles Taylor was our big revolutionary father, so he said he went to him for him to give him advice.

Q. Tell us what advice he received, if he know?

A. Well, after Issa Sesay met the Pa Charles Taylor, he said he told him that he, Charles Taylor - he would request for the UN peacekeepers arrested by the RUF, for them to be released. So he said that will serve as a help to him to show to the world that when he says anything that thing will happen.

So after he returned the UN peacekeepers were released through Charles Taylor's command. All of them came to Foya and from Foya they were airlifted to Spriggs field.

Q. When Issa Sesay left Monrovia to go back to Sierra Leone, how did he travel from Monrovia?

A. They travelled on board a helicopter to go to Foya. It was at Foya that the helicopter dropped him and from there he took a vehicle to return to Sierra Leone.

Q. If you know, whose helicopter was it?

A. It was Charles Taylor's helicopter.

Q. Did Issa Sesay take anything back with him to Sierra Leone?

A. Yes, when Issa Sesay was going he took with him ammunition, but I can't recall the quantity that he took with him.

Q. How do you know that he took ammunition with him?

A. When Issa Sesay used to come to Monrovia, I will be with him for all the time until his return. I went with him to Spriggs field, I entered the helicopter and I saw the materials. That was how I came to know that he went with ammunition.

Q. Do you know from whom he received this ammunition?

A. At all times when ammunition were given Benjamin Yeaten will say that it is his dad Charles Taylor who provided them.

there and then they will fly it straight to Foya and if Benjamin Yeaten was not there, if there was another commander there like a commander who was called Amphibian Father, he will be there to organise to see that the ammunition moves across to meet Issa Sesay in Sierra Leone.

15:53:19

Q. Well, I am sorry, but it is a matter of some importance, so I will have to press you on this. Foya is in Liberia, isn't it?

A. Yes.

Q. And what is the distance from Foya to the Sierra Leonean border?

15:53:43

A. There is a little bit of long distance. It is a little bit far. It is far.

Q. And Foya is also very close to the Guinean border from whence LURD attacked, isn't it?

15:54:10

A. Yes.

Q. So arms being airlifted into Foya would risk falling into the hands of LURD, wouldn't they?

A. No. Before the airlift would move, the securities on the ground would be deployed and they would deploy manpower and they will send information to Monrovia ensuring that the ground was safe before the airlifting will happen.

15:54:34

Q. But even once the arms and ammunition have been airlifted into Foya, they still have to travel by road to get across the border, don't they?

A. Yes, securities were deployed by day, because there is a river between Guinea and the Sierra Leone border in that area, so before ever a vehicle could travel there would be securities by the river bank, so if enemies were to cross over there, the securities must know about it.

15:54:58

I N D E X

WITNESSES FOR THE PROSECUTION:

TF1-567	13011
EXAMINATION-IN-CHIEF BY MS HOLLIS	13011
CROSS-EXAMINATION BY MR GRIFFITHS	13054

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

TUESDAY, 8 JULY 2008
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr William Romans Ms Carolyn Buff
For the Registry:	Ms Rachel Irura
For the Prosecution:	Ms Brenda J Hollis Mr Mohamed A Bangura Mr Alain Werner Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Mr Terry Munyard

moment. You said Benjamin Yeaten was overall in charge. Now, you have mentioned an Amphibian Father. Where did he fit in this chain of command, if you know?

A. Amphibian Father, what I knew was that he was controlling the Foya area and he was in control of a group called the navy group. He controlled that group, but what Benjamin Yeaten told us was that Charles Taylor appointed him as the joint chief of staff chairman and that he was the boss for all the other generals; he, Benjamin Yeaten.

14:52:40 Q. Mr Witness, Defence counsel also asked you questions about diamonds during your assignments 1 and 2. Defence counsel, I am referring to page 13121. The Defence counsel at one point asked you, "So, just so that I am clear, a portion of those diamonds, if I understand you, would go to Charles Taylor for safe keeping, 14:53:09 is that right?", and you answered, "Yes." Mr Witness, the diamonds went to Charles Taylor for safe keeping for whom?

A. For Foday Sankoh.

Q. To your knowledge, did Foday Sankoh ever receive those diamonds that were held by Charles Taylor for him?

14:53:36 A. At the time Foday Sankoh used to meet me in Monrovia he never told me that the diamonds that they had been keeping with Charles Taylor were given back to him by Charles Taylor.

JUDGE SEBUTINDE: Mr Witness, does that mean they were never given back?

14:54:11 THE WITNESS: Foday Sankoh did not tell me that he had received diamonds from Charles Taylor. He never told me that.

JUDGE SEBUTINDE: Did he tell you that the diamonds were deliberately kept from him?

THE WITNESS: When he came he said Mosquito and others told

him that they kept diamonds with Charles Taylor for him, but he told me that he had not received any diamonds from Charles Taylor.

MS HOLLIS: Madam President, your Honours, at this time I have a series of questions I would like to follow up with the witness relating to the Defence counsel's question, or putting to the witness that he was gun running as a private enterprise of Ibrahim Bah. This will relate directly to the matters I said were most sensitive to this witness in that they would identify him because of his unique roles. So I would ask for a private session. It will be a fairly short private session for those particular follow-up questions.

PRESIDING JUDGE: Mr Griffiths, you've heard the application?

MR GRIFFITHS: Without knowing what the questions will be I think through an excess of caution perhaps we ought to go into private session.

PRESIDING JUDGE: Madam Court Attendant could you please implement that private session. Ms Hollis, if you wish to have a seat while that is being done. For members of the public who are listening to the proceedings, the next series of questions will be in private session. This is for reasons of security of the witness. It means you will not hear what is being said within the Court and likewise it will not be recorded or broadcast to the public through the internet.

Exhibit D-54 admitted 13214



Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

WEDNESDAY, 9 JULY 2008
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr William Romans Ms Doreen Kiggundu
For the Registry:	Ms Rachel Irura
For the Prosecution:	Ms Brenda J Hollis Mr Mohamed A Bangura Mr Alain Werner Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Mr Terry Munyard

on Sierra Leone territory after he had been cut off, himself and his troop had been cut off, by activities on the border?
A. Yes, sir, he almost - he took about a year with us in the jungle and later he crossed through Guinea and entered into
16:17:02 Liberia.
Q. And do you recall what time he went back - he crossed through Guinea and entered Liberia?
A. The only time I saw him was the time I was referring to, 1998.
16:17:25 Q. The question was whether you knew about what time he went back into Liberia, the time you said he went back through Guinea and into Liberian territory. Do you recall when this was?
A. To be specific, sir, I can't recall the month or the date, but he spent some time with us in the jungle before he left.
16:17:56 Q. The next time you saw him you say was in 1998. Is that correct?
A. Yes, sir.
Q. Where did you see him?
A. I saw him in Kenema at Sam Bockarie's house.
16:18:14 Q. And do you know why he had come to Sam Bockarie in Kenema?
A. Well the only message I heard from him was that he brought some ammunition and that the truck got stuck close to Buedu, but that he came ahead to inform Sam Bockarie.
Q. Did he say where he was coming from with the ammunition?
16:18:57 A. Well at that point in time I knew that he was coming from Liberia, but he did not say that he was coming from anywhere else.
Q. How did you know that he was coming from Liberia?
A. Since the time he left us in the jungle and went to

Monrovia I knew that he had been there all along and that he was part of Charles Taylor's securities.

Q. Did you know who gave him the ammunition that he was bringing to Sam Bockarie?

16:19:52 A. Well at that point in time I was not actually taking good record about how, where or who gave - who directly gave him the ammunition that he brought at that particular time, but I knew that he wouldn't have had ammunitions all by himself in Liberia rather than getting it through the orders of Charles Taylor.

16:20:27 Q. You said he reported that he was coming along with this ammunition but the truck got stuck at a point before Buedu.

A. Yes, sir.

Q. When he reported this to Sam Bockarie, what particularly was he asking to be done about this situation?

16:21:06 A. That question is not that clear to me, sir.

Q. Did Sam Bockarie do anything about the ammunition that Jungle said he brought and was stuck somewhere before Buedu?

A. Yes, sir.

Q. What did he do?

16:21:30 A. At the time Jungle came with the information coincided with the time I was just about to travel to Daru to visit my sick father and whilst in Daru I heard that Sam Bockarie's convoy passed through and went to that direction and I believed that they were going for those ammunitions, sir.

16:22:01 Q. Did you get any information about whether they got the ammunition at all?

A. No, sir. At that particular point, no, sir.

Q. Do you know how long Jungle stayed in Kenema on this visit?

A. No, sir.

Q. Were you there when Jungle - did he leave Kenema at any point?
A. Well, at the time I was like almost trying to obtain permission to go and visit my sick father, that was the same time
16:23:00 he too was giving some parcel to take it back to Liberia, but I didn't know whether he left on that particular day and at that particular time.
Q. Now, just to be clear, about what time after Jungle's arrival was he given parcels that you just mentioned?
16:23:28 A. I'm referring to 1998.
Q. Okay. The question is how long after he had arrived in Kenema and reported that he had brought a truck full of ammunition which was stuck before Buedu, how long after that did he get, or was he given, a parcel of diamonds - a parcel.
16:24:04 PRESIDING JUDGE: A parcel.
MR BANGURA: A parcel. I'm sorry, your Honour.
THE WITNESS: I heard of his arrival let's say like last night and I met him in the afternoon when that happened.
MR BANGURA:
16:24:20 Q. So was it the next day?
A. Exactly, sir.
Q. Now, you said he was given a parcel. Who gave him a parcel?
A. Sam Bockarie gave him the parcel.
16:24:37 Q. And did you know what this parcel contained?
A. Yes, sir.
Q. What did it contain?
A. It contained diamonds, sir.
Q. How did you know that the parcel contained diamonds?

A. Well, at that particular time the diamonds were always referred to as - a parcel of diamonds were always referred to as a parcel and I saw the parcel myself whilst we were waiting and he was discussing with Sam Bockarie and I was there waiting to
16:25:25 obtain my permission to go and see my father.
Q. Were you present when the parcel was handed to Jungle?
A. Yes, sir.
Q. Did Sam Bockarie say anything when he handed the parcel to Jungle?
16:25:53 A. Yes, sir.
Q. What did he say?
A. He said, "This is what I have now for the old man."
Q. And when he said "the old man" who was he referring to?
A. When he was dealing with Jungle at that time he was
16:26:18 referring to Charles Taylor at that time.
Q. How did you know this?
A. I knew that earlier, beyond the rebel lines, and we used to refer to Foday Sankoh and Charles Taylor as Papay, or the old man.
16:26:41 Q. Now, when Bockarie handed this parcel to Jungle and said this was for the old man, did Jungle say anything?
A. I cannot remember any word actually, but I think it was appreciated.
Q. Now, this person called Jungle, did you know him by any
16:27:12 other name?
A. Yes, sir. He was Daniel. I think Daniel Falla [phon].
Q. You said that at the time that the diamonds - that the parcel was given to Jungle, you were also trying to seek permission to go somewhere. Is that correct?

A. Yes, sir.
Q. Where were you trying to go to at that point?
A. At that time --
PRESIDING JUDGE: He's made that clear. It's Daru to see
16:28:04 his sick father.
MR BANGURA: I take the point, your Honour:
Q. You said you were going to see your sick father. Did you
eventually go?
A. Yes, sir.
16:28:22 Q. How long were you away for seeing your sick father?
A. Well, unfortunately when I arrived I stayed there until the
AFRC overthrow - I mean the ECOMOG brought back Tejan Kabbah to
power.
MR BANGURA: Your Honour, I'm about to embark on a
16:28:58 completely new area.
PRESIDING JUDGE: Indeed, Mr Bangura, we're just onto time,
so that would be convenient to adjourn. Mr Witness, we are now
going to adjourn for today. It's 4.30. We will resume court
tomorrow at 9.30. I again remind you, as I did yesterday, that
16:29:17 while you're under oath you should not discuss your evidence with
any other person. Do you understand?
THE WITNESS: Yes, ma'am.
PRESIDING JUDGE: Very well. Please adjourn court until
tomorrow at 9.30.
16:29:35 [Whereupon the hearing adjourned at 4.30 p.m.
to be reconvened on Thursday, 10 July 2008 at
9.30 a.m.]

I N D E X

WITNESSES FOR THE PROSECUTION:

TF1-388 13240

EXAMINATION-IN-CHIEF BY MR BANGURA 13240



Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

THURSDAY, 10 JULY 2008
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr Simon Meisenberg Ms Doreen Kiggundu
For the Registry:	Ms Rachel Irura
For the Prosecution:	Ms Brenda J Hollis Mr Mohamed A Bangura Mr Alain Werner Ms Julia Baly Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Mr Terry Munyard

referring to that made that request?
A. A large number of us in this group I am referring to that left Voinjama.
Q. And are you saying that that large group was a group that
14:54:43 made the request? That's the question. Who made the request?
A. Well, it was - the request was from every one of us who were in Voinjama.
Q. Now, you said you were given the option of going to be trained as security for President Taylor at that time. Is that
14:55:25 correct?
A. Yes, sir.
Q. Were any other options discussed with you if you did not take the option of going to be trained?
A. Well, it was not until we had travelled for another one
14:55:51 week to Gbarnga, because the day we had - we left Voinjama to go we had a breakdown at Zorzor and so we spent another one week in Zorzor. So when we finally arrived in Gbarnga Sam Bockarie came and met us and some of us complained about the information we got, that is going to train in Liberia. And I was one of the
14:56:19 spokesperson for those that stayed behind and I made him to understand that we escaped from war and Liberia was strange to us, it was not our home country, so how was it possible for us to come and train as securities for a nation that we were not citizens of.
14:56:52 So in that respect Sam Bockarie responded that it was very important for us to be part of that training and that those who refused to go to the training will live on their own and if anything happened to them they will not give account of them. And there were other things he explained that instilled fear in

us because of the security situation in the country at that time. And he said again that we should not even ask him for any help in Liberia in the form of supports to our families, so the only option left to us at that time was that we were forced to go and undergo the training.

Q. Now, you said that he explained certain other things to you regarding the security situation in the country at the time. What was the security situation at the time that you knew about?

A. From the complaint I gave to him concerning the order, I told him that I had decided to take my family to any of the refugee camps and then he said that, if I can recall, about a few months ago they had just driven the rebels that crossed from Guinea and attacked Kolahun and Voinjama and they were still threatening to come and re-attack.

MR MUNYARD: I am sorry to interrupt. Can I just be clear which country is the security situation we are talking about?

PRESIDING JUDGE: Yes, in a few places there, Mr Bangura, he is speaking of Guinea, and Kolahun and Voinjama which is in Liberia.

MR BANGURA: Your Honour, I will get the witness to clarify, but they were clearly in Liberian territory at this point:

Q. Mr Witness, talking about the security situation here, of which country are we talking about?

A. I am referring to Liberia at this point in time.

Q. Thank you. Can you continue, please. Continue. Your evidence was interrupted, or are you done with that answer?

A. If it is clear, sir, then I have finished with that.

Q. You said you were reminded about recent events in Kolahun

and Voinjama by Sam Bockarie and I am not sure whether you quite completed what you were saying. What recent events in Kolahun and Voinjama were you reminded about?

A. And, like I said, I said he reminded us about the attack that the LURD rebels - later we came to know them by that name - that came from Guinea and attacked those areas that we were occupying, I mean Voinjama and Kolahun. He said that the area was not that safe for anybody to go to the refugee camps in the area, so it was better for us to be in areas that were under the control of the government.

Q. So as a result of these discussions that you had with Sam Bockarie, what became your position, all of you?

A. There was no other option left. We were all taken to Gbatala base for training.

Q. Now, where was Gbatala base?

A. Gbatala base was about a few miles away from Gbarnga going towards Monrovia on the Monrovia-Gbarnga Highway.

Q. Can you recall when exactly you went to Gbatala base?

A. Yes, sir.

Q. When was it?

A. That was in January 2000.

Q. And at this time that you went to Gbatala, are you in a position now to recall the number of you that went there who were in Sam Bockarie's group?

A. After our graduation, that of our group, we were about 100 - I mean about 120 who graduated in my own batch.

Q. Now, the question was how many of you actually went there initially. The number you have given us is of those who graduated. Was that the same number that went to Gbatala base

initially?
A. What I am trying to say here is that the total number of men who left Gbarnga with us I cannot recall now, but when we entered Gbarnga - I mean Gbatala base, some other brothers who had gone ahead with Sam Bockarie to Monrovia were also brought to the base and whilst we were on the base I was not completely having control over our own men, because we were now mixed up with the Liberian brothers, but we only came to know ourselves after we had graduated because we wanted to know those who were all members of our group that came.
Q. Mr Witness, let me just again advise that you try and speak a little slowly when you give your answers. I noticed that you were getting quite too fast. Now, apart from your group that came across with Sam Bockarie, do you know whether any other people from Sierra Leone came across after you left; from the RUF I'm saying?
A. Yes, sir, people continued to cross into Liberia from the RUF to Sam Bockarie.
Q. And when you went to Gbatala to start training, did your group include those who came afterwards?
A. No, sir, after our graduation another group of people were - from Sierra Leone were also trained in the name of Sam Bockarie's group.
Q. How long was your training for at Gbatala?
A. Well, the first training I underwent generally with those with whom I went to the base was for three months and that one was referred to as the basic training, sir.
Q. And who was responsible for training you at Gbatala?
A. At that time we had white instructors and they had Liberian

Court where Sam Bockarie was?
A. No, sir.
Q. Were you in any communication with Sam Bockarie at this point in time?
16:07:19 A. No, sir.
Q. When you got back to Monrovia - you were withdrawn from Bopolu and you came to Monrovia did you get assigned on to any other duty?
A. Yes, sir.
16:07:35 Q. What duty was this?
A. I was assigned to the 1st Battalion headquarters at the ATU and my company was responsible to secure and protect the Executive Mansion area.
Q. Now, did you get any assignment much later on outside of
16:08:04 Monrovia?
A. Yes, sir.
Q. What assignment was that?
A. A few months after I had been assigned company commander protecting the Executive Mansion, an order was published at the
16:08:35 ATU headquarters ordering us, I mean the Sierra Leoneans who were in the ATU, to go for reassignment at Gbarnga in the Bong County.
Q. When you say an order was published, who published that order?
A. Well, at this time that I am speaking about it was - the
16:09:21 order came from the ATU high command at that time and at this point in time, 2002 I am speaking about, it was Chucky, the son of Charles Taylor, that had retaken over the ATU.
Q. Now, you said Chucky. What were his full names?
A. I didn't know whether he had any other full name, but the

I N D E X

WITNESSES FOR THE PROSECUTION:

TF1-388 13359

EXAMINATION-IN-CHIEF BY MR BANGURA 13359

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

WEDNESDAY, 16 JULY 2008
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr Simon Meisenberg Ms Doreen Kiggundu
For the Registry:	Ms Rachel Irura
For the Prosecution:	Ms Brenda J Hollis Mr Nicholas Koumjian Mr Mohamed A Bangura Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Mr Terry Munyard Mr Morris Anyah

these other diamonds went, you claim that you know that Sam Bockarie gave Jungle diamonds and that those diamonds were for Charles Taylor, yes?

A. Yes, sir.

10:07:16 Q. You only saw Jungle the one time in 1998, didn't you?

A. No, sir.

MR MUNYARD: Would your Honours give me just a moment.

Q. Well, you were asked a question, "Do you know how long Jungle remained in Sierra Leone?", on page 13353, line 29. You

10:08:52 said, "Yes, sir, he took about a year with us in the jungle and later crossed through Guinea and entered Liberia." Then you were asked, "Do you recall when he went back?" You said, "The only time I saw him was the time I was referring to, 1998. I can't remember the month or the date, but he spent some time with us in

10:09:12 the jungle before he left." Then:

"Q. The next time you saw him you say was 1998, is that correct?

A. Yes, sir.

Q. Where did you see him?

10:09:31 A. I saw him in Sam Bockarie 's house in Kenema."

You talk about that being an occasion on which his truck had got stuck. Do you remember that?

A. Yes, sir.

Q. You were asked:

10:09:55 "Q. Do you know how long Jungle stayed in Kenema on this visit?

A. No, sir."

Then you were asked on page 13356:

"Q. Okay. The question is how long after he had arrived

in Kenema and reported that he'd brought a truck full of ammunition which was stuck before Buedu, how long after that did he get, or was he given, a parcel of diamonds?"

At that point the Presiding Judge interrupted and said:

10:10:33 "A parcel.

MR BANGURA: A parcel. I'm sorry, your Honour."

Then you said:

"I heard of his arrival let's say like last night and I met him in the afternoon when that happened.

10:10:48 Q. So was it the next day?

A. He was given a parcel. Sam Bockarie gave him the parcel. It contained diamonds."

Of course you'd already been told that it was a parcel of diamonds in an earlier question. At that point you then went on

10:11:03 to say that the diamonds were handed to Jungle for Jungle to take for the old man and by old man you were referring to Charles Taylor. Remember telling us all of that?

A. Yes, sir.

Q. You didn't have a clue what Sam Bockarie was giving Jungle

10:11:26 diamonds for, did you?

A. I only know that diamonds given to Jungle were for Charles Taylor and those diamonds were only sent to him for arms and ammunition as I later confirmed.

Q. You didn't know whether or not Jungle had brought any arms

10:11:53 and ammunition, did you?

A. I heard him telling Sam Bockarie when he arrived in Kenema. When I saw him in Kenema the night he arrived and the following morning that he brought ammunition and that the truck had got stuck in a bridge very close to Buedu. I heard him say those.

Q. So why is it that when the Prosecution were asking you in a detailed interview about all of this did you tell them that you didn't know what Sam Bockarie did with diamonds and when you saw Colonel Jungle coming to meet him in Kenema you didn't know if any diamonds were handed to him by Sam Bockarie and you didn't know if Jungle brought any arms and ammunitions at that time? Why did you tell the Prosecution that when they were asking you questions about Jungle, Sam Bockarie and diamonds?

10:12:43

MR BANGURA: Your Honours, again may I ask that I don't know whether counsel is referring to evidence that the witness gave in court and denied all this fact, or is he referring to the statement? I'm not too clear.

10:13:02

PRESIDING JUDGE: Counsel has put to the witness that in a detailed interview, so I take it from that that counsel is putting a prior statement or prior interview record.

10:13:19

MR BANGURA: May I have the reference, please, your Honour.

MR MUNYARD: I am and I will, but I want an answer to the question first.

PRESIDING JUDGE: I allow the question as put.

10:13:35

MR BANGURA: Your Honour, I don't quite understand the position.

PRESIDING JUDGE: He's putting a proposition, admittedly it is somewhat composite, and he's entitled to put that that there was a prior statement made to the Office of the Prosecutor in which those matters were as in the question and, as I understand Mr Munyard's response just now, the detail will be put in due course to the witness. Is my understanding of your response correct, Mr Munyard?

10:13:53

MR MUNYARD: Absolutely.

MR BANGURA: Your Honour, I was asking for the reference for our own purposes so that we know from what counsel is making these --

PRESIDING JUDGE: I see. Mr Munyard --

10:14:25 MR MUNYARD: It's coming, but I want to deal with the proposition generally first of all.

JUDGE LUSSICK: Mr Munyard has already undertaken to provide the reference once he gets an answer to this question and the Court has allowed the question, so what are we talking about?

10:14:43 MR BANGURA: Your Honour, I take the point, but I was --

PRESIDING JUDGE: Mr Bangura, you will be given the information in due course.

MR BANGURA: Thank you.

PRESIDING JUDGE: I understand you're trying to get ahead

10:14:50 of yourself, but there is a ruling.

MR MUNYARD: I'll start again:

Q. Why did you tell the Prosecution in the course of a detailed interview that you didn't know what Sam Bockarie did with diamonds brought to him and you also - and that you didn't

10:15:23 know if any diamonds were handed to Colonel Jungle by Sam Bockarie and you don't know if Colonel Jungle brought any arms and ammunitions to Sam Bockarie at that time?

A. Well, if you are referring to a particular statement with a particular time frame during which I gave this type of

10:15:52 information I don't know actually, but in terms of in connection to the question asked about what Sam Bockarie did with the diamonds, the ones that were given to Jungle at that time, that is the answer I have given to you here that I knew that he sent it to Charles Taylor because I know that Jungle was the

coordinator between Sam Bockarie and Charles Taylor at that time, especially in terms of the arms deal. But the other individuals who brought their diamonds, I don't know whether the specific diamond that the individual brought was the one given to Jungle and so I cannot say what Sam Bockarie particularly did with that diamond. That was why I said that I did not know whether it was those diamonds given to him or sent, because diamonds were meant for so many purposes, not just for that.

10:16:31

Q. Tab 4, please. It starts on page 26406. Now, I'm going to ask you if you remember this interview. You were interviewed over two days in December of 2006, a period of time closer to the events you were describing than we are in now, and you were interviewed by Magnus Lamin. Do you remember him?

10:17:26

A. I can remember an interview. I can remember that I was interviewed by Magnus.

10:17:58

Q. Yes, and also present was somebody called Shyamala Alagendra. Do you remember that person?

A. I remember her.

Q. Thank you. Because she interviewed you on more than one occasion, didn't she?

10:18:19

A. Yes, sir.

Q. Now on 1 December 2006 in the course of your interview with her, if we look at page 26407 there are a number of unnumbered paragraphs but they have bullet points against them. I want you to look at the second paragraph, please, and I'm going to ask you if this is what you told them. You stated that: "When Sam Bockarie was based in Kenema he had his own group of miners, and so did the other RUF commanders."

10:18:55

You stated that: "The diamonds that were mined, he didn't

see them himself, but is aware that they were brought to Sam Bockarie." You saw packages of diamonds being brought to Sam Bockarie in Kenema. You did not know what Sam Bockarie did with these diamonds that were brought to him.

10:19:33 Did you say all of that to the investigator and Ms Alagendra, the lawyer, or have they recorded that wrong?

A. No, I can remember that particular statement, yes.

Q. The third bullet point:

"He said he saw Colonel Jungle coming to meet Sam Bockarie

10:19:57 in Kenema. He does not know if any diamonds were handed to Colonel Jungle by Sam Bockarie and does not know if Colonel Jungle brought any arms and ammunitions at this time."

Did you tell them that?

A. No, sir, not directly in that information.

10:20:23 Q. Well, can you help the judges with what these two people have got wrong in bullet point 3? Just explain what is wrong with their record of interview. And this is not the people who you said yesterday had wrongly recorded your accounts of seeing Varmuyan Sherif. This is two other people now.

10:20:54 A. This is what I am now saying. In connection to the various groups that I heard had miners in Tongo at that time Sam Bockarie was in Kenema, you know, I said I knew that other people were bringing diamonds to Sam Bockarie, but I did not know what he did with those particular diamonds. I never made reference about a

10:21:23 specific one. I know his bodyguard commander, who I knew was working for him in Tongo, and I know that he brought diamonds. And later, when it came to the information regarding Jungle's coming to Kenema at that particular time, what I meant in that statement at that particular time was that I did not set eyes on

the ammunition, but I heard him say that he brought - I heard him say that he brought the ammunition, but I did not set eyes on them. That was what I said. And the question asked of me at that time was whether I saw the diamonds given to Jungle, but at 10:22:02 that time I said it was a parcel. I did not see the diamonds with my eyes. That was what I understood about the statement I gave to them.

I think a question was asked of me about what I knew about the word "parcel" at that time. I said whenever Sam Bockarie 10:22:22 referred to a parcel at that time it meant diamonds at that time, but I did not set eyes on the particular diamonds to see. That was what I meant in that sentence.

JUDGE SEBUTINDE: Mr Witness, you must make an effort to slow down, please. We've told you this before many times in your 10:22:45 answers. Please make an effort to slow down.

THE WITNESS: I am very sorry, ma'am. Really I am finding it difficult with the interviews because I speak very fast. I am only trying, you know, because of my interviews with you, but really I speak fast.

10:23:06 MR MUNYARD:

Q. You're finding it difficult to tell the truth, I suggest, Mr Jaward. That's the difficulty you're facing, isn't it?

A. No, sir.

Q. Then let's concentrate on what you've just told us, "The 10:23:25 question asked of me at that time was whether I saw the diamonds given to Jungle". You mean the investigators said to you, "Did you see the diamonds given to Jungle?" Are you telling us first of all that you can now remember out of dozens of - out of a dozen or so interviews you can remember a particular question

that was asked to you on 1 December 2006?
A. You know, sir, I told you earlier that it is not that I had said that grammatically I will understand all what was said, but later on these questions when these statements were read to me I
10:24:21 understood that what was written was different from what I meant and so that is when corrections come in, but it's not like totally changing it by line.
Q. You went on to follow that, in the long answer you gave a moment ago, with this - I'll start from the beginning:
10:24:59 "And the question asked of me at that time was whether I saw the diamonds given to Jungle, but at that time I said it was a parcel. I think a question was asked of me about what I knew about the word 'parcel' at that time. I said whenever Sam Bockarie referred to a parcel at that time it meant diamonds at
10:25:16 that time."
Where is the word "parcel" in either paragraph bullet point 2, or bullet point 3?
A. If you are referring to this document here, I think if you were given all the - that is what I'm saying now. If you were
10:25:54 given all, I think, the interviews I had with the Prosecution at that time, especially in terms of this particular statement that is in front of me here, I think you will see where I made corrections when I referred to a parcel at that particular time, but I don't know whether the correction made would be this one,
10:26:17 but these were statements on which I made corrections in the following interviews.
Q. Where is the word "parcel" in either of those two paragraphs?
A. This is what I'm saying here. I don't know whether they

made the correction directly in here, but this statement had been read to me before and I made the correction to the Prosecution before.

Q. Do you agree that the word "parcel" does not appear in either of those paragraphs?

10:27:00

A. I cannot find "parcel" in these two paragraphs here now.

Q. You see, you're picking up on the question that was asked of you a week ago, "What happened with the parcel of diamonds?" That's what you're picking up on, isn't it? You weren't using the expression "parcel" back in December of 2006 because nobody had suggested it to you by that stage, had they?

10:27:37

A. Nobody suggested anything to me and nobody ever tried to tell me what I am supposed to be saying here. I am telling you what I recall about those days. I'm not saying everything into details, but what I remember is what I'm saying, sir.

10:28:09

Q. So why is it that in December of 2006, much nearer to the events than we are now, when you're being asked about Jungle and diamonds you never mention Sam Bockarie giving Jungle diamonds. In fact you say quite specifically that you didn't know if any diamonds were handed to him by Sam Bockarie?

10:28:51

A. I cannot remember all of those except that you bring the statement, but my memory cannot recall all of those things to say that that was what I said particularly at that time.

Q. Your evidence to this Court, during the period of a week or more, amounts to this when it comes to diamonds: The only place you know diamonds ever went to from Sam Bockarie was to Charles Taylor through Jungle, through CO Jungle, yes?

10:29:20

A. That was what I - I mean that was what I saw - I mean I saw with my own eyes.

Q. Do you agree that that's the gist of your evidence to this Court: You don't know the destination of any of the diamonds that these other people gave to Sam Bockarie, you only know that Sam Bockarie gave diamonds to Jungle to give to Charles Taylor? That's your evidence in a nutshell, isn't it?
10:30:18
A. I heard of other diamonds given to other persons. Like I made mention in the evidence that a diamond was given to Issa Sesay which later I --
Q. I am going to stop you at this point. I've already been through your evidence about diamonds. Why is it that when you are asked in December of 2006 about Sam Bockarie, Jungle and diamonds you say you don't know if any diamonds were handed to Jungle by Sam Bockarie? Why did you say that to the Prosecutors in December 2006 unless it was the truth?
10:30:33
A. This is what I think I told you earlier, you know. Whenever a question was asked at that particular time, the true picture I had to - I had to rewind my memory for over 10 years from my history I knew behind the rebel lines at that time, before I can get the actual story and whenever we met I didn't have to leave that particular correct answer behind because I felt that I had already said something different before. I must have to bring that true story that although I said it, but this is exactly the true story that I can believe. This is exactly what was happening.
10:31:06
10:31:32
Q. And it doesn't matter when or where you now tell us Sam Bockarie gave diamonds to Jungle to give to Charles Taylor, because you had every opportunity on 1 December 2006, when you're being asked about Sam Bockarie and diamonds and Jungle, to say to the Prosecutors, well, on such and such an occasion, or
10:31:51

occasions, and in such and such places, "I saw Sam Bockarie give Jungle diamonds." You had every opportunity to say that to them, didn't you?

A. Yes, I had that opportunity.

10:32:37 Q. Were you pressed later by the Prosecution to change your mind on this and say that you did actually see Sam Bockarie, or became aware of Sam Bockarie giving diamonds to Jungle for Charles Taylor?

A. No, sir.

10:32:56 Q. Are you quite sure of that?

A. Yes, sir.

Q. So why the change of story?

A. I think I said it earlier that even the records we're dealing with here now for the RUF behind the lines at that time, 10:33:26 it's so important in this case that my contribution here is one of the main thing, but I want to assure you that from 2000, from the time I spent, I was not even thinking about RUF issues any more. It was only when I got in contact with these people, I mean the Prosecution, that I knew that most of these records had 10:33:47 to be remembered before I started bringing some of these important points back to my memory. So whenever I had said something that I felt was not exactly how it was before I came to present it here, I must have to make that correction, no matter how it would look like.

10:34:07 Q. Talking of corrections, just explain to the judges, will you, what it is that the Prosecutors recorded wrongly in paragraph 3. When I first started asking you questions you said no, you hadn't said that to the Prosecution. Just explain what they got wrong, please.

A. When you're referring to paragraph 3 here, I don't know exactly what the paragraph 3 meant. Maybe if you can read it I will know exactly what caused the change in that particular paragraph, because there were - there are some paragraphs maybe it was because of either the way I felt about the situation and it was --

Q. I will read it to you now.

A. You can go ahead, sir.

Q. I'll read it and I'd like you to follow it, please. It's the third bullet point down from the top. Can you see that on the screen? Can you see it on the screen, Mr Jaward?

A. Yes, sir.

Q. You said that you saw Colonel Jungle coming to meet Sam Bockarie in Kenema. You do not know if any diamonds were handed to Colonel Jungle by Sam Bockarie and you do not know if Colonel Jungle brought any arms and ammunitions at this time. When I read that to you first and said, "Did you say that to the Prosecutors?", you said no, they've got that wrong. Just explain to the judges what is wrong about what they have recorded of your answer on that occasion.

A. I have just said it here. I said this particular statement, what I meant at that time was that I did not set eyes on the diamonds, on the diamonds themselves. It was only a parcel that was given to Jungle at that time and I knew that at that time when Mosquito said a parcel, there were diamonds in the parcel at that particular time. I also referred to Jungle saying - well, I don't know whether Jungle came with the ammunition at that time. I meant that I myself did not set eyes on the ammunition, but I heard that he brought the ammunition but that

the truck got stuck in the bridge closer to Buedu at that time.
Q. Mr Jaward, most of your evidence consists of things that other people told you, or other people said they'd seen or heard. Why didn't you say to the Prosecutors when they read this back to
10:36:57 you, "Well, I was told about diamonds, although I didn't actually set eyes on them myself", or "I was told about ammunition, but I didn't actually set eyes on it myself"?
A. I believe it's not only here that I'm making this correction now. I think I have done this before and I believe a
10:37:26 similar thing that I have explained here was given to the Prosecution at that time.
Q. If you look at paragraph 3 they haven't even said that you claim to have seen arms and ammunition. All they say is that - all you told them then, according to this, is you don't know if
10:37:50 Jungle brought any arms and ammunitions. You don't have to see them yourself to be able to tell the Prosecutors, "I understand, from what I was told, he brought arms and ammunition", do you?
A. I do not understand that long question except you repeat it.
10:38:13 Q. You don't have to see something yourself to be able to tell the Prosecutors, "I heard", or "I learned", or "I understood", that he brought ammunition, or that he was given diamonds, do you?
A. That question is somehow - I cannot understand the
10:38:41 question, so it's difficult for me to just say yes or no. You can turn it any other way maybe so that I can understand it better.
Q. And just where were you living when you were working as Sam Bockarie's house boy and store keeper?

I N D E X

WITNESSES FOR THE PROSECUTION:

TF1-388	13811
CROSS-EXAMINATION BY MR MUNYARD	13811

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

WEDNESDAY, 20 AUGUST 2008
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr William Romans Ms Carolyn Buff
For the Registry:	Ms Advera Kamuzora Ms Rachel Irura
For the Prosecution:	Ms Brenda J Hollis Mr Nicholas Koumjian Ms Ruth M Hackler Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Mr Morris Anyah

A. It was one morning when I went to Rambo, because he was my friend I went to say "hi" to him and when we were together he told me that Sam Bockarie had travelled and I said "To where?" and he said, "Sam Bockarie had travelled to Monrovia for
15:14:16 materials. When he would return Issa would have to come to Kono for us to attack Koidu Town." That was what he told me.
Q. How long approximately after you arrived at Guinea Highway did Issa Sesay arrive, if you know?
A. It did not take long. Just about two weeks. It did not
15:14:48 take long.
Q. When Issa Sesay arrived, do you recall if he brought anything with him?
A. Yes.
Q. What did he bring, if you know?
15:15:12 A. He brought materials and his bodyguards and some officers. They came together.
Q. When you say "materials", what do you mean?
A. I mean ammunition.
Q. Was this a small amount of ammunition, or how would you
15:15:40 describe it?
A. Well it was not that very small because people carried it, because that was what we used to capture the town even.
Q. After Issa Sesay arrived, was there any meetings held?
A. Yes, sir.
15:16:08 Q. Can you tell us what you recall about any meetings held after the arrival of Issa Sesay?
A. When he came they sent message to the other targets for all senior officers to report at the headquarters. That happened and they scheduled a date for a meeting and that too took place and

the meeting was held and they discussed the Koidu Town attack. They planned it and they asked the senior officers, everybody expressed his own opinion. He organised the branches, the roads leading to Koidu Town, he said that those roads were to be
15:17:09 attacked by the commanders. That was the plan.
Q. Can you recall now any specific commanders that were given orders during that meeting?
A. Yes.
Q. Tell us what you remember about the meeting.
15:17:33 A. Like, for instance, Akim and Kailondo were given a place to attack and Rambo too was given Five-Five to attack where the head weapons were. Peleto, Issa, myself and some others were on the Guinea Highway and Banya was sent to Tankoro. That was how the manpower was deployed.
15:18:32 Q. Thank you. Mr Witness, the person that you just said was sent to Tankoro, can you say his name slowly?
A. Banya.
Q. Who was Banya?
A. He was a former SLA like Akim.
15:18:57 Q. Thank you, you anticipated my next question. Do you recall Akim's last name?
A. No, that was the name all of us knew for him, Akim.
Q. Who was Kailondo?
A. Kailondo was an RUF.
15:19:20 Q. You said that Akim was given a place to attack. Do you recall what Akim's assignment was during this offensive in Kono?
A. Yes, but I have forgotten the name of the place now, but later if I recall it I'll tell you.
JUDGE SEBUTINDE: Mr Koumjian, the witness mentioned - in

describing the places that were assigned to attack, he mentioned Five-Five. Is Five-Five a name of a place?

THE WITNESS: Yes, yes, it's an area.

MR KOUMJIAN:

15:20:07 Q. And what we understood you to say is "At Five-Five where the head weapons were"? Can you explain what you meant, or if we understood you correctly? What did you say about Five-Five and weapons?

A. The place where heavy weapons were, where ECOMOG - what

15:20:34 actually strengthened ECOMOG were two places, Five-Five and Lebanon. Those were the two places that strengthened ECOMOG. That's why those strong commanders were assigned there. Rambo went to Lebanon and Five-Five. Those were the two places where the heavy weapons were.

15:20:54 Q. At this meeting with Issa Sesay, about how many people were present? Can you give us any approximation?

A. No, I cannot because I did not make a head count, but we were many.

Q. Was the meeting for all the soldiers, or was it a

15:21:21 commanders' meeting?

A. For all the soldiers and commanders, but not all the soldiers could come from far to attend the meeting, so the commanders represented them. Whatever the commander would hear from the meeting he would go and tell his soldiers.

15:21:43 Q. Was it discussed at this meeting what the objective of this attack was?

A. Yes.

Q. What was the goal of the attack?

A. One of the importance of the attack was that Kono was a

stronghold and we had in mind that, if we attacked Kono, we would suppress the then government in administration and Foday Sankoh would be released. That made us to attack Koidu Town.

Q. In this attack that was discussed at the forum, did they discuss where the attack would stop? What areas were hoped to be captured in the total attack?

A. Yes, Koidu Town itself, to capture the town itself, and from there we should not stop anywhere. We should go straight to Freetown. That was our determination. We should go to Freetown and release Foday Sankoh. That was why it was code named Operation Free Foday Sankoh.

Q. Mr Witness, was there any discussion from the commanders to the soldiers about how the operation should be carried out?

A. Yes, the only piece of advice that was given to every soldier was that it was an operation do or die mission, or Operation Free Foday Sankoh. We should do everything possible to release Foday Sankoh.

Q. Was there any discussion about how either the enemy soldiers or the civilians in these areas being attacked should be treated?

A. The only piece of advice that was given was that nobody should sabotage the mission, that the operation should be made fearful so we should conquer the enemy. We should make the operation fearful.

MR KOUMJIAN: Thank you. Your Honour, I have a couple of documents now I'd like to have shown to the witness. Perhaps begin with tab 9 and the original, the best copy that the OTP has, is available.

PRESIDING JUDGE: Is this week 25, Mr Koumjian?

MR KOUMJIAN:

Q. Mr Witness, thank you for your patience through all this. Sir, can you tell us was the attack in Kono District and on Koidu Town that was planned at the forum that you attended with Issa Sesay successful?

16:04:18

A. Yes.

Q. You've talked about Issa Sesay coming with some ammunition. Do you know where that ammunition came from?

A. Yes.

16:04:38

Q. What do you know about that?

A. At that time we did not have anywhere else to get ammunition from except Liberia from Charles Taylor. Sam Bockarie went to Liberia and Issa Sesay stayed in charge in Buedu as commander. So when Sam Bockarie returned to Buedu and he brought

16:05:06

the ammunition and he handed them over to Issa, Issa took the ammunition to Kono for us to attack Koidu and every one of them was new, but before that Rambo had given me the information because he was the high command at the place.

Q. The forces that were defending Koidu Town and other parts

16:05:38

of Kono District, were those forces well armed or not well armed?

A. It was ECOMOG. They were from all over. They were well armed.

Q. In your experience throughout this war, was this a strong defence force - relatively strong, or relatively weak, that was

16:06:08

defending Koidu Town and Kono District during this attack?

A. The only thing was that because what we captured from them, they would tell you that they would be able to defend the ground but that they were not strong fighters. They had heavy weapons that would prove that if it were the RUF that had such weapons no

other fighter would have been able to enter there.

JUDGE SEBUTINDE: Mr Koumjian, you asked the witness a question what does he know about where the ammunition came from and in his answer he says, "Issa took the ammunition from Kono for us to attack and every one of them was new." One of what? One of what?

MR KOUMJIAN: I didn't catch that as what the witness said, but I'll ask him to repeat it:

Q. Mr Witness, I'm going to go back to when you said Issa Sesay brought the ammunition. First of all, where was Issa Sesay coming from, if you know, with the ammunition?

A. He brought the ammunition from Buedu and he brought them to Kono, but we knew that it was Sam Bockarie who handed the ammunition over to him.

Q. And can you repeat, and perhaps give us more detail, how was it that you knew that the ammunition had come from Charles Taylor?

A. Even before Sam Bockarie - I mean, Issa Sesay left Buedu to come, like I said earlier, I got the information first from Rambo who told me that Sam Bockarie had gone to Charles Taylor, but at that time we never used to refer to him that way. We used to call him Father. He said he had gone to him for arms and ammunition and we were on that when Sam Bockarie arrived in Buedu and we got the information through radio communication that he had returned and after two to three days, Issa travelled to Kono and he met us there with the materials with many manpower. They in fact carried it on their heads because they did not use the motorway. So those were the ones we used for the attack on Kono and that was - those were the materials that they took.

I N D E X

WITNESSES FOR THE PROSECUTION:

TF1-367 14074

EXAMINATION-IN-CHIEF BY MR KOUMJIAN 14075



Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

THURSDAY, 21 AUGUST 2008
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr William Romans Ms Carolyn Buff
For the Registry:	Ms Advera Kamuzora Ms Rachel Irura
For the Prosecution:	Mr Nicholas Koumjian Ms Ruth Hackler Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Mr Morris Anyah

A. No, I did not hear that.
Q. Did you ever hear from any other combatant that they had been ordered by a senior commander to rape women?
A. No.
14:41:26 Q. Did you ever hear from any other combatant that they had been ordered by a senior commander to burn down people's homes?
A. No.
Q. Did you personally ever amputate anybody's limbs?
A. No, sir.
14:41:55 Q. Were you ever ordered by anyone senior to you to amputate people's limbs?
A. No, it never happened.
Q. Did you ever hear from any other combatant during the 11 years that you remained in the RUF that they had been ordered by
14:42:23 a senior commander to amputate people's limbs? Did you ever hear that?
A. No, that never happened on our own side.
Q. But you have looted other people's property, haven't you?
A. Yes.
14:42:51 Q. You did that in Makeni, didn't you?
A. I did not do that in Makeni, because I never went there.
Q. Where did you loot property then?
A. Like in Kono when I was there and we attacked the town, after the attack the mining equipment that we gathered I can
14:43:22 refer to that as looting because they did not belong to me.
Q. But did you, for example, apart from mining equipment, enter people's homes and take their television sets, fridges and the like? Did you ever do that?
A. No, that one, no. In the RUF I am telling you that those

I N D E X

WITNESSES FOR THE PROSECUTION:

TF1-367	14191
EXAMINATION-IN-CHIEF BY MR KOUMJIAN	14191
CROSS-EXAMINATION BY MR GRIFFITHS	14266

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

MONDAY, 1 SEPTEMBER 2008
9:30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr William Romans Ms Carolyn Buff Ms Doreen Kiggundu
For the Registry:	Ms Rachel Irura
For the Prosecution:	Ms Brenda J Hollis Mr Nicholas Koumjian Mr Alain Werner Ms Ruth Hackler
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Mr Terry Munyard Mr Morris Anyah

called Giema, but because we wanted to disguise the name of that town Giema we then called it Burkina Faso.

Q. Now those who fled to Libya, Pujehun District, do you know what happened to them?

15:26:58 A. The Kamajors forced them to cross into Liberia.

Q. And where did Zino go when Zogoda was overrun?

A. Zino and I were trying to fight our way to go to Burkina Faso, but he did not arrive there.

Q. And what happened to him?

15:27:37 A. Well, he lost his life on the way.

Q. Now after that happened to Zino, who was in charge of the RUF on the ground in Sierra Leone?

A. Well, when we got to Giema we met Sam Bockarie, Mosquito, there as the commander.

15:28:06 Q. Now, at this time I would like to direct your attention to the year 1997. Where were you at the beginning of 1997?

A. At the beginning of 1997 I was at Giema and later we went to Buedu and from there Koindu.

Q. And at the beginning of 1997 where was Foday Sankoh?

15:28:40 A. Well, by then we heard that he had been arrested in Nigeria.

Q. And how did you hear about that?

A. We heard that over Daybreak Africa on the BBC.

Q. After you heard of his arrest, did you receive any

15:29:05 communications from Foday Sankoh?

A. We got communication from Foday Sankoh, but it was not a direct communication.

Q. When you say it was not a direct communication, tell us what you mean?

A. Well, the communication was sent to Mosquito by somebody else and that person did say that it was Foday Sankoh who sent him to do so.

Q. And who was this other person who sent the communication to Sam Bockarie, to Mosquito?

A. We heard one Jungle who was called Daniel.

Q. Who was Jungle?

A. Jungle was an SSS in Liberia.

Q. When you say he was an SSS, what do you mean?

A. Special Security Services.

Q. And for whom did Jungle work, if you know?

A. He worked for Charles Taylor.

Q. Now what was this communication that Jungle passed to Mosquito?

A. Jungle passed ranks to Mosquito. The communication was about ranks.

Q. What do you mean it was about ranks?

A. Well, he promoted Mosquito, Issa and some other fighters, then he said that Charles Taylor had said Papay said Mosquito should take direct order from him.

Q. Mosquito should take direct orders from whom?

A. From Charles Taylor.

Q. Now you said he said Charles Taylor said Papay said. So who was it telling Mosquito that Charles Taylor had said something from Papay?

A. Jungle was the one who sent the communication over the VHF radio to Mosquito. He said it was from Charles Taylor. He said Charles Taylor had told him that he should send the message to Mosquito that Papay had promoted him to force commander and Issa

was his deputy and then he promoted other commanders. And Jungle also said that Foday Sankoh had said that Mosquito should take instruction and command from Charles Taylor until he returned from Nigeria.

15:32:13 Q. Until who returned from Nigeria?

A. Until Foday Sankoh returned from Nigeria, if he would be released.

Q. Now to your knowledge, did Sam Bockarie obey that instruction?

15:32:31 A. Yes, he obeyed the instruction.

Q. Now you have told the Court about Foday Sankoh leaving Sierra Leone in 1996 to go for Abidjan Peace Accord and you have also testified that Foday Sankoh was arrested in 1997. Did you yourself ever see Foday Sankoh again after 1996?

15:33:04 A. I did not see Foday Sankoh again from after 1996 to 1999.

Q. In 1999 where did you see Foday Sankoh?

A. I saw him in Liberia, Monrovia.

Q. And do you know why Foday Sankoh was in Monrovia in 1999 when you saw him?

15:33:35 A. He came from the peace talks, when he returned.

Q. Do you know what peace talks he was returning from?

A. He said Lome Peace Accord.

Q. Now what happened when you saw Foday Sankoh in Monrovia in 1999?

15:34:05 A. Mosquito sent for me. He said Foday Sankoh had said I should go, because there was an infighting between him and Superman, so Foday Sankoh said I should go to explain about the infighting and some other development that had taken place in his absence.

proceeded to the Mansion Ground with the truck.
Q. And when you say this person appointed by Issa was left on the ground, what do you mean? Where were they left?
A. At the lodge in Congo Town, the lodge that was there for
16:24:18 the RUF.
Q. And you said Joe Tuah went to Mansion Ground with the truck. Again, what do you mean by Mansion Ground?
A. The Executive Mansion Ground where Charles Taylor was.
Q. And what happened after this?
16:24:41 A. From there the next morning when they were taken from the Weasua airport - they took them to the Weasua airport and they met the materials had already been loaded in the chopper and they went to Foya.
Q. And what kind of chopper was this that went from Monrovia
16:25:05 to Foya?
A. Weasua.
Q. And what happened once the materials arrived in Foya?
A. They were off-loaded and some were taken to Sierra Leone, to Kono, Koidu Town where Issa was based, and some were stored in
16:25:30 Foya. And later they came for the remaining and it was divided. Some stayed in Foya that was used there and the remaining was taken to Kono again.
Q. Where was it in Foya that this other material was stored?
A. They had a ground there that was called Tamba Taylor
16:25:58 Ground. There was a chief called Tamba Taylor who was in Foya. His house was what was used as the ground.
Q. Now the material that was taken back to Sierra Leone in this instance, how was that material used in Sierra Leone?
A. They used it to fight against the Kamajors and the

I N D E X

WITNESSES FOR THE PROSECUTION:

TF1-367	15006
CROSS-EXAMINATION BY MR GRIFFITHS	15006
RE-EXAMINATION BY MR KOUMJIAN	15065
TF1-338	15081
EXAMINATION-IN-CHIEF BY MS HOLLIS	15083

EXHIBITS:

Exhibit P-166 admitted	15077
Exhibit D-57A to C admitted	15079

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

TUESDAY, 2 SEPTEMBER 2008
9:30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr William Romans Ms Doreen Kiggundu
For the Registry:	Ms Rachel Irura
For the Prosecution:	Ms Brenda J Hollis Mr Alain Werner Ms Leigh Lawrie Ms Ruth Hackler
For the accused Charles Ghankay Taylor:	Mr Terry Munyard Mr Morris Anyah
For the Office of the Principal Defender:	Ms Elizabeth Nahamya

happened to these arms and he said they were disarmed.

MS HOLLIS:

Q. Mr Witness, let's be clear on the record about this. When you say that the arms were disarmed, can you explain to the Court what you mean? What happened to those arms?

A. What particular set of arms are you talking about?

Q. You said that Issa Sesay went back and began to disarm the child soldiers and then you said that the arms were disarmed. What do you mean "the arms were disarmed"?

12:10:57 A. You did not get me clearly. I said after that grumbling when he went back he mobilised the child soldiers who had arms, who had their own rifles that they used to fight and he started disarming them, the ones who had rifles.

JUDGE SEBUTINDE: Mr Witness, you were then asked what 12:11:20 happened to the arms that were recovered from the child soldiers and you said, "Some of them were disarmed and others were to be returned to Liberia to Charles Taylor who had given them in the first place". So the question is what do you mean by those that were disarmed? What happened to those weapons?

12:11:49 THE WITNESS: The weapons that had been taken from them, the UN destroyed them. Just when the child combatants were disarmed, they will give your own very arm to you and they will give you a hammer to destroy it yourself.

MS HOLLIS:

12:12:12 Q. Now, Mr Witness, in your testimony you said, "It came a time when Benjamin Yeaten said to him that Charles Taylor had said the weapons and the remaining rounds were to be sent back to Liberia". Benjamin Yeaten said this to whom?

A. He said this to Issa. He said Charles Taylor had said that

the arms he had supplied him with, those that he did not use he should not use them to disarm with because those arms belonged to him. He should not surrender those arms. He should bring them back because they belonged to him. He had given them to him.

12:12:57 Q. When you say those arms belonged to him, who are you referring to? The arms belonged to whom?

A. He was referring to Charles Taylor.

Q. And when you say that the arms should be brought back to him, to whom should the arms be brought back?

12:13:29 A. He said they should take the arms back to Benjamin Yeaten, they should meet Benjamin Yeaten in Vahun. At that time Benjamin Yeaten was in Vahun when the instruction came to Issa. He said Charles Taylor said the arms and ammunition that he had given to him, those that he did not use he should assemble them and bring

12:13:50 them to Benjamin Yeaten because Charles Taylor had said he was the one who had the weapons - he had given them the weapons. If he did not use them he should bring them back to him.

Q. Now what happened after Benjamin Yeaten had this conversation with Issa Sesay?

12:14:13 A. Immediately after that Issa called one of his securities and sent him to Tongo to bring the remaining arms from Gbarnga to Koidu Town.

Q. To bring the remaining arms from where?

A. The ones he sent - he sent his bodyguard to Gbarnga to -

12:14:45 for Banya to collect the heavy weapons that were there and the ammunition that he had in his possession to be brought to Lebanon. And the ones that he had in Lebanon, he put some into the truck and a jeep and took them to Vahun to Benjamin Yeaten.

Q. And who was Banya?

A. Banya was a battalion commander. Even though that is not part of my statement, he was a battalion commander in Tongo.
Q. And to what group did Banya belong?
A. Banya was an RUF commander.
12:15:29 Q. Did you know Banya by any other name?
A. That is no nickname. His real name is Banya. They usually call him Sama Banya, but we call it short, Banya.
MR MUNYARD: Madam President, can I just be clear that where we see in this particular passage he sent his bodyguard to
12:15:56 Gbarnga, we are talking about Banya.
PRESIDING JUDGE: Yes, I was going to --
THE WITNESS: Not Gbarnga. He sent them to Banya in Tongo.
PRESIDING JUDGE: The witness has answered your question, Mr Munyard. It would appear that something was lost in
12:16:11 translation there.
MS HOLLIS:
Q. Now you indicated that Issa sent someone to collect the heavy weapons and that they were to be taken to Vahun. Did this happen?
12:16:33 A. Yes, he sent one of his bodyguards.
Q. And what exactly was taken to Vahun?
A. They went with ammunition and two Chinese 50 calibres and a GPMG, an RPG, an AK rifle and G3 rifles.
Q. Now when you say two Chinese 50 calibres, what is a 50
12:17:08 calibre?
A. It is a heavy weapon that people mount in vehicles. At times they mount them on the ground or at times in vehicles. It should be operated by a team of seven people that is whenever it is mounted. It is a Chinese made weapon, a heavy weapon.

Q. And what happened then when these materials were taken to Vahun?
A. The man who took them there, he handed them over to Benjamin Yeaten and the following day he returned to Issa.
12:17:56 Q. Now, Mr Witness, earlier you testified about Issa Sesay taking trips to Monrovia and giving diamonds to Charles Taylor. Where did Issa Sesay get the diamonds that he was giving to Charles Taylor?
A. He got them from Kono and Tongo.
12:18:27 Q. And did Issa ever say anything about how many diamonds he took to Charles Taylor?
A. He had said something about it some time in 2002.
Q. And what did he say?
A. In 2002 when RUF had been transformed into a political
12:18:56 party, the man who was appointed to be the presidential candidate of the RUF asked Issa what his account was and he said he hadn't any account, but that he had diamonds with Charles Taylor up to 5,000 carats and he had $150,000 that he had given to Charles Taylor for safekeeping and Charles Taylor had said any time
12:19:22 elections would be coming close he would assist the RUF and that was why he was keeping the diamonds.
Q. Now you testified that Charles Taylor had also said that he was going to hold on to the diamonds that were given to him by Issa and by Sam Bockarie to give to Foday Sankoh when Foday
12:19:42 Sankoh was released. To your knowledge, did Foday Sankoh ever receive those diamonds from Charles Taylor?
A. Well, he did not receive them in my presence and, in fact, he did not receive them because Foday Sankoh was not released. He died in detention.

Q. To your knowledge, did Issa Sesay ever receive those diamonds?
A. No, he did not receive them.
Q. To your knowledge, did anyone in the RUF receive those diamonds that Charles Taylor held?
12:20:23
A. No, nobody in the RUF received them.
Q. You have also testified about Issa Sesay meeting a person known as Alpha Bravo and on one occasion taking diamonds to Alpha Bravo. Were there any other times that diamonds were taken to Alpha Bravo?
12:20:53
A. Yes, but he did not go. He used to send one of his securities to Eddie Kanneh. Eddie Kanneh in turn would meet Five-Zero and they would take the diamonds to Alpha Bravo.
Q. Who was Five-Zero?
12:21:20
A. Five-Zero was a code name for Benjamin Yeaten. He was called Unit 50 again, Benjamin Yeaten.
Q. And how many times did that happen?
A. It happened about two times that I can recall now.
Q. Now you testified that when Issa Sesay took diamonds to
12:21:47
Alpha Bravo, Issa Sesay was given $300,000. On these other occasions when diamonds were taken to Alpha Bravo what, if anything, did the RUF receive in exchange for these diamonds?
A. When they took the diamonds, RUF could not receive anything. All what Issa got - heard was that Alpha Bravo had
12:22:21
gone back to Belgium. He said he would come later.
Q. So on these other two occasions to whom were these diamonds given?
A. Eddie Kanneh said he gave the diamonds to Alpha Bravo, that he and Benjamin Yeaten went there.

I N D E X

WITNESSES FOR THE PROSECUTION:

TF1-338	15138
EXAMINATION-IN-CHIEF BY MS HOLLIS	15139
CROSS-EXAMINATION BY MR MUNYARD	15239



Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

FRIDAY, 5 SEPTEMBER 2008
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr Simon Meisenberg Ms Doreen Kiggundu Ms Sidney Thompson
For the Registry:	Ms Rachel Irura
For the Prosecution:	Ms Brenda J Hollis Mr Mohamed A Bangura Ms Leigh Lawrie Mr Christopher Santora
For the accused Charles Ghankay Taylor:	Mr Terry Munyard Mr Morris Anyah

Do you remember saying that?

A. I remember saying that.

Q. Can you explain to the Court what you mean by "according to the instruction, because it was according to instruction that we decided to infiltrate there".

A. The instruction that I mean was the instruction from Issa. He said he got an instruction from Charles Taylor that he should organise the troops to enter Guinea through Pamelap.

THE INTERPRETER: Your Honours, can the witness repeat this last one.

PRESIDING JUDGE: Pause, Mr Witness, please. The interpreter asks that you repeat the last part of your answer. Please pick up from where you said, "He should organise the troops to enter Guinea through Pamelap". Please continue from there.

THE WITNESS: They should enter to Guinea by Kissidougou through Kono, not Koinadugu. Then he should send manpower to Foya to Benjamin Yeaten to be able to join the other forces who were there to enter through Guéckédou. That was why there was delay, the disarmament in that area.

MS HOLLIS:

Q. Now, Mr Witness, on 3 September you also testified about materials being brought by plane to Mayoroh which is near Magburaka, and you testified that the materials included GMG rounds, G3 rounds, stick grenades and AK-47 rounds. To your knowledge, what was done with these materials once they arrived at that location in Mayoroh?

A. Whether they brought, first they tried to take them from Mayoroh. They took some to Freetown to the Ordinance and some

were taken to Makeni and some were in Magburaka. They were used to repel the ECOMOG troops who wanted to invade Freetown at that time.

Q. So these materials, once they were received, how were they distributed?

A. Some were left in Magburaka, some were taken to Ordinance and some were taken to Makeni.

Q. Mr Witness, you were also asked questions about General Ibrahim Bah and General Ibrahim Bah's involvement with Ukrainian mercenaries?

JUDGE SEBUTINDE: Ms Hollis, sorry to interrupt, did the witness say a word "ordinance"? What is ordinance?

MS HOLLIS: Yes, your Honour, he did and I will clarify that:

Q. Mr Witness, you have used the word "ordinance". What does that mean, ordinance?

A. Ordinance, it's an a particular place that the military had in the Murray Town barracks where arms were stored. They called the place Ordinance.

Q. Now, Mr Witness, you were asked questions about General Ibrahim Bah and his involvement with Ukrainian mercenaries and you were asked about these Ukrainian mercenaries who were going to assist the RUF and you talked about having a last meeting in December that was held for you to go and capture Kono, and I am speaking here about pages 15294 all the way through to 15298. So you talked about a last meeting in December that was held for you to go and capture Kono and it was during that meeting that you saw General Ibrahim Bah and Mosquito said it was General Ibrahim who had helped him to pass through Charles Taylor to go to Blaise

communications should go, that all call signs should call on that particular control station to know the present situation that obtained. If there were any instructions, so the instructions would be passed on to you directly.

12:23:54 Q. Who did the controlled station communicate with?

A. The control station communicated with various substations.

Q. You mentioned a special frequency. Was there one that the system operated on, the RUF radio system?

A. Yes, we had a special frequency which was the control

12:24:30 frequency, control station, which was 70110. It was on that particular frequency that every call sign, every radio station, should monitor or should present report or to receive instructions from.

Q. Now you mentioned call signs. Were there any particular

12:24:58 call signs to any particular radios that you recall?

A. Yes.

Q. Please go on?

A. We had Bravo Zulu 4. We had Mike November 1. We had Foxtrot Yankee on the other side. We had Base 1 on the other

12:25:39 side. We had many other frequencies we were call signs, but I cannot recall everything now.

Q. But, Madam Witness, you first of all mentioned on the other side. What do you mean by "on the other side"?

A. That is the Liberian side. That's what I meant. In

12:26:03 Monrovia and around Monrovia.

Q. You mentioned a few names of call signs and you said - you clearly said some were on the other side. Which ones of these were not on the other side, that is which ones were on your side?

A. Well, Mike November 5 was my own side, that was Sierra

Leone, RUF station. Planet 1 was on the RUF station that was in Sierra Leone under RUF command. We had many others.

Q. Now where was Planet 1?

A. Well, Planet 1 was in Buedu. That was Sam Bockarie's station.

Q. You mentioned also Bravo Zulu 4. Where was that?

A. It was in Buedu again. It was the same call sign that we changed to Planet 1, because we used to change call signs.

Q. And you mentioned Mike November. Which call sign was that or for which radio was that call sign?

A. Well, it was in the same Buedu. In Buedu we had three different radio stations, all of them were under Sam Bockarie's command. We had Mike November 5, that was towards going to the airfield. Then we had Marvel, which was a mobile radio station that was mounted in a vehicle. Wherever Sam Bockarie would go that was the radio set he would move with. And Planet 1 was mounted right at Issa Sesay's veranda. That was the permanent radio that Sam Bockarie used.

Q. Now you have mentioned a number of names of radio stations, or call signs for radios that were used in Buedu. Can you give us the time frame when these different radios were in use, or these call signs were in use in Buedu? Let us start with Bravo Zulu 4. You said that was the sign before it was changed. When was it in use?

A. The time we came to Buedu when we had left Kenema, Sam Bockarie left Kenema to Buedu, from Kenema right up to - in Kenema it was Bravo Zulu 4, but when we got to Buedu that was the time we changed it. We changed it to Planet 1.

Q. From the time you changed Planet 1, about what period was

it?
A. It was early 1998.
Q. And up until what time did you continue to use Planet 1 as a call sign for Sam Bockarie?
12:29:39 A. Up to the time that Sam Bockarie left for Monrovia, we were using Planet 1 right up to that time.
Q. And what about Marvel?
A. Marvel was his mobile station that he used whenever he wanted to go to the front line, like the Pendembu area, and
12:29:59 whenever he went to Monrovia. We used Marvel to go and escort him to the airfield, Foya airfield, for him to board a chopper to Monrovia.
Q. Within what period was Marvel used in Buedu? What time period?
12:30:19 A. It was around '98. From early '98 up until the time we went to Monrovia. We used that as an escort radio station. As an escort radio station. That was the mobile radio station.
Q. Finally you mentioned Mike November. For what period was Mike November also used as a call sign for a radio in Buedu?
12:30:54 A. It was the same time that we left Kenema for Buedu. It was the same early 1998. Mike November 5 was used to relay any information that any other call sign would want to pass to Planet 1 whenever that station did not get us. It was as well used particularly for 448, whenever 448 would be coming in Buedu or
12:31:23 any other RUF operational areas.
Q. Madam Witness, you just mentioned 448. What do you mean?
A. That is the ECOMOG jet. That was the code name for the ECOMOG jet that used to come from Liberia.
Q. Now you said that "whenever 448 would be coming in Buedu".

Can you explain that? What is the link with Mike November?
A. Well, that particular station was there for whenever 448 would be taking off from IRA, IRA in Monrovia, Roberts International Airport, we had an operator there who was called
12:32:18 Sky 1. He would come on the net and tell us that 448 had just left my location and during that time Planet 1 would instruct Mike November 5 saying that he should tell the MP commanders in Buedu to ring the bell. That was for Buedu, inside of Buedu. So Mike November 5 now would pass the information on to MP commander
12:32:47 so they would ring the bell. When they would ring the bell, everybody - anybody who was in the RUF in Buedu at that time and the surroundings, whenever he or she heard that bell everybody would know that ECOMOG jet was around and so everybody would go into hiding.
12:33:08 Q. Madam Witness, you mentioned earlier that Marvel was used as a mobile radio. Was any other radio at any time used as a mobile radio, apart from Marvel?
A. Yes, whenever Marvel had a problem we used Planet 1. That was up to us, the operators, to choose which call sign we would
12:33:40 use on that day. We were the ones who would choose the call sign we used on a particular day.
Q. Madam Witness, you started giving us names of call signs of radios, you said on the other side, and that means Liberia. Can you recall any more names? You gave us Foxtrot Yankee. First of
12:34:02 all where was Foxtrot Yankee based?
A. Well, Foxtrot Yankee was based in Foya, Foya airfield. And we had another radio station that was called Victor 1. That was in Vahun. And Lima Bravo in Base 1 - sorry, as well as Base 1, that was in Monrovia with 50. That was Benjamin Yeaten's call

I N D E X

WITNESSES FOR THE PROSECUTION:

TF1-338	15537
CROSS-EXAMINATION BY MR MUNYARD	15538
RE-EXAMINATION BY MS HOLLIS	15546
TF1-585	15571
EXAMINATION-IN-CHIEF BY MR BANGURA	15574

EXHIBITS:

Exhibit P-167 admitted	15569

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

MONDAY, 8 SEPTEMBER 2008
9:30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr William Romans Ms Sidney Thompson
For the Registry:	Ms Advera Kamuzora Ms Rachel Irura
For the Prosecution:	Ms Brenda J Hollis Mr Mohamed A Bangura Mr Nicholas Koumjian Mr Christopher Santora Ms Leigh Lawrie
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths, QC Mr Terry Munyard Mr Morris Anyah Ms Emily Mitchell

Q. Thank you. Madam Witness, in your testimony on Friday you mentioned a particular message that was sent from --

JUDGE SEBUTINDE: Mr Bangura, sorry to interrupt. Mr Interpreter, did the witness say any radio station or every radio station?

THE INTERPRETER: Your Honours, can the witness repeat it.

MR BANGURA:

Q. Madam Witness, I asked you about whether there was a logbook at Zogoda and you - your answer was yes and you talked about other radio stations. Can you repeat that answer, please?

A. I said each radio station had a logbook, not just Zogoda.

Q. Now on Friday you talked about 448 messages. You said 448 was a coded message that came from RIA. Do you recall that?

A. Yes.

Q. And you said it came from an operator at RIA. Do you recall that?

A. Yes.

Q. Now where was RIA to your knowledge?

A. Well, as far as I know, it is Roberts International Airport in Liberia.

Q. And do you know on whose behalf the operator was - the operator you mentioned, who was the operator again? Can you recall?

A. I said Sky 1.

Q. And do you know for what group Sky 1 was working at the Roberts International Airport?

A. What I know is that he was one of Charles Taylor's fighters.

Q. And are you able to tell the Court how he was able to

communicate with radios within RUF territory?
A. There are times he will just come to the national which was 70110. He will just come up and say, "448 has just left my location heading for you location". Then the station would go
09:42:45 off.
Q. Madam Witness, when you say he would come to the national, 70110, what do you mean?
A. That was the control frequency.
Q. The control frequency for who, or which group?
09:43:02 A. For RUF station. That was the central control frequency for the RUF station.
Q. Was it only to the control frequency 70110 that he would communicate, Sky 1?
A. I said 70110, yes.
09:43:26 Q. Yes, the question is was it only to the control station, the 70110? Was it only to that station that Sky 1 would communicate 448 messages?
A. Well, that was the station we received the message from.
PRESIDING JUDGE: Madam Witness, I think counsel is asking
09:43:52 did you get it from one station only, or from others? Is that the purport, Mr Bangura?
MR BANGURA: Thank you, your Honour.
THE WITNESS: Okay, it was not just one station. We got it from Foxtrot Yankee, that was Foya airfield, and we got it from
09:44:10 Base 1 which was Benjamin Yeaten's radio station which was based in Monrovia in Benjamin Yeaten's compound. We also got it from Vahun, which was Victor 1.
MR BANGURA:
Q. Thank you, Madam Witness. I believe you understood my

question the other way round, but I will live with the answer that you have given. My question really was whether Sky 1 communicated these 448 messages to other stations apart from the control station 70110. Do you understand that?

09:44:53 PRESIDING JUDGE: Mr Anyah?

MR ANYAH: I believe the witness said that 70110 was a control frequency as opposed to a control station.

PRESIDING JUDGE: That was the answer, yes, that it was a control frequency.

09:45:16 THE WITNESS: That was the national station for all the RUF stations, the 70110.

MR BANGURA:

Q. Madam Witness, 70110, we have frequency and we have station, what was it? Was it a station or was it a frequency, 09:45:34 can we be clear?

A. Well, it was not a station. It was a frequency, a selected frequency.

Q. You mentioned Foxtrot Yankee as one of the stations from which 448 messages came. Where was Foxtrot Yankee based?

09:46:05 A. It was based at Foya airfield in Liberia.

Q. Do you know who used this call sign, Foxtrot Yankee?

A. Well, there were radio operators there whose names I don't recall now.

Q. And do you know who controlled the radio at Foya that used 09:46:33 this call sign?

A. Well, the radio station was under the control of Charles Taylor's soldiers.

Q. And can you recall when these messages came from Foxtrot Yankee?

A. Well, I recall that at any time they saw the ECOMOG jet fly over their area, or heading towards our own area, they will also come over the net and tell us that, "448 has just passed our location" and that, "448 is heading for your location". Then the station will go off.

Q. Over what period? What period are we talking of here that these messages came from Foxtrot Yankee?

A. Well, from early '98 throughout.

Q. And when you say early '98 can you recall a month in '98?

09:47:58 A. Well, I cannot recall the month now because it has been a long time ago. I don't recall.

JUDGE SEBUTINDE: Mr Bangura, if you could remember to switch off your microphone every now and then.

MR BANGURA:

09:48:14 Q. When you say "throughout", what do you mean? Throughout what period?

A. Up to 1999 when we left for Monrovia.

Q. What about the case of the messages from Sky 1 at RIA? Over what period did you get those messages?

09:48:50 A. Well, it was from 1998 at the time the ECOMOG jet was bombarding the RUF controlled zones.

Q. Up until what time?

A. Up to 1999, mid-1999, even before we left to go to Monrovia.

09:49:20 Q. Madam Witness, you also mentioned Base 1 as a radio that communicated 448 messages, do you recall?

A. Yes, yes, yes.

Q. And you mentioned Lima Bravo, do you recall as well?

A. Yes.

Q. Now where were those two radios located?
A. Well, those two call signs were just one radio station located in Benjamin Yeaten's compound in Monrovia.
Q. Do you recall who the operators were on this radio?
09:50:13 A. Yes, I still recall Sunlight and Dew.
Q. Madam Witness, in your evidence also on Friday you talked about mining that was going on in Kono. Do you recall that?
A. Yes.
Q. Now are you able to tell the Court what period mining was
09:51:05 taking place in Kono, over what period?
A. Well, I recall that it was - the one that was actually serious it was from 1998, early '98.
Q. Madam Witness, your evidence on Friday was that you were in Kenema when you learnt about mining going on in Kono. Do you
09:51:40 recall?
A. Yes, that was why I said that serious mining was actually in 1998. In '97 mining went on there, but it was not as serious as the one that started in 1998 at the time we were finally in Buedu.
09:51:57 Q. How did you know that mining was going on in Kono during the period 1997?
A. Well, Issa Sesay was in charge of Kono at that time. He used to bring the diamonds to Kenema to Mosquito, Sam Bockarie, because at that time he was in Kenema, he was based in Kenema.
09:52:28 So when they got diamonds from Kono, Issa Sesay would bring the diamonds and hand them over to Sam Bockarie in Kenema and at that time Sam Bockarie was based at NIC, so it was through that that I was able to know.
Q. Now when you say you were able to know, exactly how were

commanders whenever they needed arms and ammunition.
Q. And did you know how Jungle brought these materials, the supplies, to Buedu?
A. Yes, I can say something about that, because Jungle's
10:56:42 driver was with him and he told me that they picked up the arms and ammunitions from White Flower at night and they will bring it to Benjamin Yeaten's house in a pick-up and they will off-load it and reload it in a truck for Buedu and he said they would move at night.
10:57:12 Q. Madam Witness, you said Jungle's driver, he told you this. When did Jungle's driver - what is the name of Jungle's driver? What is the name of Jungle's driver who told you this?
A. He was called Alpha.
Q. Did he have a surname?
10:57:42 A. Alpha Jalloh.
Q. You said that Jungle's driver, Alpha Jalloh, would tell you or told you that they picked up the arms and ammunition from White Flower. Where was White Flower?
A. It was Charles Taylor's house in Congo Town.
10:58:05 Q. Where?
A. In Monrovia, Congo Town.
Q. And he said that they would bring the arms and ammunition to Benjamin Yeaten's house in a pick-up. Did he tell you where Benjamin Yeaten's house was?
10:58:27 A. Yes.
Q. Where did he say it was?
A. It was in Congo Town, close to Charles Taylor's house. Charles Taylor's house was up the hill and if you go down the hill that was where Benjamin Yeaten's house was.

announce it. He will say it. He will discuss it either with Issa Sesay or with Eddie Kanneh, those two people. He will say it to them before ever he would convene the meeting. That was how I knew about the meeting.

12:46:44 Q. [Microphone not activated] this meeting, did Sam Bockarie discuss the idea of a meeting before the meeting took place with any of the two persons that you have mentioned?

A. Yes, he discussed it with Eddie Kanneh and in that same meeting they discussed about the Kono issue. From Kono they were

12:47:13 to advance to Freetown, because during that time --

Q. Witness, can I pause you for a while. We will get to --

A. Okay.

Q. Now when you say that this meeting was discussed with Eddie Kanneh, where was it discussed before the meeting I am referring

12:47:36 to - this is your evidence that this meeting was discussed, the idea of a meeting was discussed with Eddie Kanneh by Sam Bockarie. Where was it discussed?

A. Well, it was at Sam Bockarie's veranda where they were eating. By then they were serving them food, so he was

12:47:58 discussing that with Eddie Kanneh. That was how I heard it.

Q. When you say they were serving them food, who were the "they" who were serving them food?

PRESIDING JUDGE: Madam Witness, did you hear the question?

THE WITNESS: Yes.

12:48:23 PRESIDING JUDGE: Can you answer the question?

JUDGE SEBUTINDE: Mr Bangura, I don't know. In private session this witness laid out a number of roles that she did not want the public to know she performed. Now this question you are asking, I don't know if it is one of those roles that you are

[Open session]

MS IRURA: Your Honour, we are in open session.

PRESIDING JUDGE: Madam Witness, we are back in open session and I again remind you of your obligation to ensure that your answers do not reveal your security. Mr Bangura, proceed.

12:59:45

MR BANGURA: Your Honour, just to get the witness to be reassured that the series of questions which we have just had were actually in private session. I am not too sure whether the witness was quite aware of that fact. I may not have got the point:

13:00:16

Q. Madam Witness, we were talking about this meeting that took place and the point we last discussed was Sam Bockarie discussing the idea of a meeting with Eddie Kanneh. You said that during the meeting they also discussed something about Freetown, about moving towards Freetown. Do you recall saying that?

13:00:48

A. Yes.

Q. Can you explain clearly what they discussed at the meeting about Freetown?

A. He said they should discuss about how to go and attack Freetown during that particular mission and that they were at first supposed to clear up Kono and he said that Kono, Superman and Komba Gbundema and others should combine. It should be a uniform mission. They together with SAJ and others, because by then there weren't existing communication between them. He said after they and SAJ would have cleared up Kono they should go to Kabala and from Kabala they should proceed to Freetown. That was what he meant by "discuss", because by then there wasn't any communication between Sam Bockarie and SAJ.

13:01:18

13:01:46

Q. Madam Witness, the matters that you have just talked about,

were they matters which were discussed at the meeting, or were they matters which Sam Bockarie discussed with Eddie Kanneh during the time they were having food together?

A. Well, what I have just explained to you was the discussion that took place between he and Eddie Kanneh whilst they were taking meal together.

Q. Do you recall where the meeting took place?

A. Well, it was in Buedu at Sam Bockarie's house.

Q. And do you recall the persons who were present at this meeting?

A. Well, Isaac was present, that is CO Isaac, Morris Kallon was there, Issa Sesay was there, Abu Keita was there, together with some other people.

Q. Now you mentioned Abu Keita. Who was he?

A. Well, he was a Liberian fighter. A soldier, I mean.

Q. How did you know he was a Liberian soldier?

A. Well, he only spoke Liberian English. He was not speaking Krio, nor English. He was only speaking Liberian English.

Q. And did you know why he was there?

A. Well, he was one of the fighters who had joined the RUF to fight.

Q. Do you know when he joined the RUF to fight?

A. Well, I only saw him in Buedu and I only came to know him in Buedu.

Q. Do you know where he came from before he came to Buedu?

A. Yes, he came from the Liberian side.

Q. And do you know what was decided or discussed at the meeting?

A. Well, I did not attend the meeting, but that was what I

heard even before the meeting itself took place.
Q. Did you learn about what was discussed at the meeting later?
A. Yes, just the same thing I have explained, those were the
13:05:15 things they discussed. That is to go and re-attack Kono, that is the RUF fighters.
Q. Now back to Abu Keita. Do you know whether he belonged to any group in Liberia from where he came?
A. Well, I only knew that he was a Liberian fighter, but I did
13:05:41 not actually know to which group he initially belonged.
Q. Madam Witness, apart from Abu Keita, at this time do you know whether there were any other Liberian fighters in Buedu?
A. Yes, I later knew about one Senegalese.
Q. Who was Senegalese?
13:06:09 A. Well, he was a Liberian fighter too. He was a Liberian soldier. He was fighting in Liberia.
Q. When did you first see Senegalese?
A. Well, I saw him at first in Kenema together with Jungle at the time Jungle and others used to go there.
13:06:38 Q. And then after that did you see him anywhere else apart from this time that he was in Buedu?
A. Yes, I said I saw him at first in Kenema and all of us pulled out from Kenema before we went to Buedu.
Q. And do you know what nationality Senegalese was?
13:07:09 A. Well, he was a Liberian.
Q. How did you know he was a Liberian?
A. He was speaking Liberian English and he came from Liberia.
Q. Do you know whether he belonged to any group in Liberia?
A. Well, that I wouldn't tell. All I know is that he was a

batteries, so it was only once in a while that their radio came on. So he spoke to Brigadier Mani and Brigadier Mani spoke to Sam Bockarie, and later Gullit came on because Brigadier Mani had spoken to Gullit that he would have to tell Sam Bockarie about
14:42:46 SAJ's death and later Gullit himself came up and told Sam Bockarie about SAJ's death. That was how they started talking and they spoke about where they had reached, their position and what they were going through. It was from that point that communication started between Sam Bockarie and Gullit.
14:43:15 Q. Was there any reaction from Sam Bockarie when he learnt that SAJ Musa had died?
A. Well for one reason or the other he said he felt it because he was his colleague strong man, but only that SAJ had refused his order. He objected going to Buedu because he had diamonds,
14:43:42 but - which means even if he died he would not feel it that much. He would feel it, but not that very much because he had rejected his orders because SAJ was not supposed to be in the front line at that time.
Q. You mentioned earlier that Sam Bockarie spoke through the
14:44:00 BBC.
A. Yes.
Q. Sam Bockarie spoke through the BBC saying that his troops would enter Freetown within a certain period. Do you know how Sam Bockarie was able to indicate a time frame within which the
14:44:22 troops would enter Freetown when he spoke to the BBC?
A. Yes, at that time he and Gullit had already spoken. Gullit had told him their position at that time. That was why he made the broadcast on the BBC. Gullit had already told him that they were entering Freetown.

Q. Did you yourself hear this broadcast on BBC radio?
A. I heard it, but I was from a distant point when he was talking.
THE INTERPRETER: Your Honours, can the witness slow down and repeat.
14:45:04
PRESIDING JUDGE: Madam Witness, you're going too quickly for the interpreters and the people that have to write your evidence. We would like you to speak more slowly, please, and pick up where you said, "I was from a distance when he was talking". Please continue from there.
14:45:19
THE WITNESS: I was in the distance when he was talking. After he had spoken, he came to the veranda. He said that he and Gullit had no problem. He said the problem was SAJ. SAJ was the one who had the problem, but as long as SAJ was now dead he and Gullit had no more problems. He said he trusted Gullit and he knew Gullit would make it up to enter Freetown.
14:45:55
MR BANGURA:
Q. Was all of this what Sam Bockarie said to the BBC, or was he saying this in some other context?
A. After he had spoken to the BBC, it was later when he was explaining further. That was when he explained this. After he had finished talking to the BBC, it was later that he explained discussing this in the veranda.
14:46:16
Q. Do you recall whether the troops entered Freetown? Gullit's troops?
A. Yes, later I understood that he had entered Freetown.
14:46:42
Q. How did you understand - how did you get to know that he had entered Freetown?
A. Well, it was over the FM radio that the rebels had entered

Freetown.
Q. Which FM radio are you referring to?
A. It was over the SLBS.
Q. Do you recall whether anything happened - was there any
14:47:19 reaction from Sam Bockarie after the troops entered Freetown?
A. Yes, he came on the media and said he was a man of his word. He had given three days that his men would enter Freetown and indeed they had entered Freetown.
Q. When you say he came on the media --
14:47:48 A. Sam Bockarie came up and spoke.
Q. -- what media are you referring to?
A. I mean BBC. He came up again and spoke and said he was a man of his words. He had said that within three days' time his men would enter Freetown and indeed they had entered Freetown.
14:48:09 Q. How did you know this?
A. Well, he put the satellite in the veranda. It was there he said this, happily. The place was full of people. Everybody was dancing around.
Q. Madam Witness, when you say "satellite", what are you
14:48:29 referring to?
A. I mean the satellite phone.
Q. Do you recall any communication that went on between Sam Bockarie and anybody else during the course of the - during the times that these troops had entered Freetown?
14:49:01 A. Yes. Just after the announcement over the BBC we got a call from Base 1, which was Benjamin Yeaten's radio station, called Sam Bockarie's radio station, that is Planet 1, and the operator enquired if that news that they had got from the BBC was correct that Sam Bockarie's troops had entered Freetown. The

operator responded happily, saying "Yes", and they asked for Sam Bockarie.

Q. Can I ask you to indicate who - you're talking of two operators. Can I ask you to indicate which operator was responding to whose call, or whose questions, please?

A. Well, the radio operator at Benjamin Yeaten was called Sunlight and was the one who called Sam Bockarie's radio station to the operator who was on duty that day. I cannot recall the name now.

Q. And you said that the operator answered or responded that --

A. Yes, he responded happily saying, yes, they had entered Freetown.

Q. Did anything happen after that?

A. Yes, they asked for Planet 1 - and that was Sam Bockarie - if he was around and the operator said, "Yes", so the operator said 50, which was Benjamin Yeaten, wanted to talk to Sam Bockarie.

Q. Which operator said they wanted to talk to Sam Bockarie?

A. Benjamin Yeaten's operator, who was called Sunlight, said his father, who was 50, Benjamin Yeaten, wanted to talk to our own father and that was Sam Bockarie.

Q. Madam Witness, how did you know this?

A. Well on that day, after the jubilation, I knew because the place was full of people. The veranda was in a veranda. When that thing occurred that day, the place was full. During the jubilation I too went to the radio room. I heard the operator asking.

Q. Madam Witness, just to clarify the last answer you gave, I

will just read from what you said. You said, "Well on that day, after the jubilation, I knew because the place was full of people. The veranda was in a veranda". That's not so clear. What did you say about veranda? Can you say that again?

14:52:19 A. No, I said Sam Bockarie was in the veranda and the radio set - where the radio set was, Planet 1, it was in Issa Sesay's veranda opposite Sam Bockarie's veranda. There is a street in between them. The place was packed full with people. There were soldiers there, civilians, a lot of people jubilating. Everybody

14:52:39 was there. That was why I too came to the place and I saw Sam Bockarie and - sorry, I heard Sam Bockarie and Benjamin Yeaten talking on the phone.

Q. Madam Witness, you said that there were many people there, it was full and they were jubilating. Why were they jubilating?

14:53:05 A. Because of the recapture of Freetown, their entry into Freetown, the entry of the rebels into Freetown.

Q. Do you know whether any communication took place between Sam Bockarie and Benjamin Yeaten as had been --

A. Yes, as I said earlier - as I had said earlier after the

14:53:30 operator had asked for our own father, that was Sam Bockarie, that 50 wanted to talk to him, they called him, Sam Bockarie, and Sam Bockarie - 50 asked Sam Bockarie if the news which he had heard over the BBC was correct. Sam Bockarie replied joyously and he said "Yes", and 50 congratulated him and he said, "If that

14:54:01 was the case, if that is the case, then I will be there in two weeks' time and my father would want to talk to you", and he instructed him to switch on the satellite phone.

Q. Madam Witness, were you privy to this communication between Sam Bockarie and Benjamin Yeaten?

A. Yes.

JUDGE SEBUTINDE: Which of the two communications? The one on the satellite phone, or the one on the ordinary radio?

MR BANGURA: I am referring, your Honour, to the one on the radio, not the one on the satellite phone.

14:54:38

THE WITNESS: It was the one on the radio that I heard. After he had asked him if it was true that his men had entered Freetown and he said "Yes" happily, Benjamin Yeaten congratulated Sam Bockarie and he instructed him to put the 21 on, that was the satellite phone, and told him that his father would want to talk to him and if that was the case then he should expect him in two days' time.

14:55:01

MR BANGURA:

Q. Just before we talk about the satellite phone, the last part of your answer was that "If that was the case he should expect him in two days' time". Who should expect who in two days' time?

14:55:19

A. Sam Bockarie was to expect Benjamin Yeaten in two days' time.

Q. Who said this to who?

14:55:31

A. Benjamin Yeaten spoke to Sam Bockarie that if it was true that his men had entered into Freetown, Sam Bockarie should expect him, Benjamin Yeaten, in two days' time.

Q. Expect him where?

A. In Buedu within two days' time.

14:55:50

Q. Do you know whether Sam Bockarie had communication on the 21 with anybody after this conversation with Benjamin Yeaten?

A. Yes. Just as I am saying, just after he left the radio room he went straight to the open terrain and he spoke on the

satellite phone.
Q. Who did he speak to on the satellite phone?
A. Well, he said he had spoken to Charles Taylor.
Q. Did you know he was speaking to Charles Taylor when he
14:56:38 spoke on the satellite phone?
A. Well, before he spoke on the satellite phone Benjamin Yeaten had instructed him to switch on the satellite phone because Benjamin Yeaten's father, Charles Taylor, had said he wanted to talk to him.
14:56:56 Q. Did you know what was discussed between Sam Bockarie and Charles Taylor on the satellite phone?
A. Well, that one I don't know what they discussed.
Q. Madam Witness, you said that Benjamin Yeaten promised to be in Buedu within two days - I believe, within two days - if it was
14:57:34 true that the troops had entered Freetown. Did Benjamin Yeaten come to Buedu?
A. Yes, he came to Buedu.
Q. When did he come to Buedu?
A. Well, after two days after the conversation had taken place
14:57:59 he came.
Q. How did you know Benjamin Yeaten came to Buedu?
A. Well, Sam Bockarie told us to prepare food for guests coming from Liberia.
Q. And who was that guest?
14:58:27 A. It was Benjamin Yeaten.
Q. Did you yourself see Benjamin Yeaten in Buedu?
A. Well, that was my first time to see him. I never knew him before that time.
PRESIDING JUDGE: Mr Bangura, I note the witness answered

the question in the plural, "guests" coming from Liberia.

MR BANGURA: Your Honour, I will get to that:

Q. Madam Witness, did Benjamin Yeaten come to Buedu alone?

A. No, he did not come alone. He came together with Sampson, Junior and Jungle.

14:59:09

Q. Do you recall how long they stayed at Buedu on this visit?

A. Well, they came, they spent the night and in the morning - early in the morning - they went to Kono together with Issa and others.

14:59:43

Q. Madam Witness, was this the only visit in your recollection that Benjamin Yeaten made to Buedu?

A. No, I can recall that Benjamin Yeaten went to Buedu twice that I can recall now.

Q. Was this the first time that he came to Buedu, or was it

15:00:13

the second time?

A. Well, it was the first time. The second time was when Voinjama was cleared.

Q. I shall ask you about the second time later. You said that they went to - Benjamin Yeaten and the others who came with him

15:00:36

went to Kono the next day. Is that correct?

A. Repeat that one.

Q. Your evidence is that - I asked you how long they stayed and you said, "They slept one night and the next day they went to Kono", and "they" referring to Benjamin Yeaten and Jungle,

15:00:57

Sampson and Junior. Is that your evidence?

A. Yes.

Q. Do you know what they went to do in Kono?

A. Well, at that time all of them went together with Issa. I don't know what they went there for because I did not go with

Q. Were you privy to this communication from Gullit to Sam Bockarie?
A. Well, I did not monitor the communication. Sam Bockarie was the one who used to discuss it. He was discussing it.
15:04:21 Q. Did Sam Bockarie give any orders in relation to that situation in Freetown at that time?
A. Yes, Sam Bockarie ordered Gullit that they should not challenge the ECOMOG troops. He said as long as the troop was too heavy for them they should not challenge them, they should
15:04:48 pull out of the town, but before they should pull out of the town they should kill many people and burn down many houses before they should leave the town. He said "If any bush shake, fire should blaze", but they should leave the town.
Q. What do you mean, or what did you understand from the
15:05:11 statement that, "If any bush shake, fire should blaze"? What did that mean?
A. Anywhere they heard gunshots from whatever angle they should fire towards that particular direction and they should kill many people from that direction and they should burn houses,
15:05:36 many of them.
Q. Madam Witness, how did you know that Sam Bockarie gave these instructions to Gullit in Freetown?
A. Well, that was right outside in the open because the radio station was not in a room. It was right outside in the veranda,
15:05:59 an open place. There was a street in between them. He stood there. He was a man without fears. He would just say anything in the open. He said, "Whoever wanted to hear, let that person hear". That was not his business, so he was standing in the open when he said that, because he was angry. He was extremely angry.

He said, "Whosoever wanted to hear, let that person hear it".
Q. Do you know what happened eventually to the troops in Freetown?
A. Well, finally they were pushed out of Freetown. The ECOMOG
15:06:39 forces pushed Gullit and his group out of Freetown.
Q. How did you know that the ECOMOG forces pushed Gullit and his troops out of Freetown?
A. That was the instruction that Sam Bockarie gave to him and he obeyed it. Brigadier Mani was the one who reported to him
15:07:10 that he had started receiving people, that Gullit and others had left Freetown, they had come, and later on the station came on and gave message to Sam Bockarie that they had pulled out of Freetown.
Q. Madam Witness, the earlier part of the answer you gave to
15:07:28 that question is not quite clear. The question was, "How did you know that the ECOMOG forces pushed Gullit and his troops out of Freetown?", and the earlier part of your answer goes as follows, "That was the instruction that Sam Bockarie gave to him and he obeyed it." It is not entirely clear. The rest of the answer
15:07:51 makes sense.
A. Well, I read it in the logbook that they had retreated from Freetown.
Q. What did you mean then when you said that was the instruction that Sam Bockarie gave to him and he obeyed it?
15:08:14 A. Sam Bockarie had said he should pull out of - that Gullit should pull out of Freetown, but before he should do that he should kill many people and burn houses and Gullit responded saying, "Yes, sir". And finally they retreated from Freetown, Gullit and others.

Q. Did you know whether Gullit carried out the orders that Sam Bockarie gave to him regarding what to do in Freetown?
A. Yes, we heard that over the SLBS that rebels had pulled out from Freetown, but they had killed many people and --
15:09:02 PRESIDING JUDGE: Please pause, Madam Witness. Mr Anyah, you are on your feet.
MR ANYAH: Yes, it's just the use of the word, the plural, "orders", or I can't say the word perhaps, "orders", O-R-D-E-R-S. The question was whether the witness knew whether Gullit carried
15:09:19 out the orders in plural. Thus far, the evidence has led one to believe there was just the one order from Sam Bockarie to Gullit regarding the pull out from Freetown.
PRESIDING JUDGE: I see. Mr Bangura?
MR BANGURA: Your Honours, it's a matter of semantics, but
15:09:43 the point is that implicit in the order, which my learned friend is referring to, were specific acts and it could be said that those were individual orders and there were orders, an order to kill civilians, there was an order to burn houses, and so I believe I am quite right to talk about orders.
15:10:00 PRESIDING JUDGE: One thing that I do note that - I see your point, Mr Bangura, but were these at different times, or was it a consolidated order that contained several elements?
MR BANGURA: Your Honours, I will get the witness to say. I wouldn't say what my understanding is, but I will get the
15:10:22 witness to clarify:
Q. Madam Witness, you talked about Sam Bockarie giving orders. I find it difficult, your Honour, to keep myself to the singular. I will just continue based on the argument I've made --
JUDGE SEBUTINDE: The original word was "instruction".

According to the record, it was "instruction".

MR BANGURA:

Q. Madam Witness, the instruction which Sam Bockarie gave to Gullit about what to do in Freetown in the face of pressure from ECOMOG, can you simply tell the Court again what that instructions - instruction was?

15:10:51

A. Well, I don't know what your understanding is. Maybe our understandings are different, so maybe we would have to be coping with each other. What I understand by that is what he told him to do, he said as long as they had realised that the ECOMOG troops were heavy for Gullit's troop then Gullit should retreat from the town, but before Gullit should do that he should kill many civilians and burn many houses and after that he would pull out from Freetown.

15:11:18

MR BANGURA: I hope that answers the enquiry, or question, raised by --

15:11:51

PRESIDING JUDGE: I think it does, yes. Does it deal with your objection, Mr Anyah?

MR ANYAH: Yes, and I think counsel made a valid point in responding to the objection. Thank you.

15:12:09

MR BANGURA:

Q. Madam Witness, the question that I had asked before the objection came was whether you knew whether the instruction given to Sam Bockarie [sic] was carried out.

A. I said yes, because the SLBS radio said that rebels had killed many people and burnt many houses down before ever they left Freetown. He said the civilians - sorry, the ECOMOG soldiers had pushed the rebels out of Freetown, but that the rebels burnt down many houses and killed many civilians. I heard

15:12:32

that over the SLBS radio.

JUDGE SEBUTINDE: Mr Bangura, the instruction was given by Sam Bockarie, not to Sam Bockarie as you stated.

MR BANGURA:

15:13:21 Q. Madam Witness, the instruction to Gullit was given by who?

A. Sam Bockarie was the one who gave the instruction to Gullit.

Q. Did you yourself hear Sam Bockarie give these instructions to Gullit?

15:13:51 A. Yes, I said it was in an open place, outside in the veranda, not in the house.

Q. When you said in an open place, how did Sam Bockarie give this instruction to Gullit? By what means?

A. It was through radio communication set.

15:14:19 Q. After the troops had withdrawn from Freetown, did anyone come to Buedu from Freetown of the troops that withdrew from Freetown?

A. Well, it was very few who returned. Some of them stopped at Gullit's and others' place and some stopped in Kono and very

15:14:55 few of them came to Buedu.

Q. Apart from troops that came to Buedu, did any other persons come to Buedu from Freetown after the pull out?

A. Yes, Victor - they brought Victor Foh and the other people. Victor Foh and his group came to Buedu.

15:15:23 Q. When you say Victor Foh and his group, which group are you referring to?

A. I mean the ones who were at Pademba who were released. I cannot recall their names now, they were many, but I can still recall the name of Victor Foh.

I N D E X

WITNESSES FOR THE PROSECUTION:

TF1-585 15624

EXAMINATION-IN-CHIEF BY MR BANGURA 15624



Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

TUESDAY, 9 SEPTEMBER 2008
9:30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr William Romans Ms Sidney Thompson
For the Registry:	Ms Rachel Irura
For the Prosecution:	Ms Brenda J Hollis Mr Mohamed A Bangura Mr Nicholas Koumjian Mr Christopher Santora Ms Ruth Hackler
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Mr Terry Munyard Mr Morris Anyah

would not allow you to monitor RUF operations?
A. Not all. That's why I initially said - it's in my statement that during operations, not all RUF operations, but during times of operations he would not allow that. He himself would come to the radio room and he would serve as operator for himself. Even for the men, he would be the one doing it.
Q. The point is there were times, as you say, during operations when you were excluded from the radio room because you were a woman, true?
15:19:56 A. Yes.
Q. And you have told the Prosecution that whenever it was operation time you were not involved much in communication, yes?
A. Yes.
Q. Madam Witness, you gave us the names of Sam Bockarie's
15:20:31 radio stations and you gave us the name Planet 1, yes?
A. Yes.
Q. You gave us the name Marvel, correct?
A. Yes.
Q. Besides Marvel and Planet 1, did Sam Bockarie have any
15:20:58 other radio stations?
A. Yes, he had one other radio station that was called Mike November 5.
Q. Where was Mike November 5 based at?
A. Well, it was based in Buedu going towards the airfield -
15:21:27 the airfield in Buedu.
Q. Who were some of the radio operators assigned to Mike November 5?
A. Well, I can only recall one that was called Agama. The others I have forgotten their names.

Q. Did you saying Agama or Adama?
A. Agama. Agama. He was a male.
Q. Madam Witness, do you know how to spell this Agama?
A. Well, I don't know. The way I can spell it is A-G-A-M-A.
15:23:06 That is the way I spell it. I don't know if it is correct.
Q. Madam Witness, do you know whether or can you tell us whether Mike November 5 was a stationary or mobile radio station?
A. Well, it was stationary. It was not mobile.
Q. Planet 1, was it a mobile or stationary radio station?
15:23:57 A. Well, that one I can explain. Planet 1 was a radio station that was initially mounted. Marvel was the one Sam Bockarie used as his mobile. That was mounted in his - in a vehicle. But whenever Marvel had a problem that was up to us, the radio operators, to decide. Whenever Sam Bockarie would want to go
15:24:27 elsewhere whether it was Pendembu or to the front lines, we would use Planet 1 as his mobile station wherever he was.
Q. So your evidence is that Planet 1 was at the same time stationary and could be modified to a mobile radio station, yes?
A. Yes.
15:24:56 Q. And Planet 1 is the same radio in question that was once called Bravo Zulu 4, right?
A. Yes, initially.
Q. Have you ever heard of a radio station called Lemon?
A. What?
15:25:27 Q. In Buedu when you were in Buedu was there a radio station called Lemon, L-E-M-O-N?
A. Well, I never heard the name of that radio station, Lemon, in Buedu, no.
Q. Was there a radio station in Buedu through which RUF

fighters would speak to other radio stations about personal family matters?

A. Well, it was that Mike November 5 that I knew to be the radio they used for that purpose.

15:26:17 Q. So Mike November 5 was never used for official RUF communications?

A. They used it as official and as well as the other way that you have just mentioned.

Q. Foxtrot Yankee you said was a radio station at Foya

15:26:47 airfield, right?

A. Yes.

Q. Who were the radio operators at that station?

A. I don't recall that one.

Q. It was located in Liberia, you say, correct?

15:27:06 A. Yes, in Foya airfield.

Q. Victor 1, another station you say was located in Liberia, correct?

A. Yes.

Q. Vahun, Liberia, to be specific, yes?

15:27:28 A. Yes.

Q. Tell us the names of the radio operators at Victor 1?

A. Well, for now I don't remember any of the radio operators' names in Vahun.

Q. You said there was a radio operator at Roberts

15:28:05 International Airfield called Sky 1, yes?

A. Yes.

Q. What is the real name of this person?

A. Well, I don't know his real name. I only knew Sky 1.

Q. What was the call sign of the radio Sky 1 used?

A. I can't recall now.
Q. So you don't remember the call sign or name of Sky 1's radio, you don't remember the names of any radio operators in Vahun, you don't remember the names of any radio operators in
15:28:53 Foya. All you remember is Benjamin Yeaten's operators in Base 1. I am speaking of Liberia now.
A. Yes, because we lived together for a long time.
Q. Yeaten, how many radio stations did he have, Madam Witness?
A. Well, it was just the one that I knew for him.
15:29:37 Q. When you say just that one, are you referring to Base 1?
A. It's Base 1 that I knew for Benjamin Yeaten. I did not know any other radio station. If he had any other radio station, I did not know.
Q. Base 1, is it the same radio station as Lima Bravo?
15:30:03 A. Yes.
Q. It was first called Lima Bravo and then it came to be known as Base 1, yes?
A. Yes.
Q. When we say Base 1, that is the name of the radio. It's
15:30:30 its call sign, correct?
A. Well, I knew it as a call sign. That was the call sign I knew.
Q. And a call sign is a unique way to identify a particular radio, right?
15:30:58 A. Yes.
Q. A call sign can either be a name with alphabets, or it can be a number, correct?
A. Yes.
Q. When you spoke with the Prosecution in November last year

I N D E X

WITNESSES FOR THE PROSECUTION:

TF1-585	15761
EXAMINATION-IN-CHIEF BY MR BANGURA	15761
CROSS-EXAMINATION BY MR ANYAH	15811



Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

WEDNESDAY, 10 SEPTEMBER 2008
9:30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr Simon Meisenberg Ms Sidney Thompson
For the Registry:	Ms Rachel Irura
For the Prosecution:	Ms Brenda J Hollis Mr Mohamed A Bangura Mr Christopher Santora Ms Ruth Hackler
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Mr Terry Munyard Mr Morris Anyah

exchange was between myself and Madam Court Officer.

MR ANYAH:

Q. Madam Witness, when we left off yesterday we were talking about RUF codes in the possession of persons in Liberia. Do you recall that, Madam Witness?

09:37:21

A. Yes.

Q. During your testimony on Monday, the 8th, you spoke about ECOMOG jets that took off from Roberts International Airfield and attacked RUF positions in Sierra Leone. Do you recall that, Madam Witness?

09:37:44

A. Yes.

Q. There was a code you said was used in radio communications to alert RUF stations in Sierra Leone that these jets were coming. Can you tell us what that code is again?

09:38:04

A. I recall that I said it was 448.

Q. And this is code 448 you said was relayed or transmitted by a radio operator at Roberts international by the name Sky 1, yes?

THE INTERPRETER: Your Honours, your Honours --

PRESIDING JUDGE: Madam Witness, please pause. Yes, Mr Interpreter?

09:38:41

THE INTERPRETER: Your Honours, the gender of Sky 1 has not been made clear to the interpreter.

PRESIDING JUDGE: Very well. Madam Witness, I want you to continue with your answer, but say whether Sky 1 was a man or a woman.

09:38:55

THE WITNESS: Sky 1 was a man.

PRESIDING JUDGE: Please continue with your answer, Madam Witness.

THE WITNESS: Like I said, at Roberts International Airport

Sky 1 was a male. He was the one that used to give us the information from there.

MR ANYAH:

Q. And the information Sky 1 gave you from Roberts International Airport was about the 448, correct?

09:39:28

A. Yes.

Q. At the time that Sky 1 gave you this information, was it when you were in Buedu between the early part of 1998 through December 1999?

09:39:55

A. Well, from early 1998 up to 1999, but it was not in December. It was mid-1999 that the jet stopped attacking the RUF positions.

Q. So it would be fair to say that for about two-thirds of the period while you were in Buedu, early January 1998 through

09:40:20

mid-1999, Sky 1 was the one providing you with this information about the 448 jets, right?

A. It was not just Sky 1 that used to send the information to us. We used to get it from various locations in Liberia, but Sky 1 was the number one person, or he was the person that

09:40:51

relayed the information to us from IRA.

Q. Madam Witness, at this time ECOMOG was both in Sierra Leone as it was in Liberia, correct?

A. Well, yes.

Q. This Court, Madam Witness, has found as a fact that on 29

09:41:25

August 1997 ECOWAS, Economic Community of West African States, extended the mandate of ECOMOG troops in Liberia to include Sierra Leone. Are you aware of that, Madam Witness?

A. Well, I don't know about that.

MR ANYAH: Your Honours, for the record it is judicially

noted fact Z:

Q. Where were there ECOMOG jets taking off from Lungi in Sierra Leone and attacking RUF positions in other parts of Sierra Leone during this period of time, Madam Witness?

09:42:11 A. Well, I do not know about that.

Q. In your opinion, Madam Witness, is it the case that the code word or the code numbers 448 were only relative to jets taking off from Liberia and attacking Sierra Leone?

A. Well, the code name, that code number 448 was referring to

09:42:48 an ECOMOG jet. Whether it took off from Sierra Leone or from Liberia, that was the code name for the ECOMOG jet bombers.

Q. That is fair enough. My question is, to rephrase it, were you aware of ECOMOG jets, also known as 448, taking off from Lungi International Airport in Sierra Leone and attacking RUF

09:43:17 positions within Sierra Leone?

A. Well, that I do not know about.

Q. You are only aware of those jets taking off from Roberts International Airfield in Liberia. Is that your evidence, Madam Witness?

09:43:38 A. I knew about jets and I got information from IRA whenever an ECOMOG jet took off from there to come and attack RUF positions, but I did not know about any other jet that took off from anywhere else in the world to attack RUF positions. The 448 generally meant ECOMOG jet. Whether it took off from where or

09:44:06 where not that was really not the concern. The code name was 448 for jet bombers.

Q. And, just like you said in Court this morning, you told the Prosecution out of court that separate and apart from Sky 1 in RIA, RUF were warned of approaching 448 jets by radio stations in

Vahun, Foya and elsewhere in Liberia, correct?
A. Well, I informed the Prosecution that we used to get information from Vahun, Foya airfield, about 448.
Q. The radio station in Vahun is Victor 1, yes?
09:45:09 A. Yes.
Q. You also told the Prosecution you got information about 448 from Foxtrot Yankee in Foya, yes?
A. Yes.
Q. And in respect of these radio stations you referred to them
09:45:23 as NPFL radio stations, right?
A. Well, I did not tell the Prosecution any specific name regarding that. All I know is that those radio stations were deployed there under Charles Taylor's government.
Q. Madam Witness - and for counsel's benefit this is in tab 2
09:45:58 of the Defence bundle. This is the set of documents handed out by us yesterday. Your Honours, the relevant page is page 7 going into page 8, starting at the bottom of the page.
Madam Witness, just to be quick about this, in November last year between the 19th and the 27th speaking of these events
09:46:41 you told the Prosecution you recall that there were communications between the RUF and a Liberian radio station in Foya called Foxtrot Yankee and another in Vahun - I'm now on the next page, page 8 - called Victor 1 and they had you saying these were NPFL stations located on the border. Did you use the words
09:47:04 or the acronym NPFL in association with these radio stations, Madam Witness?
A. Yes.
Q. Are you aware of the fact that there was no such entity as the NPFL starting towards the end of - in fact, in the middle of

1996, Madam Witness?

A. I did not understand that question.

Q. I will repeat it. During the time you were in Buedu, indeed as far back as when you were in Kenema, there was no entity or organisation in Liberia at that time called NPFL. Are you aware of that, Madam Witness?

A. Well, what I know is that under Charles Taylor's government they had the NPFL.

Q. There was something called the National Patriotic Party, but it was not the National Patriotic Front of Liberia. Are you aware of that, Madam Witness?

A. Well, I do not know that difference. I don't know.

MR ANYAH: Madam Court Officer, with your assistance could we produce Defence exhibit D-25. Thank you, Madam Court Officer:

Q. Madam Witness, this is a document already exhibited before this Court, Defence exhibit D-25. You see at the top it says "22 November" and that should be 1996 through January - sorry, through 12 February 1997. At the very top it says "Liberia demobilisation sites" and that is the map of Liberia. Have you ever seen the map of Liberia before, Madam Witness?

A. Well, no.

Q. But you have been into Liberia a number of times, right?

A. Not so many times. I only went there at the time I went there with Sam Bockarie and the area where I went to I stopped at the border. That was - the first time I went there I stopped at the border, so I have not been there for many times. I went there twice.

Q. Since you left Liberia in the early 2000s, I think you said it was 2003, have you ever gone back to Liberia, Madam Witness?

Q. Madam Witness, this map which comes to us from the World Food Programme, a UN entity, United Nations entity, it is written at the bottom of the map, shows various parts of Liberia, including Vahun, Voinjama, Gbarnga, Camp Naama, Camp Schefflein, 09:56:48 Tubmanburg, and it shows numbers in respect of each of those areas. And if you look in the centre of the map at the bottom near Harper, Liberia, it is written there "Total number of soldiers disarmed and demobilised 21,315."

Are you aware of the fact that between November and 09:57:10 February - November 1996 and February 1997 there was what was called DDRR, Disarmament, Demobilisation, Reintegration and Rehabilitation taking place in Liberia?

A. Well, I don't know about anything like that. I don't know anything about what you have said.

09:57:38 Q. But your evidence is some time in 1997 through 1999 ECOMOG jets were taking off from RIA and NPFL radio stations in Vahun and Foya were alerting RUF positions in Sierra Leone, yes?

A. Yes.

Q. Madam Witness, have you heard the name --

09:58:13 MR BANGURA: Your Honours, I think the answer has gone through now, but I believe my learned friend has gone back on the time period that he initially put to the witness about 448 from Liberia. The evidence before was '98 from the witness, but that question was from '97. The witness's testimony has been that 09:58:36 when she was in Buedu and that was from '98.

MR ANYAH: If I may be heard?

PRESIDING JUDGE: Yes, Mr Anyah, I am just looking at the record as I do recall the witness saying some time the jets stopped. Mr Bangura, you have finished your objection?

MR BANGURA: Yes, your Honour.

PRESIDING JUDGE: Yes, Mr Anyah?

MR ANYAH: I see the point counsel is trying to make but there are a number of issues here. One, it's cross-examination and I can have some fluidity in going back and forth. Two, the witness did say earlier in the sequence of questioning that even before she went to Buedu they used to receive 448 alerts and some of my prior questioning included her time in Kenema and I can use this map for a variety of purposes; the present purpose being to show the witness that ECOMOG was present in Liberia at a particular point in time, disarmament was taking place in Liberia and to use that context to pose specific questions about ECOMOG jets.

PRESIDING JUDGE: I have no problem at all about your right to cross-examine and put questions. I am just bearing in mind that you said "your evidence has been" and I want to ensure that there is an accuracy in those dates. That is the only point I wish to check, Mr Anyah, and I am looking at a question - perhaps it would be best, Mr Bangura, since you have raised the objection, that you refer us to the prior evidence of the witness.

MR ANYAH: Madam President, I appreciate the objection and your Honour has said that I prefaced my question with the words that the witness's evidence has been such and such.

PRESIDING JUDGE: Yes.

MR ANYAH: That being the case, I am more than willing to reformulate and proceed.

PRESIDING JUDGE: Very well. That would save time and you put your point to the witness, Mr Anyah.

MR ANYAH: Thank you, Madam President:

Q. Madam Witness, the map I have just shown you indicates that after February 1997 there was disarmament in Liberia. Do you agree?

10:01:04 A. Well, I don't know about that. I have no knowledge about the Liberian disarmament.

Q. It is your evidence, is it not, that at the time when you were in Buedu there were still radio stations affiliated with the NPFL in Foya and Vahun alerting RUF positions in Liberia about

10:01:37 incoming 448 jets, yes?

A. There was a radio station at Foya and there was a radio station at Vahun that always informed RUF positions about the 448 at the time I was in Buedu.

Q. And these radio stations would have been in Liberia after

10:02:02 the period of time that I proposed to you disarmament took place, yes?

A. Well, I have said it that I do not know about disarmament. In early '98 when I was in Buedu I did not know whether they had disarmed before I went to Buedu. I don't know about that.

10:02:31 Q. This radio operator at RIA, Sky 1, did you tell the Prosecution that he was a brother of Superman?

A. Yes.

Q. Superman was Liberian, yes?

A. Yes.

10:02:52 Q. I mean Liberian by nationality, yes?

A. Yes.

Q. And you do not recall what the call sign or radio name for Sky 1's radio was, yes?

A. I don't recall, not at all.

Q. Have you ever heard the name Vandy Gbamayaji?
A. Yes.
MR ANYAH: Your Honours, part of this name have been given before in prior evidence but I could spell it V-A-N-D-Y and
10:03:39 G-B-A-M-A-Y-A-J-I:
Q. Madam Witness, in what context have you heard that name?
A. Well, that particular name, I heard that particular name and I know the person. He was a radio operator who operated the SLA radio station at that time in 1997 when Sam Bockarie and I
10:04:23 and others were in Kenema and he was even working at the brigade headquarters in Kenema. So at the time we pulled out of Kenema, that is Sam Bockarie pulled out of Kenema, all of us went together with Vandy Gbamayaji. So he was a radio operator and Sam Bockarie assigned a radio set to him. That was a Thompson
10:04:56 radio set. He was in Buedu monitoring the ECOMOG communication in Buedu.
Q. Gbamayaji you said was a radio operator for Sam Bockarie in Buedu monitoring ECOMOG communications, yes?
A. Yes.
10:05:27 Q. He first became a radio operator associated with Sam Bockarie when you were in Kenema, yes?
A. No, he was at the brigade - the Kenema brigade. That was where he was working.
Q. He was an SLA, as in a member of the Sierra Leone Army,
10:05:49 yes?
A. Yes.
Q. And when we say SLA in this context, you mean the SLA that became the Armed Forces Revolutionary Council, AFRC, yes?
A. Later, yes.

Q. When you refer to him as SLA he was no longer an SLA that was loyal to the Government of Sierra Leone, right?
A. That I do not know, but he was an SLA. He was a soldier.
Q. You said his role was to monitor ECOMOG communication in
10:06:30 Buedu. Was that the only thing he did when it came to monitoring, Madam Witness?
A. Well, that was the assignment I knew for him.
Q. What was the call sign of the radio he operated?
A. The radio did not have a call sign. They just installed
10:06:59 the radio. He did not call from that radio. He was just there to monitor the ECOMOG net.
Q. You mean there was a radio in Buedu that did not have a call sign?
A. Yes.
10:07:21 Q. Is it your evidence that radios that are used only for monitoring do not always have call signs?
A. Some had call signs. Those that they could use to communicate had call signs. Those that were used for monitoring did not have call signs.
10:07:51 Q. What was Gbamayaji's code name as an operator or his, shall we say, nickname?
A. Well, I did not know any nickname by which he was called. That was the only name I knew for him.
Q. Gbamayaji also monitored communication about ECOMOG jets,
10:08:23 or 448 jets. Do you agree, Madam Witness?
A. Not a day did I know about that, that he monitored the operations of the ECOMOG jets. I do not know about that and I do not recall that.
Q. Do you know what a Morse - M-O-R-S-E - code is? Morse

code, have you heard that?
A. Well, I have heard that before, but I was not taught the Morse code.
Q. In what context have you previously heard Morse code being
10:09:06 referred to?
A. Well, I only heard that there was a code known as the Morse code for radio operators. They said it was - it made a sound like "pin pin", something like that, but I don't know much about that anyway. I do not know anything about Morse code, because I
10:09:39 was not taught Morse code. I was not taught. I don't know.
Q. Morse code was a code used by AFRC former SLA radio operators. Do you agree, Madam Witness?
A. Well, that I don't know.
Q. There were AFRC radio stations in Buedu that transmitted
10:10:05 information to the RUF about approaching 448 jets. Do you agree, Madam Witness?
A. I don't understand that question.
Q. I will repeat it. In both Kailahun and Kono Districts post intervention, that is post February 1998, there was some
10:10:31 collaboration between AFRC and the RUF in alerting each other about approaching ECOMOG Alpha Jets. Do you agree, Madam Witness?
A. Well, I do not know about that.
Q. Do you know who Perry Kamara is, Madam Witness?
10:10:58 A. I know about King Perry, but I do not know who is Perry Kamara.
Q. Have you ever heard King Perry being referred to as Perry Kamara?
A. Well, I do not know his Perry Kamara name. I do not know

about that. I heard about King Perry, but I do not know the name Perry Kamara.

Q. King Perry was one of the senior RUF radio operators when you were with the RUF, right?

10:11:45 A. King Perry was a senior RUF radio operator.

Q. During the time you were with the RUF, correct?

A. Yes.

Q. King Perry was in the company of Gullit and others when they entered Freetown on 6 January 1999, correct?

10:12:10 A. Well, at this time he was with Gullit. At the time they entered Freetown he was with Gullit.

Q. Madam Witness, I am going to read you what King Perry testified to before this Chamber earlier this year. For counsels' benefit this was in open session on 6 February 2008.

10:12:59 The relevant pages are 3222, 3223, 3224 and I will jump from page to page, but try and give an indication of where I am so everybody can follow. Line 15, page 3222:

"Q. During the course of your journey to Rosos were there any communications which updated you on the threats that

10:13:40 you were faced with?

A. Yes, communication was going on. Besides the troops, which were the government forces and the Civil Defence Forces, ECOMOG used to attack us from the air - air raid. The jet was coming from Lungi and attack our positions and

10:14:04 it was not only us. They were attacking positions like Kailahun, Kono, Koinadugu and also even as we were moving it used to attack our positions, but this attack that this jet was doing in our communication we had two areas how we could communicate. We had radio operators. They were just

there to monitor on the radio the activities of ECOMOG."

Pause there. Madam Witness, a couple of questions. King Perry told this Court that ECOMOG jets used to take off from Lungi to attack their positions. Do you agree?

10:14:48 A. Well, I do not know. I wouldn't - I can't tell, because I did not move with King Perry and others. I was in Buedu. I don't know.

Q. King Perry told this Court that they had radio operators who were just there to monitor on the radio the activities of

10:15:11 ECOMOG. Do you agree, Madam Witness?

A. Well, that I don't know. Maybe it happened where he was. We were not at the same location, so I don't know about that.

Q. On the next page, same transcript, 6 February this year, page 3223, starting line 3 a question is posed:

10:15:44 "Q. Now, in what form was this information passed on to you about ECOMOG air raids?"

And then Perry Kamara or King Perry gives his responses starting at line 7, that is where I will read from:

"A. For example, when the jet was coming from Freetown or

10:16:02 Lungi we had a particular code name for that. We called it 448."

Then if you go down to line 13 he said:

"The word 448 means jet has moved or it has attacked our location."

10:16:20 On the same page, line 26, the question is posed:

"Q. Where were these messages coming from?

A. As I was talking about monitoring communication set we had a particular radio set in Buedu monitored by the AFRC, that was the former SLA. That group was monitoring and

the name that was given by TF1-516, the other name of a radio operator called Atati, A-T-A-T-I? Have you heard that name before?

A. I do not recall.

10:25:12 Q. Are you persistent in maintaining that you are not sure whether or not Gbamayaji monitored 448 because you want this Court to believe that the monitoring of 448 was only done in Liberia?

A. Well, I will still say this: Gbamayaji was monitoring

10:25:33 ECOMOG activities in Sierra Leone and at the end report to Sam Bockarie. Maybe he monitored about the ECOMOG jets and reported it, or maybe he reported some other things that he monitored. I do not want to point specifically to that. All I know is that he monitored ECOMOG activities and at the end report

10:26:01 to Sam Bockarie.

Q. And the reason you do not wish to be specific, I am putting it to you, Madam Witness, is because you want this Court to believe that monitoring was only done in Liberia; true or false?

A. Well, I will not just agree with you and I will not

10:26:22 disagree with you like that, but I know that Gbamayaji monitored ECOMOG activity and in the end would report to Sam Bockarie and that might be the ECOMOG jet or whatsoever movement that ECOMOG undertook that he reported to Sam Bockarie, as well as - and I want to assure the Court that we used to get reports about the

10:26:47 448 from Monrovia, or from Liberia to Sierra Leone.

Q. I am not arguing with you whether or not you used to get these reports from Liberia. I am suggesting to you you want this Court to believe you only got them from Liberia and not from within Sierra Leone. Do you agree?

A. I have answered that question and you are still pushing me there. You are confusing me. I have already answered that question.
Q. Do you know Zedman, Sahr James, right?
10:27:35 A. I know him.
Q. Another senior RUF radio operator, correct?
A. Yes.
Q. At one point Zedman was based at Lungi monitoring ECOMOG jets. Do you agree, Madam Witness?
10:27:54 A. Well, I don't know. I never heard about that. I am only hearing that from you now.
Q. Well, let me rephrase that because I might stand to be corrected. Do you agree with this proposition, Madam Witness, that at some point Zedman had the responsibility of monitoring
10:28:17 the flights of ECOMOG Alpha Jets that were taking off from Lungi International Airport in Sierra Leone?
A. Well, I do not know about that.
Q. Have you heard the name Victor Malu before, Madam Witness?
A. Well, I do not recall any more.
10:29:00 Q. Was there a radio operator by the name of Sita, S-I-T-A, that you know of?
A. Well, I do not recall.
Q. You have heard the name Abu Keita before, have you not?
A. Yes.
10:29:22 Q. Who is Abu Keita, Madam Witness?
A. Well, I came to know Abu Keita in Buedu as a ULIMO, but I do not know who he was.
Q. Abu Keita was ULIMO. You agree with that, yes?
A. That was what I heard.

Q. Abu Keita was Mandingo, yes?
A. Yes.
Q. Abu Keita testified before this Court in January of this year. On 23 January of this year he said something about ECOMOG
10:30:20 Alpha Jets. I will read it to you from - your Honours, for everyone's benefit, the transcript of 23 January 2008 at page 2024, at line 12 - actually at line 18 the question was posed to Abu Keita:

"Q. Was there any strategy involving radios?
10:30:55 A. The strategy was the monitor. Zedman monitored the radio stations from the Nigerian ECOMOG who were based in Lungi. Also, Memunatu and Sita, they monitored from Monrovia. If a jet takes off from Monrovia on the RIA because Victor Malu who was the first commander was staying
10:31:21 in Monrovia, so they will call 448 so the radio operator would ring a bell and everybody would escape. That was the only strategy that I knew about."

Did you hear what I just read as said by Abu Keita, Madam Witness?
10:31:38 A. Yes, I have heard it.
Q. Abu Keita is saying that jets also flew from Lungi airport and that Zedman monitored the flights of those jets. Do you agree?
A. Well --
10:31:57 PRESIDING JUDGE: Pause, Madam Witness. Are you asking the witness if he said that, or are you asking if there was monitoring of the flights, Mr Anyah?
MR ANYAH: I understand the distinction:
Q. Do you agree with what Abu Keita has said that there was

monitoring of flights taking off from Lungi International Airport?

A. Well, I cannot just agree with that. That was what he said and that is his statement and in fact all what he said there, I do not know anything about it, but that is his own statement. That was what he said in Court here. I am not saying he lied. And what I know and what I heard is what I am telling the Court. I do not know anything about what Abu Keita said or what he knew.

Q. Do you agree with Abu Keita when he says that Zedman used to monitor the flights of jets from Lungi airport?

A. That was what he said, but I do not know anything about that.

Q. Have you ever been to Roberts International Airfield in Monrovia, Madam Witness?

A. I have never been there.

Q. Have you ever been to any airport, Madam Witness?

A. I have been to the Lungi airport and - why are you smiling? And I have been to Brussels airport.

Q. You did fly on a plane to get here, right, Madam Witness?

A. Yes.

Q. At Lungi airport, using it as an example, when a plane takes off if someone were somewhere in a farm near Lungi would they be able to see that plane taking off?

A. Farm? Which farm are you referring to?

Q. Let's forget farm as an example. If you were in the terminal of Lungi airport, or somewhere in the premises of Lungi airport, and you saw a plane taking off - rather and a plane took off or landed, would you be able to see it?

MR BANGURA: Your Honours, I am not sure where we are

going, but it seems like we are dwelling in the realm of speculation here now. The witness has not said that she - I don't know whether counsel wants to lay that sort of foundation, but we do not have the witness in any situation where she says
10:35:03 she has been standing and seeing a plane take off. We are dwelling on speculation.

PRESIDING JUDGE: I think counsel is entitled to put that question. He is asking something that she may or may not have done, but he is asking her to say if she could have seen if she
10:35:23 was in that situation. She has already told us she was at Lungi, so I think counsel is entitled to put that question.

MR ANYAH: Thank you, Madam President:

Q. Madam Witness, when you were at Lungi did you see any planes take off or land at that airport?

10:35:45 A. The day when I said I was at Lungi, it was at the time that I was coming here that I entered Lungi. That was my first time of going to Lungi. I have not lived in Lungi before. I was passing through.

Q. My question is not whether you have lived there. My
10:36:03 question is not whether you were passing through. My question is not whether that was the first time you were there. My question is this time you were there did you see any planes take off or land?

A. I can only come out to see or want to see if I had any
10:36:29 interest over that particular plane.

Q. I am not asking you whether you had an interest in a plane landing or taking off.

PRESIDING JUDGE: Madam Witness, the question is not difficult. You have told us you were at Lungi. When you were

there, did you see a plane take off from the airport or did you see a plane land at the airport?

THE WITNESS: Well, I cannot remember that.

MR ANYAH:

10:37:03 Q. Have you ever seen a plane take off or land anywhere else before, whether it be Lungi, Brussels or when you arrived here in Holland at another airport?

A. Repeat that question.

MR ANYAH: Madam President, to be fair to the witness it

10:37:23 may be possible that she did not arrive at Schiphol, so I will rephrase the question:

Q. Madam Witness, have you ever seen a plane take off or land in either Lungi or Brussels airport?

A. Well, because I saw myself in, I entered the plane and we

10:37:44 took off and then we landed.

Q. When someone is at Lungi airport is there anything obstructing their view of the runway that planes land and take off from?

A. Well, I can't tell that. I do not know about that.

10:38:06 Q. When you were at Lungi were you able to look out and see the runway on which planes take off or land on?

A. Except at the time when we came out to board the plane. My attention was not there. My attention was just on my travel. I was not even thinking about all of that. I was not paying

10:38:35 attention to all of that.

Q. When Abu Keita says Memunatu Deen and others monitored Alpha Jets at Roberts International Airfield, do you agree that that in fact did take place?

A. Well, I don't know that.

I N D E X

WITNESSES FOR THE PROSECUTION:

TF1-585 15882

CROSS-EXAMINATION BY MR ANYAH 15883



Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

FRIDAY, 12 SEPTEMBER 2008
9:30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr Simon Meisenberg Ms Carolyn Buff
For the Registry:	Ms Rachel Irura
For the Prosecution:	Ms Brenda J Hollis Mr Christopher Santora Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Mr Morris Anyah Ms Salla Moilanen

sign name for that station.
Q. So are you saying that this particular station's name changed?
A. Yes.
12:04:27 Q. And, if you remember, which name was it first and which name did it change to?
A. At first it was Lemon and later it became Mike November 5.
Q. Now earlier in your description of your training you referred to some of the things you were trained in, such as
12:04:58 coding, frequencies, logbook and other aspects of your training. During the time you were in Buedu, were you following along with the protocols that you learned in this prior training?
A. Yes.
Q. Can you describe typically what a day would consist of for
12:05:29 you in your assignment while you were in Buedu at this time?
A. Yes, because I used to monitor all the stations and particularly so Marvel and Planet 1. In the morning I would go to Planet 1 and I would try to get reports from the various stations, and we would go down to the ground to Planet 1 because
12:06:05 at the time Sam Bockarie would be on the ground we operated that radio. Marvel will just be there to monitor, because if we had any messages to be sent we would send them there and if some other messages came from various areas that was where we received them.
12:06:24 Q. Okay. Just to understand your last reference, you said, "Marvel would just be there to monitor. If we had any messages to be sent we would send them there and if some other messages came from various areas that was where we received them." Can you just clarify your answer. You said Marvel and Planet 1 were

both in Buedu. Is that correct?
A. Yes, both stations were in Buedu. In the morning Marvel was the ground station, by that I mean the base station for Buedu, and Planet 1 was Sam Bockarie's mobile station. It was
12:07:12 mounted in a vehicle and once Sam Bockarie was on the ground he was the commander. We would always be with him and at any time we received situation reports in the morning from the various stations, at that time the operators at Planet 1 would be there and I and Zedman would be at Marvel to monitor what the situation
12:07:39 report was. We would go to the ground. All of us would go there. We would sit with Sam Bockarie. At times we would take Marvel to a house going towards Foya, it was something like a hut, because we used to get threat from the jet and we used that hut to install the radio. That was where we used to work.
12:08:09 Q. So when you received a threat from the jet, which radio would you take to this hut?
A. During those times when the jets persistently disturbed us we used to get calls from Sunlight from Monrovia at any time the jet wanted to move, because by then the ECOMOG base was in
12:08:39 Liberia and the jets will move from Monrovia and at any time the jet will move from Monrovia he will tell us that the Four-Four-Eight or the iron bird is moving from Monrovia and so we would inform all our stations to be alert.
Q. Okay, but my question to you was when this alert would come
12:09:08 over you said that - actually, I withdraw the question. I realise it's answered. It actually is answered. I apologise. And what's a Four-Four-Eight, Mr Witness?
A. That is the jet, or the iron bird.
Q. Now, you said that also from Buedu you were communicating

Q. Now you earlier said that periodically during the time you were in Buedu at the time after the intervention to December 1999, that Sam Bockarie would regularly bring back ammunition. Is that correct?

13:09:52 A. Yes.

Q. Now in this instance you're saying you recall that the meeting took place - "It was when Sam Bockarie went to Monrovia and came with that ammunition".

A. Yes.

13:10:12 Q. What are you referring to?

A. I have not understood that question.

Q. Let me simplify the question a little bit. You said that, "This meeting, it was when Sam Bockarie went to Monrovia and came with that ammunition". What ammunition?

13:10:42 A. The ammunition that was in the truck that he came with. That was the heaviest ammunition that he had come with in all his travels to Monrovia.

Q. And when was this ammunition brought?

A. It was in 1999, but I cannot recall the precise month. But

13:11:13 when that ammunition came, when the commanders came, the attack on Kono took place immediately.

Q. Now are you familiar with an incident in Sierra Leone referred to as the January 6 attack on Freetown?

A. Yes.

13:11:41 Q. Did this ammunition arrive before or after that incident?

A. That ammunition arrived after we had captured Kono, Makeni up to Waterloo. It came before the January 6.

Q. Let me ask you your last answer again, Mr Witness. You said, "That ammunition arrived after we captured Kono, Makeni, up

to Waterloo. It came before January 6." When do you recall the ammunition arriving in terms of what you earlier said was an attack on Kono that led up to Freetown?

PRESIDING JUDGE: Did the witness actually say the Kono attack led to Freetown?

13:12:39

MR SANTORA: Not in this particular answer but earlier back on the record he did say, in referring to this - referring to the meeting, that there was an attack on Kono that led to Freetown. I can look for the reference if --

13:12:57

PRESIDING JUDGE: If you assure me it's there then I will accept it, Mr Santora. Please proceed.

MR SANTORA: Thank you:

Q. Now I'm going to ask you the question again, Mr Witness. This ammunition, this large shipment, did it arrive - when did it

13:13:16

arrive in terms of what you've earlier described as an attack on Kono that led up to Freetown?

A. The ammunition arrived, it was that ammunition that we used to attack Kono. It was that ammunition that we used to attack Kono, Makeni, up to Lunsar, that ammunition. Even before we

13:13:53

thought about January 6.

Q. So to clarify, are you saying this ammunition arrived before January 6?

A. Yes.

Q. Now taking you back now, first of all, what did you observe

13:14:11

in terms of this ammunition arriving?

A. When the ammunition arrived we were happy on the ground because we knew that the threat from the enemy was over, so Sam Bockarie gave a message for us to send to call the commanders and Issa, especially those who were on the defensive, so that they

can come and sit together and plan for the attack. So they came and held a meeting behind Issa Sesay's house.

But I was not present at that meeting. It was Zedman who attended that meeting. After the meeting when we came back he explained to me that they had held the meeting and that they were to attack Kono. Morris Kallon was to use a bypass to cut off a supply line between Kono and Makeni so that Issa, Rambo, Banya and the other commanders would hit on Kono. He said that was the plan. And the next morning they were to take off - they were to take off to go.

13:14:59
13:15:28

Q. Now you said you yourself did not attend this meeting?

A. Not at all.

Q. Do you know who did attend the meeting?

A. I said Zedman attended. Zedman attended. He attended the meeting. He was one of the operators. He gave me this information.

13:15:49

Q. Do you know anyone else that attended the meeting?

A. Yes, CO Issa came, Morris Kallon came, Amara Peleto came and they had come for that meeting.

MR SANTORA: Your Honours, just as a point of clarification, because I did misspeak on the record and I just looked back at the reference, the actual phrasing that the witness used with regards to that meeting and the ammunition was that "we used to attack Kono up to Freetown". The word "led" was not there and I apologise for that and I apologise, counsel:

13:16:15
13:16:35

Q. Who was Amara Peleto?

A. Amara Peleto was one of the front line commanders and also a bodyguard to Issa. Later he became the mining commander, the diamond mining commander.

along with Jungle and others.

Q. I should rephrase it. Did anybody you recall who left with Sam Bockarie, who left Buedu for Liberia - do you remember anybody else - anybody - if anyone left with him?

13:20:23 A. Yes, when he was going he went with the operators. He went with this boy, Pascal. CO Lion who was with him too went and his bodyguards, Foday - he did not go alone.

Q. Now you've mentioned the name Abu Keita. Who is he?

13:21:09 A. Abu Keita, from the information we got, he was a ULIMO general in Liberia. Later he joined the NPFL. So when this operation that they were talking about, this Guinea operation, commenced, they were all there. So Abu Keita, Sheku, Sidibay, the three of them were in their group when they came.

Q. Who is Sidibay?

13:21:41 A. Sidibay was a Guinean national. He used to speak Mandingo.

Q. Now you yourself - you said you did not attend this meeting you've referred to behind Issa Sesay's house. Is that correct?

A. Yes, I was not there.

Q. Why not?

13:22:14 A. I was on duty. I was monitoring the radio.

Q. After this meeting did anything happen to you?

A. After that meeting, after they had organised all the ammunition and everybody had gone and they've attacked Kono, Makeni, Lunsar and other areas, at one time - at one night Sam

13:22:50 Bockarie took the radio up at MP because I was in a vehicle - it was in a vehicle and they were communicating from there. I had come from one of my friends and I passed by, but at that time one of his bodyguards whom he had made an operator, Pascal, it was Pascal who was on duty for the whole day till that night. In the

I N D E X

WITNESSES FOR THE PROSECUTION:

MOHAMED BERETEH KABBAH 16085

EXAMINATION-IN-CHIEF BY MR SANTORA 16086



Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

MONDAY, 15 SEPTEMBER 2008
9:30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr Simon Meisenberg Ms Carolyn Buff
For the Registry:	Ms Rachel Irura
For the Prosecution:	Mr Nicholas Koumjian Mr Christopher Santora Ms Kathryn Howarth Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Mr Terry Munyard Mr Morris Anyah Ms Jacqueline Watts

continue to describe what you observed in terms of the communications between the radio room in Buedu and the men in Freetown?

A. Yes. Every day communication went on up till night. When the enemies suppression had become really intense, that is, the enemies had cut off our supply lines from our men who were in Freetown, they cut off the supply lines in Waterloo, Rambo who was sent at that time could not go through. The supply lines had already been cut off by the enemies and Gullit was sending the complaint to Sam Bockarie and he in turn told him to move with the prisoners who had been released from Pademba Road, that is JS Momoh and others, and he said when we would be going with them he should do so at night because of the jet. And the following day there was communication again between him and Sam Bockarie and he said they could not withstand the tension any more and they had to withdraw, so Sam Bockarie told him that if they were to leave the town they should make the area fearful, they should be destroying so anybody who would go there thereafter would know that there had been fighting in that area and Gullit replied that as long as he had told them to pull out he would go according to his instruction and that very night they left Freetown and passed through Tombo where they were received by Rambo at the crossing point.

Q. Now you said that, "Sam Bockarie told him that if they were to leave the town they should make the area fearful." What do you understand that to mean?

A. From my understanding that meant the destruction. To make an area fearful during the wartime, we meant to destroy completely and leave the place.

the entire movement.

Q. Now you also said - you were speaking of a conversation between Sam Bockarie and Benjamin Yeaten during the time of the Freetown invasion. First of all, can you just describe generally who, if anyone, was Sam Bockarie in communication with during the time of the Freetown invasion?

10:03:46

A. Sam Bockarie communicated with Benjamin Yeaten and he used to communicate as well with Charles Taylor, but for the communication with Charles Taylor that one he used the satellite phone. And the capture of Freetown, that was not even a hidden thing that he would go to a corner and discuss like he used to do, that one he did in an open place when he was trying to inform Charles Taylor that our men were in Freetown. He did that in the open because the RUF was happy, that was a joy to the RUF that they had entered Freetown.

10:04:12

10:04:39

Q. Let's start, first of all, what did you observe in terms of communications between Sam Bockarie and Benjamin Yeaten during the time of the Freetown invasion?

A. There had been communication between them for a long time. It was - let me say it was a sisterly or brotherly operation that we had. So whatever good or bad information that we had from any of the ends we should share that with each other.

10:05:08

Q. Before you continue, I'm specifically asking you in terms of at the time of the Freetown invasion what was the state of communication - what did you observe in terms of communication between Sam Bockarie and Benjamin Yeaten?

10:05:36

A. What I observed, it's just like for example when you and your subordinates would be doing something you would be giving him instructions or orders and that was the way I observed. Like

were you referring to when you said "you"?

A. Benjamin Yeaten was the "you" and the subordinate was Sam Bockarie.

JUDGE SEBUTINDE: Mr Santora, another area I think you might clarify is when the witness said that one of the communications he noticed was the satellite phone conversation. I would like to know the basis of his knowledge of this.

MR SANTORA: I was going right to that area. I was starting out with the radio communications, but I will go right to that right now actually:

Q. Mr Witness, you also - when I asked you if Sam Bockarie was in communication with anyone outside of Sierra Leone you've discussed some conversations with Benjamin Yeaten and you also said that Sam Bockarie was in communication on a satellite phone with Charles Taylor. Before you explain that, first of all, how do you know that?

A. That was not any hidden thing, particularly with regards to communication, that was not hidden to me particularly because I was in charge. Once when Sam Bockarie went to Liberia he brought a satellite phone, just like handset that people use, that security guards use. That was what he communicated with always whenever he wanted to talk to Charles Taylor. When he would want to talk to Charles Taylor he would tell like me or the operator who would be on duty to tell Sunlight because Sunlight was the one who worked at Charles Taylor's radio station, the Mansion Ground. He would say tell Sunlight that I want to talk to Father because we used to call him Father or Pa, so he would say I want to talk to Pa or Father. So Sunlight would tell Charles Taylor that Sam wants to talk to you and he would switch on the phone

and call. At that time, Sam Bockarie would be on the standby. It was not any secret. It was not hidden or that the satellite phone was not there. No, he had it. He used to hang it on his pants walking around with it. It was not hidden. And for communications it was - I would either be present or not, but I will know.

Q. Now I'm going to ask you to focus though on the time of the Freetown invasion. Now you've spoken generally about Sam Bockarie using the satellite phone, but I'd like you to be specific. At the time of the Freetown invasion, how do you know he was - Sam Bockarie was in communication with a satellite phone with Charles Taylor?

A. All along communication on the VHF went all other commanders, but the satellite phone communication went on directly to Charles Taylor. The night that the dialogue took place, that was at the MP headquarters in Buedu, the operator who was on duty, Tiger, Sam Bockarie told him to tell Sunlight to tell his Pa that he wanted to talk to him, and that is Charles Taylor, and that very night Tiger passed a message to Sunlight. And where the satellite would receive call radios up at the MP and Sam Bockarie went into the vehicle and they went. That was the Planet 1 and the - we too were at the --

THE INTERPRETER: Your Honours, can the witness repeat.

PRESIDING JUDGE: Please pause, Mr Witness. The interpreter needs to clarify and catch up with you. Would you go back to your answer and pick up again where you said, "That was Planet 1 and ...", and then continue from there, please.

THE WITNESS: Sam Bockarie I said he went into his vehicle that was - that was having the mobile radio. We referred to that

radio as Planet 1. The base radio, that was Marvel, too was in a vehicle and we went into that vehicle. We and the - myself and the other operators and some bodyguards, we went to the MP. That was where we were that night when he called and this discussion took place.

10:13:43

MR SANTORA:

Q. Okay, Mr Witness, I'm going to ask you to focus specifically on the incident you just described. First of all, were you present when Sam Bockarie made this call?

10:14:00

A. I was present. I said it was up at the MP station, because there is where you - there was the hill and that was where the satellite got coverage.

Q. Now who else was present in this particular instance when Sam Bockarie made this satellite call, if you recall?

10:14:26

A. I was present, Tiger who was on duty was present, Pascal who was with Planet 1, that is Sam Bockarie's station, was there. His bodyguard commander Foday too was there.

Q. Now in terms of when this particular call took place, do you know when it occurred?

10:14:56

MR GRIFFITHS: I hesitate to interrupt my learned friend, your Honours, but the Pascal mentioned at line 14, is that the same Pascal who was in Foya because unless he was beamed over, as on Star Trek, he couldn't be in two places at the same time?

PRESIDING JUDGE: I understood that the Pascal in Foya was

10:15:18

corrected to Mortiga and that Pascal was actually in Buedu. I need to go back to give you a reference.

MR SANTORA: Do you want me to look for the reference on that? I also recall the same thing.

MR GRIFFITHS: I'm sure it's my fault. I may have mistaken

something.

PRESIDING JUDGE: I have to concede, Mr Griffiths, that this particular identification of this person in Foya was - there was at least twice it was said Pascal and then it was at least twice said Mortiga.

10:15:56

MR GRIFFITHS: I'm sure it's my fault, your Honour.

MR SANTORA:

Q. Mr Witness, now I'm referring to this particular instance where you say that you were present when Sam Bockarie made a satellite phone call. Do you know approximately when this was?

10:16:11

A. The day that the communication occurred between Buedu station and King Perry in Freetown, it was that very night that the communication took place.

Q. Do you know what was discussed in this communication?

A. The one that I heard Sam Bockarie tell Charles Taylor was that our men had entered Freetown, they were advancing and they had even captured State House.

10:16:51

Q. Did you learn anything else about what was discussed?

A. He was just laughing while they were talking. He will say, "Yes, sir. Yes, sir".

10:17:28

Q. Who was laughing?

A. Sam Bockarie. Sam Bockarie.

Q. Now, how do you know he was speaking with Charles Taylor?

A. The communication for - even for them to talk came directly from our station, Buedu. He said he wanted to talk to Charles Taylor and, when the response came, that was why we even went to the MP to talk to Charles Taylor.

10:17:57

Q. Now, were there any other communications during this time that you have information about involving Sam Bockarie and the

A. I spoke to them in two minds. One I spoke to them hesitantly and, two, some areas I actually gave correct information.

Q. Does that mean in some areas you gave them incorrect information?

14:47:33

A. Some areas, yes.

Q. Now when you gave such incorrect information, did you do so deliberately and knowingly?

A. I did not do it deliberately the way you are saying it. I did it for my security.

14:48:06

Q. Whether you did it for your security or whether you did it for any other reason, my question is very simple. Did you know what you were doing in giving them incorrect information and, despite that knowledge, did you deliberately go on and provide them with that incorrect information? That's the simple question.

14:48:28

A. No.

Q. So help us, please. How did it come about that you gave them inaccurate information?

A. There are certain areas that they asked me about and I thought about my security, where I was. I knew - I said, well, this, I wouldn't be safe, my security would be at risk if I spoke on that particular issue.

14:48:51

Q. Let's try my question again and it's very simple. Did you give them incorrect information, yes or no?

14:49:18

A. I said I gave them information, but not all of them that I gave was correct. Some of them were correct and some of them were not correct.

Q. So the answer to my question is, "I did give them some

incorrect information". Is that right?
A. Yes.
Q. Now, I am not interested in why you did that. What I am interested in is when you did that did you know what you were
14:50:06 doing?
A. Well, I did not really know.
Q. What caused you to have problems recognising what it was you were doing?
A. Why I didn't understand what I was doing, this was just
14:50:39 something like when somebody comes and you ask him questions and the person responds and that was it.
Q. Let me try once again. As you sat there with those two men and you opened your mouth and spoke, knowing that what you were saying was incorrect, did you do that willingly?
14:51:10 A. I did it, but I was - my mind was juggling in between whether I should do it rightly or not. I was thinking of my security.
Q. I am going to try once again. I understand why you did that. You did it for what you felt was self-preservation, didn't
14:51:38 you?
A. Yes.
Q. And can we just be straight with each other for a moment. Putting it bluntly, you lied to them to help yourself, didn't you?
14:52:03 A. Yes, for my life. Yes.
Q. Thank you. And having lied to them on what you say was that first meeting, did you ever tell any lies to them thereafter?
A. No.

Q. So we can take it then that everything you said to them after that initial meeting was the truth, can we?
A. Yes.
Q. And you are a Muslim, aren't you?
14:52:49 A. Yes.
Q. You appreciate it is wrong to lie, don't you?
A. I would say yes, but there is a condition in the Koran. It says you can tell a lie to free yourself from danger.
Q. Thank you. So you were merely following your faith in
14:53:19 lying to those men to free yourself? Did you hear my question?
A. No, repeat it.
Q. So you were merely following the faith of Islam when you told lies to help yourself?
A. No, I was not following Islam, but I think in difficult
14:54:13 situations, especially things that have to do with human life - because everything that we are doing now, it's because I'm alive. If I was not alive I wouldn't have been here giving evidence.
Q. Now, help me with this: Did you purposefully choose those parts of your account which you would lie about?
14:54:48 A. Pardon?
Q. Did you purposely choose those things you would give inaccurate information about?
A. That area had something to do with my security.
Q. Help us then, please. What were the topics upon which you
14:55:27 gave those investigators inaccurate information in February, you tell us, 2007? What were the areas?
A. It was the Freetown attack.
Q. So you lied to them about the Freetown attack, did you?
A. Yes.

Q. What other things did you lie about?
A. They asked me about the Freetown attack, but I tried to disassociate the RUF from the attack, but actually RUF partook in the attack. It was because of what happened in Freetown and at
14:56:23 that time I was based in Freetown and then the government of the day, the SLPP government, was not taking things easy. So that was the reason.
Q. Did you lie about anything else?
A. That is what I can recall now that was not correct among
14:56:52 the information that I gave to them.
Q. Now, just so that I can understand why you told that lie, you told that lie because you knew that the Freetown attack was a notorious event, didn't you?
A. Yes.
14:57:14 Q. And in effect you wanted to suggest that you had nothing to do with it?
A. Yes.
Q. And so you decided that you would lie to the investigators about it?
14:57:41 A. When they asked me, I did not say the truth about that.
Q. Very well. Was there anything else that you told lies about, anything at all?
A. That was the only one.
Q. So can we take it then that apart from Freetown everything
14:58:07 you told them in that interview in February - everything else is the truth? Can we take that as read?
A. Yes, what I told them was the truth.
Q. Very well. So, apart from Freetown, everything else is the truth, is it?

I N D E X

WITNESSES FOR THE PROSECUTION:

MOHAMED KABBAH 16162

EXAMINATION-IN-CHIEF BY MR SANTORA 16162

CROSS-EXAMINATION BY MR GRIFFITHS 16196

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

TUESDAY, 16 SEPTEMBER 2008
9:30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr Simon Meisenberg Ms Carolyn Buff
For the Registry:	Ms Rachel Irura
For the Prosecution:	Ms Brenda J Hollis Mr Christopher Santora Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Mr Terry Munyard Mr Morris Anyah Ms Amina Graham

network. This is what I am trying to express. Where Sam Bockarie's house was and where we had been doing our operation when the radio was there that mobile handset, it did not have any coverage there except if he went up to the hill, there he would be able to get coverage.

12:15:18

Q. Mr Kabbah, not just in Kailahun, in this very building you have black spots where you can't get a mobile phone network, so we totally understand that. And so what Mr Bockarie had to do was he had to go up a hill to get - up by the MP station you said, to get coverage, to get the network, yes?

12:15:43

A. Yes.

Q. And also with those satellite phones you had to use them outside because within a building you didn't get a network?

A. Network in a house at times it would be there. It all depends on the weather.

12:16:07

Q. But for the most --

A. Certain - certain areas like today I would come here and I would go and stand at this place I would not be able to get coverage. Tomorrow I would come to the same place and unexpectedly there would be coverage. So coverage is not something that is stagnant. It's not something that is stagnant.

12:16:20

Q. Sam Bockarie would normally use his satellite phone outside?

A. Yes, he used to use it outside. You see, we would not spend the night together.

12:16:43

Q. Thank you. Now, we are still on this same point that I have been labouring and what I would like you to do is to go, please, now to page 19 in the same document, third paragraph:

"Kabbah never saw or heard a conversation between Charles

Sam Bockarie."

Now, I just want to clarify that a little in light of other things which you have said in the past. Can we go behind divider 1, please. Let's look at the fourth paragraph in that page together:

15:24:47

"Kabbah does recall seeing a radio message from Benjamin Yeaten recorded in the logbook that Johnny Paul Koroma should be taken to safety in Kangama, in Kailahun District. Kabbah says that Sam Bockarie did not 'take orders' from Benjamin Yeaten

15:25:13

because Bockarie would have seen Benjamin Yeaten as 'inferior' in rank."

I'm going to read out the rest of the paragraph before anyone complains, but let me just pause there for a moment. Is that the way that Sam Bockarie thought?

15:25:32

A. Yes.

Q. So in one sense he felt that Yeaten was inferior to him?

A. He did not take him to be his senior. Just like the way he was thinking because he thought that he was a whole - he was a leader in his own right, so Benjamin Yeaten was not senior to

15:26:03

him.

Q. And just to put it in context:

"However, a message like the one from Benjamin Yeaten referred to would have been followed by Sam Bockarie [and others] because it 'had to have come from Charles Taylor'. Even though

15:26:26

such a message would not refer to Charles Taylor, Kabbah said that it was understood in the RUF that if it came from Benjamin Yeaten it had to have come from Charles Taylor."

And was that the thinking?

A. Yes.

Q. And so so long as Benjamin Yeaten said anything everyone assumed without any evidence that it must have come from Charles Taylor, is that the position?

A. Yes, because they said he was his right-hand man and so

15:27:04 whatever he said he must have discussed that with the Pa.

Q. But there was no evidence to support it. It's just what people assumed, is that the case?

A. Yes.

Q. Thank you. Now, I want to ask you about another topic and

15:27:31 it's this. Jungle was a Liberian, wasn't he?

A. Yes.

Q. Now there came a time, did there not, when Jungle and a group of Liberians because of the incursion by ULIMO into Liberia became isolated in Sierra Leone?

15:28:09 A. From 2000 - from 1992 to 2000 - from 1992 to 1997, yes, they hadn't dealings.

Q. Because what had happened was Jungle had become cut off from Liberia and he was effectively thereafter fighting with the RUF, wasn't he?

15:28:42 A. Jungle - Jungle was there with their remnant renegades, not with the RUF. They were together with Fayia. They were in the bush in their own separate jungle. He was with General Fayia, the one who was in charge of Foya at that time.

Q. But he effectively became a part of the RUF, didn't he?

15:29:18 A. Yes, he used to come to us the time Fayia wanted us to go to Monrovia.

Q. The reason I am asking you about this is this. Yesterday when you were giving evidence you said this:

"A. Jungle even at the time of the intervention while our

I N D E X

WITNESSES FOR THE PROSECUTION:

MOHAMED KABBAH 16281

CROSS-EXAMINATION BY MR GRIFFITHS 16281

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

WEDNESDAY, 17 SEPTEMBER 2008
9:30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr Simon Meisenberg Ms Carolyn Buff Ms Doreen Kiggundu
For the Registry:	Ms Rachel Irura
For the Prosecution:	Ms Brenda J Hollis Mr Christopher Santora Ms Ruth Hackler
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Mr Terry Munyard Mr Morris Anyah Mr Michael Walker

MR GRIFFITHS: All right:

Q. It was after they had captured a large quantity of arms and ammunition in Kambia and again captured a further quantity in Benguema that they launched the attack on Freetown. That's right, isn't it?

10:13:48

A. You would be correct, because if somebody had ammunition it was meant to fight with it.

Q. I now want to remind you, please, of something you told us - let me find the reference first - on Friday last week. What you told us was this. It's page 16149 of the transcript for the assistance of my learned friends. You told us this:

10:14:12

"The struggle had reached a point when these bits and pieces of ammunition that we were getting from Liberia was dwindling because the area of the struggle had become large and, you know, it is ammunition that fights war. So when Sam Bockarie returned it was at that time that he spoke about that, that he had discussed that with Charles Taylor that we should try and get Kono and when we would have taken Kono we would get ammunition because when we get Kono we will get diamonds and it will help us to get ammunition. That was the discussion, the retaking of Kono so that we can mine and get enough ammunition, because the bits and pieces that he's been giving us used to help us."

10:14:43

10:15:07

And then again at page 151 at line 14 you were asked to clarify "because the bits and pieces that he's been giving us used to help us", and you went on to say that it was from Charles Taylor.

10:15:39

Now let's put to one side for the minute the reference to Bockarie coming back and saying that he'd had a discussion with Charles Taylor about taking Kono, because you will recall that

I N D E X

WITNESSES FOR THE PROSECUTION:

MOHAMED KABBAH	16404
CROSS-EXAMINATION BY MR GRIFFITHS	16404
RE-EXAMINATION BY MR SANTORA	16451
TF1-189	16479
EXAMINATION-IN-CHIEF BY MS HOLLIS	16481

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

MONDAY, 20 OCTOBER 2008
9:30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr Simon Meisenberg Ms Sidney Thompson
For the Registry:	Ms Rachel Irura
For the Prosecution:	Mr Nicholas Koumjian Mr Christopher Santora Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Mr Terry Munyard Mr Morris Anyah

arising from some of the matters that you just discussed when my learned colleague the Defence counsel was asking you questions. Okay?

A. Yes.

16:12:05 Q. Was anyone ever punished for raping you, Mrs Witness?

A. When I was captured?

Q. At any time was anyone punished for raping you?

A. No, nobody was punished.

Q. How old were you when you first were raped?

16:12:29 MR GRIFFITHS: She has told us that on a number of occasions. I don't know why we are revisiting this particularly horrendous situation.

PRESIDING JUDGE: That has been both in chief and in cross-examination, Mr Santora, that age.

16:12:40 MR SANTORA: Okay, it was a matter of husband versus rape, but I do understand. I will withdraw that question:

Q. Mrs Witness, on several occasions when you were answering questions from Defence counsel, in regards to the first statement you gave to the Office of the Prosecution in October of 2003 you

16:13:06 said that you were not willing to talk them. Explain what you mean you were not willing?

A. Okay. Why I said I did not want to explain to them was because I had taken it that whatever had happened to me, let it just stay within me, right up to the time maybe I would console

16:13:34 myself and get into something else. And in fact I had a fear that maybe what if I come and talk to these people, what will be the consequence or what would happen as a result of my testimony. That's all I - those are the reasons I had the fear in me. Maybe in the future they will just say, "Okay, all of those who

I N D E X

WITNESSES FOR THE PROSECUTION:

EDNA M BANGURA	18662
EXAMINATION-IN-CHIEF BY MR SANTORA	18662
CROSS-EXAMINATION BY MR GRIFFITHS	18699
RE-EXAMINATION BY MR SANTORA	18791

EXHIBITS:

Exhibit D-67 admitted	18796
Exhibit D-68 admitted	18796
Exhibit D-69 admitted	18796

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

WEDNESDAY, 5 NOVEMBER 2008
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr Simon Meisenberg Ms Carolyn Buff
For the Registry:	Ms Rachel Irura Mr Momodu Tarawallie
For the Prosecution:	Mr Nicholas Koumjian Mr Alain Werner Ms Ruth Mary Hackler Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Morris Anyah Mr Terry Munyard

Q. How long did you remain with Yeaten in Gbanga?
A. I was with Yeaten. My assignment never changed. I was with Yeaten from Gbanga and later after the SSS training, because he sent me for training - a private training, SSS. It was not
10:47:00 recognised, but it was responsible to safeguard the lives of Mr Taylor and his family. So, when he sent me for this training and when I graduated he assigned me to the mansion in Gbanga. I was assigned to the mansion in Gbanga.
Q. Sir, do you recall to the best of your recollection
10:47:23 approximately what year that was that you were assigned to the Executive Mansion in Gbanga?

PRESIDING JUDGE: Mr Anyah?

MR ANYAH: Well, he didn't say "Executive". He said "The mansion in Gbanga".

10:47:37 PRESIDING JUDGE: Yes.

THE WITNESS: I said Executive Mansion.

JUDGE SEBUTINDE: Mr Koumjian, please do take care in not leading the witness.

MR KOUMJIAN: Thank you:

10:47:58 Q. Sir, what exactly was your assignment at the mansion?
A. My assignment at the mansion was that I was assigned and we were running three shifts: in the morning, in the afternoon and in the evening at night. We would go in the morning at 8 o'clock and you would be changed at 4 and another shift will come and
10:48:25 take over by 12. So, we were running three shifts. I was assigned directly to the mansion in Gbanga.

JUDGE SEBUTINDE: Mr Koumjian, as what?

THE WITNESS: SSS. I said it. I said it was the SSS at that time. It was not recognised when Mr Taylor took over as

President, but it was SSS.

MR KOUMJIAN:

Q. Mr Witness, at that time - well, first of all can you tell us what does SSS stand for?

10:49:05 A. Special Security Service. Special Security Service.

Q. Did you have any rank at that time while you were in Gbanga within any force?

A. When I took up that assignment I was an agent in the SSS - an agent. We call it agent in the service. That meant you did

10:49:37 not have a rank.

Q. And tell us what were your duties as an agent in the service there in Gbanga?

A. My duty was that when I reported for work I would meet my commander and he will assign me to either the gate, the fence,

10:50:02 the entrance, to enter the mansion. When guys were coming I would open up. Anybody who was coming to see Mr Taylor I would ask them their mission. That was my responsibility, to give protection.

Q. Did anyone live --

10:50:18 MR ANYAH: Madam President, there was a question posed by learned counsel opposite regarding what year the witness was assigned and we never got an answer to that question. It appears on page 37 at my lines 11 through 14.

PRESIDING JUDGE: Mr Koumjian, I don't think we do have a

10:50:48 year, do we? There was a year mentioned, but in a different context.

MR KOUMJIAN:

Q. Mr Witness, do you recall approximately what year it was that you took up your duties at the mansion in Gbanga?

MR KOUMJIAN:

Q. Now, Mr Witness, at what - did you ever leave Gbanga and receive an assignment somewhere else?

A. The particular supply that I am talking of, the ammunition that I am talking about, we used to take that and return to duty, so I never left Gbanga to take up assignment anywhere. We only used to take the ammunition along and return.

Q. My question is what was your next assignment after Gbanga? After being based in Gbanga, were you based anywhere else?

A. No, I was never based anywhere else apart from Gbanga. I was with Yeaten and we left and went to Grand Gedeh. This is the Eastern Region where we were fighting LPC at the time. That was where the --

THE INTERPRETER: Your Honours, can he kindly repeat the unit.

PRESIDING JUDGE: Mr Witness, the name of the unit, the interpreter asks you to repeat that please.

THE WITNESS: Jungle Fire.

THE INTERPRETER: Your Honour, can he repeat the motto of Jungle Fire. It's not clear.

PRESIDING JUDGE: I am sorry, Mr Interpreter? I can't hear you clearly.

THE INTERPRETER: The motto.

PRESIDING JUDGE: Oh, the motto.

THE INTERPRETER: He said Jungle Fire had a motto.

THE WITNESS: "Men moving, men dropping".

MR KOUMJIAN:

Q. What did that mean, "Men moving, men dropping"?

A. It means there is fighting. Anybody who --

night he gave us place to sleep, then we went to bed.

Q. Did General Mosquito ever indicate whether he had any plans for using that ammunition?

A. Yes. He said, "I'm very happy for the coming of this
12:28:18 ammunition because I was under serious attack."

Q. Did he say where this attack was going on, if you recall?

A. Really, I never went to his front line. At any time I went there I stopped at Buedu. I never went to the front line. But I was there when some of his commanders came from the front line
12:28:51 the following day and he was giving them instructions, so they started dividing the ammunition and that was across the Moa River.

Q. How long did you, approximately, did you stay in Buedu?

A. I spent two days in Buedu and I left. I went back to
12:29:20 Monrovia.

Q. Did you ever make any other trip to Sierra Leone or trips?

A. Yes, yes. The second time was with Zigzag Marzah, Jungle Daniel Tamba, Sampson Weah and I. When we drove to Benjamin Yeaten's house, and Yeaten told us to follow him to the warehouse
12:29:54 and we followed him to the warehouse, and that was right at Mr Taylor's house, that is on the left-hand side of the house, that was where they had the warehouse. We went there and Yeaten took a list of those things that we were supposed to carry and he presented it to the G4 section. The commander there was Moses
12:30:19 Duoh, and we also received another supply of ammunition, mortar guns, RPG rockets, LAR, AK rounds and that was Zigzag, Sampson, Jungle and I, we left and we went to Buedu, along with three bodyguards who were on top of the car and one of them was called Enforcer, so we went there.

MR KOUMJIAN: Your Honours, the witness said Moses Duoh. The spelling is D-U-O-H:

Q. Sir, you said this second trip began, you said you went to Benjamin Yeaten's house. Where was Benjamin Yeaten's house?

12:31:11 A. Benjamin Yeaten's house was right at the back of Mr Taylor's house, sloping down the hill. No sooner you slope down the hill you see the house on the right-hand side. It was a storeyed building. That was Benjamin Yeaten's house.

Q. And then you said you went to the warehouse. Can you tell

12:31:34 us where the warehouse was?

A. I said the warehouse was attached right on Mr Taylor's house. That is when you come to the front side of the house, by the left-hand side you will see the warehouse.

Q. I'm going to ask you to repeat it because I thought I heard

12:32:00 the witness say "down" and I didn't hear that interpreted. Sir, can you repeat where was the warehouse? Just slowly describe it.

A. This warehouse is right at Mr Taylor's house, the left-hand side of Mr Taylor's house. When you stand at the front of the house, you watch at the left side, you just walk by the side of

12:32:27 the road, then you go down and you will see the warehouse and it was attached directly on Mr Taylor's house.

Q. When you say you go down, what do you mean?

A. There is a little slopey hill. You just go down there and you see the warehouse.

12:32:57 Q. When Yeaten presented, you said a list of those things that we're supposed to carry, when he presented that to Moses Duoh do you recall any conversation?

A. He presented the list to Moses and he got back into his car and left and we stayed there. We started going through the list

so that we received those supplies of ammunition.

Q. How did you travel on that second trip?

MR ANYAH: Madam President, I realise we can ask these questions on cross-examination, but it would be helpful to know the year this took place. For the first trip all we have on the record it's in September of some year that the first trip took place, and the witness said it was when they were fighting at Camp Johnson Road. That's as precise as the timeframe got. Now we are on the second trip and there is no year on the record.

12:33:42

12:34:02

PRESIDING JUDGE: That would be helpful, Mr Koumjian.

MR KOUMJIAN: Thank you:

Q. Sir, how long after you returned from the first trip did you go on the second trip, approximately?

A. When we returned from the first trip it took about a month before I did my second trip. Like, let's say two months before my second trip.

12:34:22

MR ANYAH: Madam President, is it being assumed that the witness doesn't know the year of the second trip and the question now is how long was the difference in time between the first and second trip. Perhaps the witness could be asked if he knows the year for the second trip.

12:34:43

MR KOUMJIAN: Your Honour, counsel is welcome to do that in cross-examination. The witness has indicated, when I asked him originally, he did not know the year of the first trip and he's given the approximate time between the two. He said it was during Mr Taylor's presidency. He has also given us some information about who was the commander of the RUF at the time and I'm satisfied. If counsel wants to ask further questions on his cross-examination that's exactly what cross-examination is

12:34:57

I N D E X

WITNESSES FOR THE PROSECUTION:

TF1-579 19778

EXAMINATION-IN-CHIEF BY MR KOUMJIAN 19779



Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

WEDNESDAY, 12 NOVEMBER 2008
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr Simon Meisenberg Ms Sidney Thompson
For the Registry:	Ms Rachel Irura Mr Momodu Tarawallie
For the Prosecution:	Ms Brenda J Hollis Mr Alain Werner Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Terry Munyard Mr Morris Anyah Mr Michael Walker

A. They call them the gendarmes.

MS HOLLIS: Your Honours, we would spell that as G-E-N-D-A-R-M-E-S, plural:

Q. You also mentioned Dr Barrie. Who was Dr Barrie?

13:28:08 A. Well, Dr Barrie was a civilian. He was one of those whom we captured at Sierra Rutile, but he was in Monkanji, as a doctor he had the hospital there. But he had more international corridor. That is, he was well known outside. So when we brought them to Zogoda, the Pa made him join Fayah Musa and

13:28:45 others outside for them to represent us outside. So he was a member of the RUF.

MS HOLLIS: Madam President, this could be a good time to break.

PRESIDING JUDGE: That would be convenient, Ms Hollis.

13:29:03 There is about a minute or so to go.

Mr Witness, we are now going to take the lunch-time adjournment, this is one hour, and we will be resuming court again at 2.30. Please adjourn court until 2.30.

[Lunch break taken at 2.30 p.m.]

14:22:57 [Upon resuming at 2.30 p.m.]

PRESIDING JUDGE: Please proceed, Ms Hollis.

MS HOLLIS: Thank you, Madam President:

Q. Mr Witness, before the lunch break you had told the Court that Mike Lamin was arrested. What did you do after Mike Lamin

14:29:36 was arrested?

A. I escaped and I returned to Danané.

Q. How long did you remain in Danané?

A. I was in Danané about a week.

Q. While you were in Danané were you aware of any

communications being received in Danané?

A. Yes.

Q. What were you aware of?

A. After I had left Abidjan and had come to Danané, the house where Philip Palmer was at Bellevue One Protocol Yard - the reason why it was referred to as Protocol Yard, according to what I was told by Philip Palmer and others, there was another house nearby, just about 15 yards off the house where Philip Palmer was. There was a man there called Pa Musa Cisse. This Musa Cisse man was the protocol officer for Charles Taylor. So the house where Pa Musa Cisse was in relation to where the RUF base was where Philip Palmer was was a short distance. That's why I said I estimated it to be a 15 yard distance. So this Pa Musa Cisse had a radio man and that radio man, we referred to him as Action Man. He was a Sierra Leonean, this Action Man, but he had left the RUF for a long time and he was then with the NPFL. So Action Man had been with Pa Musa Cisse as a radio operator.

Just when Foday Sankoh and Mike Lamin were arrested when I came to Danané, the following day at night Action Man went to us at the house and he invited us at Musa Cisse's house and he told me that in fact he had had communication with Foday Sankoh. That was two days after - after Foday Sankoh had been arrested in Nigeria. He was then in detention.

He said he had heard information. He said he had had contact with Foday Sankoh and Foday Sankoh had told him to contact Mosquito so that the two of them would be linked up and he would give him some pieces of advice and order. And he told him that he should tell Mosquito to take advice from the other side. And we came. After he had told us this we were there and

the following night --

Q. Mr Witness, before you move on to the following night, let me ask you some questions about what you have just told the Court. First of all, Action Man, did you know him by any other name?

14:35:00

A. Well, this Action Man, I did not ask him about any other name of his. I don't know.

Q. And you mentioned Mosquito. Who was Mosquito?

A. Mosquito was a Sierra Leonean. He was Sam Bockarie who was taking care of RUF, whom Foday Sankoh had told to take care of the RUF in Sierra Leone.

14:35:28

Q. And who was it who said to take advice from the other side? Who said that?

A. It was Foday Sankoh.

Q. And who was it who was to take advice from the other side?

14:35:48

A. Mosquito, Sam Bockarie.

Q. Did you understand what was meant by "the other side"?

A. Yes, that is just what I am about to say. The next night Action Man called me, together with CO Brown. We went to the house where Pa Musa Cisse was and we sat there. We were about two yards away from where Action Man was sitting, but it was in the same room. We saw him contact Mosquito and I heard Foday Sankoh's voice and Foday Sankoh asked about Mike Lamin. Action Man replied that he had been arrested. He spoke to Mosquito.

14:36:34

Q. Who spoke to Mosquito?

14:37:33

A. Foday Sankoh. He told mosquito that - he told Mosquito that Mosquito should not take anything from Fayah Musa and others. He said even the detention that he was in, Fayah Musa and others had hands in that, so the only thing that he was

telling him was that he should take advice directly from Charles Taylor in Liberia.

Q. Now, who was saying to take advice directly from Charles Taylor in Liberia? Who said that?

14:38:37 A. Foday Sankoh told Mosquito, Sam Bockarie. He said Sam Bockarie should take advice from Charles Taylor in Liberia. He said even before he was arrested in Nigeria, he said he had spoken to Charles Taylor, that is Foday Sankoh, he said he had spoken to Charles Taylor, for his Sierra Leonean fighters who had

14:39:14 been with the NPFL and fought alongside the NPFL. He said, being that Mike Lamin had crossed over with a lot of his fighters into Liberia, he will want those fighters who had been fighting for a long time alongside the NPFL to find ways to be transported back to Sierra Leone to Mosquito to continue the fight and therefore

14:39:58 he should take advice from Charles Taylor. I heard that. And from there we left the room and returned to our house.

Q. Now, Mr Witness, you said that you were there with a person you called CO Brown. Who was CO Brown?

A. Well, that CO Brown was a Liberian. He was a vanguard for

14:40:36 the RUF, but they said he was a Liberian, and I too saw him that he was a Liberian. And he himself, CO Brown, told me that he was born in Gbarnga.

Q. Now, you have told the Court what it was that Foday Sankoh told to Sam Bockarie. Do you recall did Sam Bockarie give any

14:41:05 reply to what Foday Sankoh had said?

A. Exactly. He accepted it and he said he would like to support Foday Sankoh as the leader and until he would see how his detention would end up, but so long as he was still under detention he should only be praying to God for his life and the

movement which - that is the RUF which he had left Mosquito in charge of - and the pieces of advice that Pa Sankoh had given to him he, Mosquito, he said he would adhere to them.

Q. Were you aware of any other communications other than these that you have just told the Court about?

A. Those were the two main things that were discussed that I was present.

Q. You said you were in Danané for about a week. How did it happen that you left Danané?

A. Well, we had been in Danané within those few days this protocol, that is Pa Musa Cisse, called CO Brown. According to CO Brown, Pa Musa Cisse gave him money and I saw the money. He said it was Charles Taylor who had sent that money for us, those of us who were in the Ivory Coast after Pa Sankoh had been arrested and those of us who were in Danané, so we could use the money to sustain ourselves. So CO Brown, even before nightfall, on that day he escaped with the money and went to Gbarnga in Liberia and he left us there and went. It was only one lady who was at the house who told us that CO Brown had gone to Gbarnga. That was what she told us. And we too said CO Brown went to Gbarnga without telling us and he has something for us? So while we were there Action Man also told us that the money that had been taken away that Mosquito said that he had told Jungle - CO Jungle - for him to pick you guys up from there to go with you so we will look for ways to go with you to Sierra Leone where he was, Mosquito, and we were happy.

But while we were there we didn't get sufficient food to live on and there wasn't communication, not particularly when we wanted to have communication, not at the times that we wanted it,

Q. Now, you have told the Court that you yourself were mining there. Did you find diamonds?
A. Yes.
Q. What did you do with the diamonds that you found?
15:56:04 A. I used to sell it, because I was not lucky to get a diamond which weighed above five carats, so if I got one carat or two carats, it was for me. I will sell it for myself.
Q. Where would you sell these diamonds?
A. I used to sell some in Tongo, but maybe if it was above one
15:56:44 carat I will travel with it to Kenema.
Q. When you went to Kenema to sell diamonds, did you see anyone while you were in Kenema?
A. Yes.
Q. Who did you see there in Kenema?
15:57:10 A. Eagle. Eagle himself, who was based in Tongo, he used to go to Kenema, I used to see him there. I used to see Manawa there, I used to see Mosquito there because he was in fact based there, so at any time I travelled there I would go to he, Mosquito, where he was residing.
15:57:34 Q. The times that you went to Mosquito in Kenema, do you recall any visitors with Mosquito when you saw him?
A. Well, it was at one time when I went there, this same Colonel Jungle, I met him there. He was sitting together with Mosquito at NIC, where Mosquito was residing in Kenema. And I
15:58:21 also saw Eagle there, I saw Manawa there, together with other soldiers and officers. And like I said, I saw Jungle there. He was sitting there. And when we entered there Manawa and I, I saw them there. All of us sat there and Mosquito told us, he said, "Have you seen this man who has come here?" He said, "It is

Charles Taylor who sent him for us to give him some parcels of diamonds." I met them there and I had seen this Jungle before, so from there we stayed there when Mosquito, Colonel Jungle, Captain Eagle, they boarded a vehicle and went towards Tongo. So
15:59:59 that was what he told us.

Q. While you were in Tongo during this time period, to your knowledge was mining going on in any other areas?

A. Yes.

Q. Where?

16:00:20 A. You know that in Sierra Leone we have two diamondiferous towns and one is Tongo and the second is Kono.

Q. What did you know about the mining going on in Kono?

A. Well, the mining went on just as it was going on in Tongo, but they told me that the PLO-2 that we had there, they said
16:01:06 there was a PLO-1 but he was based in Kono.

Q. And did they tell you the name of this person based in Kono?

A. Yes.

Q. What was the name?

16:01:24 A. Gullit.

Q. Who was telling you this?

A. The PLO-2 who was there, the OC secretariat Yamao Kati, all of them had told me that, and even some of my RUF officers like Mosquito himself and even Captain Gweh, you know, most of the RUF
16:02:02 officers.

Q. Tell us again about how long you remained in Tongo?

A. We were in Tongo for roughly one to two months. I cannot give you a clear estimate now anyway, but I was there up to that two months.

I N D E X

WITNESSES FOR THE PROSECUTION:

AUGUSTINE SAMA MALLAH 20053

EXAMINATION-IN-CHIEF BY MS HOLLIS 20053

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

THURSDAY, 13 NOVEMBER 2008
9:30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr Simon Meisenberg Ms Sidney Thompson
For the Registry:	Ms Rachel Irura Mr Momodu Tarawallie
For the Prosecution:	Ms Brenda J Hollis Mr Alain Werner Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Morris Anyah Mr Terry Munyard Michael Walker

that, but I did not directly see where Mosquito was handing over those things, but Mosquito himself used to tell us that I am paying with diamonds or VS [sic] for those things that were coming, money.

12:58:57 Q. Now, you said he said Mosquito was giving diamonds. Who was it who said Mosquito was giving diamonds?

A. He said he was giving them to Jungle. Jungle always said that he took those diamonds directly to - for those things to Charles Taylor. I never went with them to Monrovia, but I used

12:59:28 to see what was happening and what they used to tell me.

Q. You have told the Judges that while you were in Baiima you would go often to Buedu to your family. While you were in Baiima did you attend any meetings in Buedu?

A. Yes.

12:59:58 Q. What meetings did you attend?

A. Well, like in the morning all of us would assemble at Mosquito's place because all of us were senior men, officers, and he was head of all of us as commander. So at one time, it was at the end of 1998 and we were going towards 1999 then, he told us

13:00:54 he himself was tired of staying like that in Buedu. He said he was fed up with all of us staying in Kailahun District. He said he's got something at hand. He said he was trying to go to Liberia to Charles Taylor where he will get our needs. When he comes back he said we will try to do what really he wanted to do,

13:01:40 he Mosquito. He was going to seek advice from Charles Taylor in Liberia. Then from there and the meeting was over, I went to my assignment and then he went. He, Mosquito, we heard that he went to Liberia. That was - it was a long time. We were now in 1999 because it took some time before he went. I cannot just estimate

continue destroying.

Q. Now, Mr Witness, you have been talking about what Mosquito said and I'm looking at, on my font, page 77 starting with line 11. "So he said they were contact him and he will demand". So, 13:16:08 first of all, who is saying this? "They will contact him and he will demand", who is saying this?

A. That is Mosquito.

Q. And who is the "they" that will contact --

A. He said the international committee would want to have 13:16:25 talks with him because he was leading the RUF and he said whenever the international committee contacts him, he said the only thing that he will tell them was to free Foday Sankoh before we go to peace. He said without Foday Sankoh there will be no peace. That was Mosquito saying that.

13:16:55 Q. Mr Witness, were you to have a role in this plan that Mosquito gave you?

A. Yes.

Q. And what was your role to be?

A. I was to go back to Baiima together with the brigade 13:17:24 commander CO Denis whom we called Monkey Brown. We were to Baiima to Eagle and Manawai. The command was to attack Bunumbu, Segbwema, Daru, Tondola, Bendu Junction, Jomukafebu, Kumbema all the way on to Kenema. So that was my own part of the operation.

Q. Now, this second meeting, how many people attended this 13:18:23 second meeting?

A. We were up to 35 to 40, around that, the officers.

Q. Now, Mr Witness, you said that the areas that you were to attack and including Bunumbu, Segbwema, Daru, Tondola, Bendu Junction, Kumbema, all the way to Kenema. You named one other

location. Do you remember what that location was that you were to attack? It was something like Jomukafebu. Can you tell us that location again?

A. Yes, I said Tondola --

13:19:16 Q. Just the one location, sir. Something that sounded like Jomukafebu. What was this location?

A. Yes. That's the same, Jomukafebu.

MS HOLLIS: Your Honours, our phonetic spelling for that would be J-O-M-U-K-A-F-E-B-U:

13:19:39 Q. So after this second meeting then what did you do?

A. Mosquito came back to Buedu. At that time the reinforcement that he had come with from Liberia were at the MP in Buedu. Then we, the commanders who were to go with this mission, like Manawai, Eagle, CO Denis and myself, then he

13:20:28 provided Abu Keita and his reinforcement to us for us to attack the various areas that he had mentioned. From there he gave us arms, ammunition, medicines. That was Mosquito who gave us all these things.

Then he told CO Denis as the brigade commander for us to

13:21:02 move ahead on this mission. I saw him give arms, ammunition, medicines to Issa, Issa Sesay. He said Issa Sesay should go across to Kono together with Akim and others and Soriba, who were AFRC soldiers, to join Superman, CO Rambo for them to attack Kono and from there Akim should go and attack Tongo while Issa and

13:21:49 Morris Kallon would advance all the way on to Makeni.

Q. Mr Witness, you have mentioned someone CO Denis. You said he was a brigade commander. What brigade was he the commander of?

A. Well, he was the 1st Brigade commander in Kailahun.

Q. And I believe you said CO Denis, Monkey Brown. Is that the same person or different people?
A. It's the same person.
Q. And what was the nationality of CO Denis?
13:22:42 A. He's a Sierra Leonean.
Q. And what group did he belong to?
A. The RUF group.
Q. Now, Mr Witness, after you had received the reinforcements and you had received the arms and ammunition and other supplies
13:22:56 did you move to carry out your mission?
A. Yes.
Q. Were you able to capture Kenema?
A. We were unable to capture Kenema.
Q. When you carried out your mission did you follow Mosquito's
13:23:19 instructions about spare no soul?
A. Yes.
Q. What did you do?
A. We killed civilians, we burnt down villages that we had captured.
13:23:44 Q. Now, when you were unable to capture Kenema where did you go?
A. I came back to Segbwema because that was where we had captured.
Q. And how long did you remain in Segbwema?
13:24:10 A. I was in Segbwema until the Lomé Peace Accord.
Q. While you were in Segbwema did you receive information about any events in Freetown?
A. Yes.
Q. What information did you receive?

I N D E X

WITNESSES FOR THE PROSECUTION:

AUGUSTINE S MALLAH 20157

EXAMINATION-IN-CHIEF BY MS HOLLIS 20157

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

TUESDAY, 2 DECEMBER 2008
9:30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr William Romans Ms Carolyn Buff
For the Registry:	Ms Rachel Irura Mr Momodu Tarawallie
For the Prosecution:	Mr Nicholas Koumjian Mr Christopher Santora Mr Alain Werner Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Mr Terry Munyard Ms Amina Graham

A. I was with him for communication purposes, to coordinate communication.
Q. Who were you in communication with?
A. I communicated with stations in the various front lines, like when Issa and others were towards the Freetown area together with Superman, Johnny Paul and the others who were retreating. And I was communicating also with stations in Monrovia. I communicated with a particular station, to be specific, in Monrovia.
10:56:52 Q. What station was that?
A. The station was Base 1. Base 1, which was operated - actually there were two operators who were there, but the one that I can recall now was operator Sunlight. Sunlight. Sunlight was Benjamin Yeaten's radio operator.
10:57:27 Q. Now, the time we were discussing was this period when the day after you stayed in Pendembu and you were travelling with Sam Bockarie to several locations, including Daru, Kuiva. Now, I am asking you specifically about this time period. Who were you in communication with?
10:57:55 A. I was in communication with the entire RUF radio stations, including a radio station in Liberia, Monrovia.
Q. This communication you are referring to with this station called Base 1, was this the first time you were in communication with this station, if you can recall?
10:58:30 A. Well, yes, I can recall that Base 1 - it was from Pendembu. It was from Pendembu that I started communicating with Base 1. From Pendembu.
Q. And what was the content of this communication, the communication between you and Base 1?

A. When we arrived in Monrovia, we were - Benjamin distributed us to - Jungle took some people and he lodged them at a particular place, and I was at Benjamin's house with Sunlight and Mosquito. Mosquito too went to a different place. That was
11:17:09 where he slept. And early in the morning he came.
Q. I was going to ask, because I am not sure I understand your answer exactly. You said that you arrived in Monrovia and Benjamin "distributed us. Jungle took some people and he lodged them at a particular place." Who are you referring to? Which
11:17:31 people did Jungle lodge at a particular place?
A. The securities that Mosquito went with.
Q. Later you said, "I was at Benjamin's house with Sunlight and Mosquito - Mosquito too went to a different place". What do you mean? Was Mosquito with you or not?
11:17:50 A. Well, Mosquito was just with us during the day, because when we arrived at that night we arrived late in the night, and so we needed some rest and so everybody went to where he was to sleep. So early in the morning Mosquito came and met with Benjamin Yeaten and I gave him updates from the various front
11:18:13 lines and Mosquito, Benjamin and one Rashid, they went out and they left me at Benjamin's house that morning. Rashid, Mosquito and Sellay - Sellay. Rashid, Mosquito, Sellay and Benjamin Yeaten. There were four who went out that morning and they left me at Benjamin's house.
11:18:48 Q. Now you said you gave Sam Bockarie an update from the front lines - various front lines. Is that correct?
A. Yes.
Q. How were you able to do that?
A. Well, that was the purpose why I travelled with Mosquito to

monitor the front lines and give him updates. When I arrived that very night I contacted them and in the morning - very early in the morning - I went to the radio room, that is Base 1. I even used the Base 1 radio to contact that morning, and I
11:19:28 contacted the various front lines to get updates. Then I fed Mosquito with the information.

Q. Who did you contact on the front lines?

A. Almost all the front lines. I contacted Issa's station, I contacted the various stations, Superman and others, I contacted
11:19:58 Eagle - I contacted Eagle's station. There were other stations that I contacted. I contacted many stations and I collected information from the various front lines.

Q. Do you remember what information you passed on to Sam Bockarie? Do you remember what was the content of that?

11:20:30 A. Well, at that time Issa and others were retreating from Freetown, that is Issa himself and others, Johnny Paul, Superman and others, they were on their way from Freetown. They were on their way from Freetown while retreating and in the defensive areas I asked Eagle and others and they said they had no problems
11:21:00 with the various defensive positions that particular morning.

Q. Now you said that you --

PRESIDING JUDGE: Mr Santora, Issa is Issa who?

MR SANTORA:

Q. Who do you mean when you say Issa, Mr Witness?

11:21:14 A. Issa Sesay, aka Survivor, or Senior Solar System.

Q. What was his position at this time?

A. At that time Issa was - he was battle group commander supposedly, but battle group.

Q. Now, you said you went to Benjamin Yeaten's house. Where

exactly was this house?
A. It was one area in Monrovia called Congo Town. That is at the back - that is behind Mr Taylor's place where Mr Taylor was. They referred to the place as White Flower. That was where BY
11:22:24 was.
Q. Which place did you refer to --
PRESIDING JUDGE: Mr --
THE WITNESS: Mr Taylor - Mr Taylor's residence.
MR SANTORA:
11:22:36 Q. Mr Witness, will you please look at the judges when you give your responses, okay?
A. Mr Taylor's residence.
JUDGE SEBUTINDE: Who is BY?
THE WITNESS: Well, it is Benjamin Yeaten that I am
11:22:57 referring to, please.
MR SANTORA:
Q. So you said that when you got to the house then that - well, first of all, you also have referred to a location that you contacted the front lines from Base 1. Where was Base 1 located?
11:23:19 A. Base 1 was at Benjamin's house. It was at Benjamin's house that Base 1 was. It was a radio station that was called Base 1.
Q. And can you describe this radio station. Well, when you saw it, was this the first time you had seen it?
A. That was the first time. It was a VHF radio set. It was
11:23:50 in one of the rooms at Benjamin Yeaten's back yard. In Benjamin's compound, that was where it was. There was a radio set with stationery and the radio set was a Yaesu radio set.
Q. Now you said that Sam Bockarie, Jungle, Rashid and Benjamin Yeaten went off somewhere that day and you remained. Is that

correct?
A. Yes.
Q. So when you say you remained, you remained where?
A. I remained in the radio room at Benjamin's house.
11:24:42 Q. Do you know where those four individuals went?
A. Well, they told me that they were going to meet with the Papay directly. Master told me that - I mean Mosquito. He told me that they were going to see the President. At that time it was Mr Taylor.
11:25:05 Q. Now you yourself, you have also - who was in the radio room? Who was in Base 1? Who was there besides yourself?
A. That morning - that particular morning - I was in the radio room with Sunlight. I was in the radio room with Sunlight that particular morning.
11:25:35 Q. Was this the first time you met Sunlight?
A. Yes, yes.
Q. Do you know his real name?
A. No.
Q. So you said that Sam Bockarie and the others left. How
11:25:51 long were they gone for?
A. They were out for almost the rest of the day. It was around 7 - 6 going to 7 that Mosquito and others returned to the house at Benjamin Yeaten's.
Q. What happened after they returned?
11:26:23 A. From there Mosquito told me to pack up and that we were to return to Sierra Leone.
Q. And so go ahead. Continue.
A. From there Mosquito told me to pack up my things and we were to return to Sierra Leone, so after I had completed packing

I N D E X

WITNESSES FOR THE PROSECUTION:

DAUDA ARUNA FORNIE 21410

EXAMINATION-IN-CHIEF BY MR SANTORA 21410

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

WEDNESDAY, 3 DECEMBER 2008
9.33 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr William Romans Ms Carolyn Buff
For the Registry:	Ms Rachel Irura Mr Momodu Tarawallie
For the Prosecution:	Ms Brenda J Hollis Mr Christopher Santora Mr Nicholas Koumjian Mr Alain Werner Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Mr Terry Munyard Ms Amina Graham

A. It was Mosquito who directly told me.

JUDGE SEBUTINDE: Mr Santora, the witness was about to tell us which year this December was and he didn't finish.

MR SANTORA: I apologise:

10:03:05 Q. Again just to - clarify the time frame again?

A. 1998.

Q. Now go ahead and I won't intervene. Just go ahead and sequentially say what happened. So you arrived in Monrovia and what happened then? Where specifically did you arrive to?

10:03:37 A. When we got to Monrovia I was at Benjamin's place throughout the trip waiting for Mosquito. I waited on him in Monrovia and he went and returned. I was in Monrovia at Benjamin's house using Base 1 to collect information from the front lines, because I was coordinating with the front line all

10:04:10 of the times, and Mosquito used to call on the phone, on the telephone line, to get information from me directly pertaining to what was going on at the front line and that was the reason why Mosquito travelled with me to go to Monrovia; so he would be getting information.

10:04:39 Q. Where was Mosquito calling you on the phone from, do you know?

A. From --

MR MUNYARD: I may be wrong but I'm not sure that he said Mosquito was calling him. He said Mosquito used to call on the

10:04:55 phone, on the telephone line. Yes, he did say to get information from me. I'm sorry, I've missed it.

MR SANTORA: It's okay:

Q. Do you know where Mosquito was calling you from?

A. Yes. Mosquito was calling me from Burkina Faso.

Q. And how do you know that?
A. He told me. When he arrived, that is Mosquito, he called on the telephone and he spoke with Sunlight and Sunlight called me and I spoke to him directly. He said he had reached his
10:05:40 destination. And even before he left he had told me that they were going to Burkina.
Q. Now, I just want to clarify again what exactly - how did it happen that the course changed?
A. Well, that one is for those in the higher echelons because
10:06:04 I don't know exactly why the course was diverted.
Q. So when you first arrived in Monrovia where did Sam Bockarie go, when you first arrived?
A. When we arrived in Monrovia I was at Benjamin's and Sam Bockarie and Benjamin used to go out. They would go out for the
10:06:32 whole day and sometimes when he would return he would tell me that they met with Papay briefly and sometimes - when we were in Monrovia even before he would go out he will not come back to Benjamin for the whole day at times, except the following morning, because we spent up to 72 hours in Monrovia before Sam
10:07:01 Bockarie took off for Ouagadougou.
Q. When you say we spent up to 72 hours, who spent up to 72 hours in Monrovia before taking off to Ouagadougou?
A. Myself, Rashid - myself, Rashid, Shabado and some of Mosquito's bodyguards with whom he travelled.
10:07:36 Q. Who specifically actually went on the trip with Sam Bockarie, do you know?
A. Well, from the RUF side I recall late Pa Rogers and Eddie Kanneh. They were the ones who travelled with Sam Bockarie.
JUDGE SEBUTINDE: Is that to Ouagadougou or to Monrovia

initially? Travelled to where?

MR SANTORA:

Q. I'm asking you about the trip that Sam Bockarie took to Ouagadougou. Is that what you're referring to - well, go ahead and say the people that you know travelled to Ouagadougou.

A. The people who went with Sam Bockarie to Ouagadougou were the late SYB Rogers and Eddie Kanneh.

Q. And anyone else?

A. Those are the two I know of from the RUF. If any other person was there I don't know about that person.

Q. And how long were they gone for?

A. They spent up to a week. They spent up to a week in Ouagadougou.

Q. And during that week where did you stay?

A. I stayed in Monrovia at Benjamin Yeaten's house.

Q. And you said that you were receiving calls on the phone from Sam Bockarie during the course while he was on this trip to Ouagadougou. How often was that happening?

A. He called me about three times from Ouagadougou. About three times.

Q. And were there any other discussions aside from what you've already said about reporting the situation?

A. Well, during his stay in Ouagadougou, is that what you mean? During his stay in Ouagadougou most of the discussions we had was for me to give him updates from the front lines. If there was any problem I should tell him where there was that problem or where there was no problem. That was the topic of discussion.

Q. How were you getting information to send to Sam Bockarie

about the front lines at this time?
A. I communicated on the RUF radio net every day. Every day I communicated on the RUF radio net. I followed the various activities in the front lines.
10:10:37 Q. Now, you said they were gone approximately a week. What happened when they returned? Describe what happened.
A. Well I stayed at Benjamin's house right up to the time Mosquito and others returned and, when they returned, he returned at night. On that very night I did not see him and the following
10:11:16 day he came to Benjamin's house in the evening. He was sitting in the studio for a short time, that is at Base 1, to get information from me, and he called Issa and the two of them spoke and Mosquito gave me instruction to send a message to the front line to some of the commanders to come and meet him in Buedu - to
10:11:52 come and meet him, Mosquito, in Buedu. From there, that very evening we took off together with Mosquito. All of us who had come with Mosquito took off again to go back to Buedu.
Q. Okay, before you go on, before you actually left, when the group returned from Ouagadougou who was in the group, do you
10:12:25 recall?
A. Well at Benjamin's house, where they met me, Mosquito was in a group with Benjamin, Eddie, General Ibrahim.
Q. Who is General Ibrahim?
A. General Ibrahim, I knew him to be a Gambian who used to
10:13:12 help Foday Sankoh coordinate the RUF affairs outside of Sierra Leone since 1996 during the Abidjan accord - even before the Abidjan accord.
Q. Do you know why he was present at this particular moment when the group returned from Ouagadougou?

saw two trucks, two big trucks, that is at the outskirts of Monrovia, that was loaded with ammunition of different types and all of us --

Q. Before you continue, who was present with you when you left Benjamin Yeaten's house in the two vehicles?

10:19:00

A. When we were moving I was there, Sam was there, Rashid was there, Zigzag Marzah was there, Jungle was there and some of Sam Bockarie's securities, all of us who had come with Sam. Like for the securities, we met them on the way with the ammunition. They were ahead.

10:19:33

Q. Who was ahead? Who did you meet on the way?

A. We met Sam Bockarie's securities, together with Jungle, on the way. That is on the outskirts of Monrovia to go out of Monrovia. That was where we met me.

10:19:55

Q. You also made a reference to Zigzag Marzah. Did you meet him, or did he leave with you from Benjamin Yeaten's house? Which one?

A. Zigzag was not with us at Benjamin's house, but it was all of us that moved together where they were waiting for us with the ammunition and so we moved together. Zigzag, Jungle and others were with the ammunition and Sam Bockarie's securities, those of whom he had travelled with.

10:20:19

Q. Just so we don't lose track, where was Pa Rogers at this time?

A. Pa Rogers met us at Benjamin's house before all of us took off. He met us at Benjamin's house before all of us could take off.

10:20:37

Q. And you said you met these two trucks on the outskirts of Monrovia. Can you be a little bit more specific? Do you know

where more specifically?
A. Well, I did not see where they were. I just saw them and --
THE INTERPRETER: Your Honours, can the witness repeat this.
PRESIDING JUDGE: Mr Witness, the interpreter is not able to keep up with you. Please speak slowly and just pick up where you said, "I saw them". Continue from there.
THE WITNESS: Myself, Sam Bockarie and others met the trucks while we were going on the road. That is at the outskirts of Monrovia towards Kakata. Then while we were going, while we were in the vehicle, Sam and others were discussing, and even before that at the time we were moving that was the time Sam Bockarie told me that the trucks were loaded at RIA. That is before we took off from Benjamin's house. I asked him, I said, "Master, where is the material that you went for?", and he said, "They are on the way. They were loaded from the airport". That was what he explained to me, that the trucks were loaded at the Roberts International Airfield, and we continued our journey.
MR SANTORA:
Q. Now you said you met them with these two trucks, so is it correct that you had four vehicles total? Is that correct? Two vehicles that you left with and then two trucks?
A. Yes.
Q. Now you went then - where did you go after you met up with the trucks?
A. It was in Buedu. We went to Buedu directly.
Q. Did Sam Bockarie discuss anything else? Well, first of all where exactly were you within this convoy? Who were you with?

PRESIDING JUDGE: Have we actually determined that they went in convoy? For all I know, their jeep could have passed the trucks.

MR SANTORA: Okay:

10:23:33 Q. How did you proceed from - from the moment when you met up with the trucks, how did you proceed to Buedu?

A. I have said it. I said all of us went together. We went in a convoy. All of us went together.

Q. Where were you within this convoy?

10:23:51 A. Initially from the house at Benjamin Yeaten's I was in the same vehicle as Sam Bockarie, but when we got to where the trucks were I transferred into one of the other vehicles and Zigzag Marzah transferred to Sam Bockarie and they were all in the same vehicle and we continued the journey.

10:24:26 Q. Now during the course of your journey from Benjamin Yeaten's house to meet the trucks, did Sam Bockarie discuss anything else?

A. You know, I cannot remember everything that we discussed, but one important thing that we discussed in the vehicle was

10:24:50 about the ammunition that he had gone for that all of us were expecting. That is what I asked him about. I said, "Master" - that is Mosquito. That was another name that we referred to him casually, "Master". And he told me - he, Mosquito, told me - that the ammunition was on the way. They had loaded them at the

10:25:12 Roberts International Airport.

Q. Okay. Now, what happened when you arrived back in Buedu?

A. When we arrived in Buedu, the commanders that Mosquito had sent a message for we arrived together with some of them almost at the same time. Issa came - no, Issa came after Mosquito had

information, he had information already at hand. Actually there had been some minor problems that had been existing between us and Gullit, that is RUF and the AFRC. That was Sam's concern. That was the only time that he was grumbling. Even before they 12:13:43 entered Freetown and even when he received the message in the morning, that was when Sam was saying that. He said maybe Gullit and others would want to - maybe they would change this time around to cooperate if at all they didn't go there to seize power, they wouldn't want to be greedy and take power on their 12:14:07 own.

And Sam Bockarie assured Gullit that Rambo was very close to him on his way to join him in the city and that Rambo was on his way to join him in the city and at that time late Rambo and others were around the Masiaka area, going towards Freetown.

12:14:38 Q. On that broadcast there was an individual named TAB Yaya, former PLO-2. Do you know who that is?

A. No, I don't know him in person and I don't know much about him.

Q. Now, there is a reference to Pademba Road prisoners. What 12:15:05 do you know about Pademba Road prisoners during the 6 January invasion?

A. After Gullit and others had captured Freetown, it was the following morning that he sent a message and it was King Perry who transmitted the message that they had released many people 12:15:35 from the prisons and that they had released many of the political detainees who were held prisoners, together with some other people. But when they got to Pademba Road they could not see Pa Sankoh, but that they were able to release some other people but they did not see Pa Sankoh. The message was sent to Mosquito.

After Mosquito received the message he told Five-Zero, I mean Benjamin, that the men had entered the city but they could not see the Pa, I mean Pa Sankoh, and that they did not know where Pa Sankoh had been taken to. Among the people who were released were like the late ex-President Momoh, Victor Foh and others among other renown Sierra Leone politicians who were in the prisons.

12:16:24

And Mosquito informed Benjamin about the people who had been released and he also informed him that they could not see Pa Sankoh in the prisons and he requested for more ammunition so that they will be able to defend the city. He was asking Benjamin to send ammunition for us.

12:17:00

Q. Now, you said that Gullit sent a message through King Perry to Sam Bockarie - sent to Mosquito - about the prisoners from Pademba Road. Is that correct?

12:17:32

A. Through King Perry. I mean that King Perry was the one who transmitted the message as a radio operator.

Q. Then you said that after Mosquito received the message he told Five-Zero, meaning Benjamin, that the men had entered the city but they couldn't see the Pa, meaning Pa Sankoh. About how much time transpired between the time Bockarie received the message from Gullit through King Perry to the time he contacted Benjamin? How much time transpired between?

12:17:54

A. It was that very morning just when Sam Bockarie got the message, because at that time, while the 6 January operation was going on, we moved a bit from Sam Bockarie's house. We were no longer seated at Sam Bockarie's house where we used to sit, opposite that house. We went down towards Dawa Road. There was a barri, an old barri, where we used to sit because of air raid

12:18:20

because there was frequently air raid by the Alpha Jet. The Alpha Jet used to raid Buedu and other areas.

PRESIDING JUDGE: Mr Witness, did you listen to the question? The question was about time.

12:19:08 MR SANTORA:

Q. Again I will ask you to further describe things as necessary, but just this question here, I am just asking you the time that passed - the time that elapsed from the moment Mosquito received the message from Gullit through King Perry to the time 12:19:26 he contacted Benjamin. You said, "It was that very morning just when Sam Bockarie got the message because at that time" and then you started talking about something else. How much time transpired?

A. It was not up to one hour. It was not up to one hour.

12:19:48 Q. And how in this particular instance did Sam Bockarie make contact with Benjamin?

A. It was through the sat phone.

Q. How do you know that?

A. All of us were sitting together in the barri where we 12:20:10 operated in the radio room.

Q. And you have described what he said - some of the things he had said to Benjamin. How do you know some of the things that he said?

A. He was sitting in the chair that was not far. If you can 12:20:29 allow me I can estimate the size of the barri. It's like from where I am sitting here to the exit at the back of the Prosecution lawyers. That was the size of the barri where he was sitting. The sat phone was - the sat phone was at one edge, one corner of the barri. And we were, that is the radio set was in

the other corner of the barri.

PRESIDING JUDGE: Counsel has seen the witness's indication. Mr Munyard, have you seen the witness indicate from where he is sitting to the door behind Mr Koumjian?

12:21:12 MR MUNYARD: I didn't, but I heard him say it so I am quite happy with that.

MR SANTORA: If we can stipulate a distance, that's fine. I just don't know if we have measured this before. I would be happy to stipulate an estimate.

12:21:27 PRESIDING JUDGE: Mr Witness, can you estimate the distance you have just referred to?

THE WITNESS: Estimate by what means? What do you mean? I don't think I have any professional means to estimate that besides the approximation that I have made, the visual example

12:21:45 that I have set.

MR SANTORA: It could either stand on the record or we could ask for a stipulation of perhaps 20 metres.

PRESIDING JUDGE: I don't think so.

MR MUNYARD: Can I, who also has no sense of distance - can

12:22:06 I make a suggestion that at some point somebody probably from Court staff using the tape measure just measures the distances between the witness box and various points in the courtroom so that we will have an accurate record for the future of what these distances are and that will save - apart from anything else it

12:22:27 will save the Court staff wandering up and down with the tape measure every time it is done. Then we can use it as a template for the future.

PRESIDING JUDGE: We will implement that, Mr Munyard, but in the meantime --

JUDGE LUSSICK: In the meantime, Mr Santora, for what it's worth I would estimate the distance to be about ten metres, but I would also point out that it's not very helpful evidence of how big that barri was because theoretically it may be ten metres in that direction and it might be 50 metres wide. We just don't know, so really that particular distance from the witness to the door doesn't tell us anything about the size of the barri. It just tells us perhaps the width or the length of the barri.

MR SANTORA:

12:23:20 Q. Can you just describe the barri that you're referring to, describe it in terms of the dimensions?

A. The barri is in a square form, almost the same length and width. The length and the width are almost the same, like the distance I gave to you.

12:23:43 JUDGE SEBUTINDE: If I understood the evidence properly, the witness is estimating the distance between where he was sitting at the radio --

THE WITNESS: I am sitting here.

JUDGE SEBUTINDE: -- and where the satellite phone was on

12:23:54 which Bockarie was speaking in order for us to understand how he heard the conversation on the sat phone. That's what he is trying to do, I think.

MR SANTORA:

Q. How far away were you from where Sam Bockarie was using the

12:24:11 satellite phone?

A. I was sitting near the radio and he was using the satellite phone. Like after where the last chair is, at the back of the last chair at the edge of this hall. Like where I am sitting now, that is where I was and he was sitting on the other end like

at the back of the last chair at the end of this hall.
Q. You mean the empty chair at the back?
A. Yes, yes, the empty chair at the back. And how I knew also was after he had spoken to Benjamin they spoke for some time.
12:25:01 After some time Benjamin came back to Mosquito and called him on the sat phone and he gave him instructions to make sure that he told Gullit and others to dispatch all those big names that he had mentioned, to call for them to be with him in Buedu at the headquarters, that they should not be at the front line. He said
12:25:29 that was the instructions from Mr Taylor. And Mosquito told the operator in charge - that was one Mohamed Kabbah, I can recall, and on that very day he was the one on duty and he sent the message. I was there when Mohamed Kabbah encoded the message and sent it to Gullit and others for them to send back those people
12:25:56 to the rear for safety.
Q. Mr Witness, before I go on - and this goes with Mr Munyard's suggestion - that dimension will be - at some future moment there will be given a distance to the dimension, but for the record he pointed from his seat to the empty seat in the back
12:26:11 corner of the Prosecution side of the courtroom.
MR MUNYARD: Just to be completely accurate he said, "The back of the chair at the rear of the courtroom".
MR SANTORA:
Q. Mr Witness, just to be - you said that - first of all, how
12:26:32 did you know he was speaking to Benjamin Yeaten? How did you know Mosquito was speaking to Benjamin Yeaten?
A. After he called Benjamin and I was sitting at the other extreme edge of the corner, he asked, "Is this Five-Zero?", and he said, "Yes". He explained to him the development at the front

lines and when he was talking to him he used to respond, "Yes, sir". When they were discussing, he would respond to him directly, "Yes, sir. Okay, okay, I will do that". And when Mosquito finished he told the operator directly that he had had instructions from Benjamin from above, that is Charles Taylor through Benjamin, that Benjamin had told him that the Pa had said that they should make sure that those people who had been released from Pademba Road should come to Buedu.

12:27:24

Q. Mr Witness, when you were giving your last answer you said the following. You said, "After some time Benjamin came back to Mosquito and called him on the sat phone and he gave him instructions to make sure that he told Gullit and others to dispatch all those big names that he had mentioned to call for them to be with him in Buedu". I am going to take that down, because you used a lot of words without calling out names there, okay? First of all, starting with, "After some time Benjamin came back to Mosquito and called him", meaning who?

12:27:47

12:28:14

A. And called Benjamin. It was Benjamin who came back on the line, on the telephone line, and called Mosquito. Benjamin called Mosquito back on the sat phone.

12:28:40

Q. Then you said, "He gave him instructions to make sure that he told Gullit and others to dispatch all those big names that he had mentioned". When you say, "He gave him instructions", who are you talking about?

A. It was Benjamin who sent the instruction to Mosquito for Mosquito to call for the people who had been released by Gullit and others from the Pademba Road Prisons to send all of them to Buedu, including ex-President Momoh.

12:29:01

Q. "He told Gullit and others to dispatch all those big names

that he had mentioned". What do you mean when you say "all those big names"?

A. Yes, all the big names. You know, like there was one Steve Bio among them. Steve Bio, Osho-Williams - Osho-Williams, Victor Foh. You know, really I cannot recall all of the names now, all of the names of the people who were released from Pademba that were named, but there were about 20 prominent people in Sierra Leone who were among the list.

Q. And then you said, "To call for them to be with him in Buedu and that they should not be at the front line". Who are you referring to when you say "to call for them"?

A. That is the detainees who Gullit and others had released from Pademba.

Q. "To be with him in Buedu". Who do you mean "him"?

A. To be with Mosquito in Buedu.

Q. "That they should not be at the front line". Who is "they"?

A. That the released detainees from Pademba Road should not be at the front line.

Q. Then you said, "He said that was the instructions from Mr Taylor". Who said that?

A. It was Mosquito who said that that was the instruction.

Q. Who did he say that to?

A. It was the operator to whom he was explaining. Mosquito was now explaining to the operator about his conversation with Mr Benjamin Yeaten.

Q. Now then you said that Mohamed Kabbah, who was the operator, sent this message to Gullit. Is that correct?

A. Yes, yes.

Makeni. While they were coming one renowned one, Steve Bio, died on the way from one of the bombs. According to a message, he died on the way from an enemy bomb fragment. Then while they were in Freetown for some time, the exact days of which I cannot 12:34:41 remember, when the AFRC and RUF spent in Freetown when they were flushed out I cannot recall, but during that period ECOMOG pressurised Gullit to flush - Gullit and others to flush them out of the city. While ECOMOG was pressurising Gullit and others to flush them out of the city, they started retreating towards the 12:35:04 east. They started retreating.

I can remember on one occasion when I left the monitoring station I monitored a live conversation between Mosquito and Gullit when Mosquito was giving direct instructions to Gullit for Gullit to - for Gullit to tell the men, I mean the RUF and the 12:35:29 AFRC combatants, to cause a lot of mayhem in the city. That is like to destroy some important government buildings and to tell people to take their hands off the war and to cause real damage whereby the international community - whereby the international community would show more concern about the RUF until they 12:36:04 released Foday Sankoh. He said if it is possible - Mosquito said if it is possible to chop off anybody's arm, he said - no. He said if it is possible to give anybody short sleeves or long sleeves, meaning to amputate anybody, he said that wouldn't be any problem. He said that they should raise alarm. He said 12:36:25 Gullit and others should raise alarm to the level of the international community so that they can come in. Maybe that would force the government to peace talks whereby Foday Sankoh would be released.

Q. Where were you when you heard this communication?

A. I was in the radio room. That is the barri - the court barri - that I had described here where the radio was.
Q. And you said that you don't remember the exact date. Can you approximate during the course of Freetown [sic] when this
12:37:27 was?
A. That is what I have said. I cannot remember the exact date that this incident took place. When that particular dialogue took place, I cannot remember the exact date.
MR MUNYARD: If we are moving on, can I have clarification
12:37:55 about some "he"s in an important passage here? On my font it's page 69. Just after the words "until they released Foday Sankoh", we then have - it's line 3 on page 69 of my font. "He said if it is possible - Mosquito said if it is possible to chop off anybody's arm, he said - no." Who is the "he" who is saying
12:38:28 no?
THE WITNESS: I cannot recall.
MR SANTORA: I was just waiting for Madam President to get the reference there.
PRESIDING JUDGE: I have - on mine, Mr Santora, it's around
12:38:45 page 69.
MR SANTORA: I have the reference too.
PRESIDING JUDGE: You have it.
MR SANTORA: I actually thought you were looking, sorry.
PRESIDING JUDGE: Yes, I did find it and there are a few
12:38:54 "he"s there that are unclear.
MR SANTORA: I had it and now I've lost it:
Q. Mr Witness, you said that - well, you were describing the content of this communication from Sam Bockarie to Gullit during the course of the Freetown operation and you were saying that Sam

Bockarie - you were describing the content and you said in the course of your answer:

"He said if it was possible - Mosquito said if it is possible to chop off anybody's arm, he said - no. He said if it was possible to give anybody short sleeves or long sleeves, meaning to amputate anybody, he said that wouldn't be any problem."

Now, I am going to ask you again that you called out the word "he" several times when you said, "He said if it is possible - Mosquito said if it is possible to chop off anybody's arm"?

12:39:53

A. Yes, it was Mosquito who said that. He said if it was possible. That was why I said no. Why I said no, because I wanted to quote exactly what Mosquito said in that dialogue. He said if it were possible to give them short sleeve or long

12:40:14

sleeve, that meant that to chop off the people's arms. I mean, those who were - that was one of the slangs that was well-established in the revolution, short sleeve and long sleeve. That is, to chop off people's hands.

Q. Further then, the next part of your response says is that

12:40:40

he said no. Who are you saying when you said he said no?

A. I wanted to quote exactly what Mosquito said. I have repeated that. When I said it I wanted to quote exactly what Mosquito said, because he was speaking on the radio, he was speaking on the radio, and while he was talking on the radio we

12:41:00

heard the way we talked to understand each other.

PRESIDING JUDGE: Mr Witness, who is the "he" that said - who is it?

THE WITNESS: It was Mosquito who said Gullit should give - Gullit and others should give the civilians short sleeves and

long sleeves and equally burn down houses including some important government buildings. Like the oil refinery, he passed a direct instruction that if it was possible, if they had the chance, they should set it on fire. That is Gullit and others should set it on fire.

12:41:43

JUDGE SEBUTINDE: Mr Witness, nobody has asked you all that. We are just tussling with one sentence, "He said no". As far as I am concerned you were correcting yourself, wanting to quote exactly what I think Mosquito said directly instead of saying, "If it is possible to chop off anybody's arms", you corrected yourself and then you said, "If it was possible to give anybody short sleeves and long sleeves". Is that correct?

12:42:03

THE WITNESS: You are right, my Lordship.

JUDGE SEBUTINDE: In other words there should not be a full stop after the words "he said no". It should be, "He said - no. He said if it is possible". There shouldn't be a full stop between the word "no" and "he". I think that is what is confusing everybody.

12:42:33

MR SANTORA: I think that's right and I was initially confused myself. Thank you, Justice Sebutinde:

12:42:50

Q. Now, Mr Witness, you've described communications related to - communications between Sam Bockarie and Gullit and the respective radio operators and you've talked conversations - communications related to the Pademba Road prisoners, communications related to a possible reinforcement and communications now related to orders to - direct instructions to cause - to burn buildings and to also raise the level of awareness of the international community. Do you recall any other communications between Sam Bockarie and Gullit --

12:43:25

I N D E X

WITNESSES FOR THE PROSECUTION:

DAUDA ARUNA FORNIE	21532
EXAMINATION-IN-CHIEF BY MR SANTORA	21532
CROSS-EXAMINATION BY MR MUNYARD	21642

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

WEDNESDAY, 10 DECEMBER 2008
9:30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Ms Sidney Thompson Ms Carolyn Buff
For the Registry:	Ms Rachel Irura Mr Momodu Tarawallie
For the Prosecution:	Ms Brenda J Hollis Mr Christopher Santora Mr Alain Werner Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Terry Munyard Ms Amina Graham
For the Office of the Principal Defender:	Mr Silas Chekera

there were three trucks, according to all the statements that I had made before. To the best of my memory there were three trucks in my statements.

Q. Yes, there's three trucks of arms and ammunition at some point that later on turn into two or three trucks, but I'm asking you about your evidence; what you've been telling this Court last week. Why do four vehicles, two jeeps and two trucks, suddenly turn into five vehicles in the space of a week?

A. Well, it's not a matter of a week, but before it had been three trucks, that is stated clearly in all my testimonies that you have read here. You yourself have seen that in all my testimonies that you have read here.

Q. Yes, I have. "Three trucks of arms and ammunition" in some of them, but not in all of them. Certainly there's - just bear with me for one moment. Well, I'm going to move on in fact.

Do you remember telling us in the course of your evidence last week about you hearing Sam Bockarie on the phone to Benjamin Yeaten on one occasion when you were sitting in a barri and we had a lot of discussion about distances using this courtroom as a way of assessing the distance you were from Sam Bockarie to Benjamin Yeaten - sorry, you were from where you were sitting to Sam Bockarie where he was on the satellite phone? Do you remember telling us about that?

A. Yes.

Q. And you said to us when you were asked a question:

"Q. How do you know he was speaking to Benjamin Yeaten?

A. After he called Benjamin, and I was sitting at the other extreme edge of the corner, he asked, 'Is this Five-Zero?', and he said 'Yes'."

The "he" there means - the latter "he" meaning Benjamin Yeaten. Are you saying you can actually hear the other person on the end of the satellite phone speaking?

A. I heard Sam Bockarie talking over the satellite phone. That was what I said. I heard him and I saw him.

15:44:48

Q. Are you saying you can hear the person on the other end of the satellite phone speaking into it?

A. No, I did not hear that person.

Q. Right, thank you. So it's not correct to say that when he, Sam Bockarie, asked "Is this Five-Zero?", you heard he, Benjamin Yeaten, say "Yes"?

15:45:10

A. Say again.

Q. It's not correct to say that you could hear Benjamin Yeaten say "Yes"?

A. Well, I recall that I told you that I heard Mosquito asking questions and he asked whether, "Is this Five-Zero?", and I think it was a message that he had received that he was trying to discuss with Five-Zero that we discussed about. He, Sam Bockarie himself, told me what he discussed with Five-Zero.

15:45:33

Q. I don't want --

A. And whilst he was talking to him, anything he said to him I heard him answer to him, "Yes, sir".

Q. It is a short point. I simply wanted to understand from some evidence you gave last week on page 21586 at lines 27 to 29 whether you were claiming you could actually hear the person on the other end of the satellite phone speaking, because the answer you gave was, "After he called Benjamin, and I was sitting at the other extreme edge of the corner, he asked, 'Is this Five-Zero?' and he said 'Yes'." You're now saying, "No, I can't actually

15:45:55

15:46:13

hear what the person on the other end of the phone was saying"? That's all I want to establish.

A. Well, you got me wrong. I heard Mosquito ask, "Is this Benjamin?" - I mean, sorry, "Is this Five-Zero?" That is what I'm telling you. I heard that. I heard Sam Bockarie ask. He said, "Is it Five-Zero?" That was what I heard. I did not tell you that I heard Five-Zero talking.

Q. I'm not querying that. I'm querying your evidence that Five-Zero said, "Yes", therefore you could have heard that. That's all.

A. No.

MR SANTORA: Objection. The transcript at the reference that my learned colleague gave does not say that Benjamin Yeaten said "Yes". It's a, "He said 'Yes'", and then later on there's a reference to "he" saying "Yes" and "Yes, sir". So the transcript itself is not - there's no specific instance in the transcript where the witness said that he heard Benjamin Yeaten say "Yes". I'm referring to lines 27 to 29, going on to the next page, and that's the same --

PRESIDING JUDGE: Well, Mr Santora, if you look at page - well, my font page 129, line 4, "He asked, 'Is this Five-Zero?', and he said 'Yes'". Who else could it be, but the person on the other end of the phone who said "Yes"?

MR SANTORA: I'm sorry, I was specifically referring to the - I understand. I was specifically referring to his question that it was said in the transcript specifically that Benjamin Yeaten said "Yes". In my submission, the transcript is very ambiguous as to who said "Yes". It's a "He said", "He said", "He said".

PRESIDING JUDGE: I get the point, but I'm allowing the question on the basis that it's a follow up from the previous answer. Please continue.

MR MUNYARD:

15:48:25 Q. Ambiguous it may be, but commonsense suggests, does it not, Mr Fornie, that when someone says, "'Is this Five-Zero?', and he says, 'Yes'", you're talking about Five-Zero saying "Yes", correct?

A. I did not tell you that it was Five-Zero. I did not tell you that I heard Five-Zero answer. I did not tell you that. I said it was Mosquito who asked. He said, "Is this 50?" It was Mosquito who asked. He said, "Is it 50?", and then they continued talking and whilst they were talking he was answering to him, "Yes, sir. Yes, sir".

15:49:03 Q. Well, you have picked that up from Mr Santora.

JUDGE SEBUTINDE: Who was answering, "Yes, sir"? Who was answering?

THE WITNESS: It was Mosquito.

MR MUNYARD:

15:49:13 Q. That is later in your answer. That's later in your evidence on the next page, but I'm not going to pursue this. I want to go on to something different, please. Can you remember telling this Court last week that during the Freetown invasion, 6 January '99 onwards, that you monitored:

15:49:39 "... a live conversation between Mosquito and Gullit when Mosquito was giving direct instructions to Gullit for Gullit to tell the men - the RUF and the AFRC combatants - to cause a lot of mayhem in the city, that is like to destroy some important government buildings and to tell people to take their hands off

I N D E X

WITNESSES FOR THE PROSECUTION:

DAUDA ARUNA FORNIE 22001

CROSS-EXAMINATION BY MR MUNYARD 22001



Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

THURSDAY, 11 DECEMBER 2008
9:30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr William Romans Ms Carolyn Buff
For the Registry:	Ms Rachel Irura Mr Momodu Tarawallie
For the Prosecution:	Ms Brenda J Hollis Mr Christopher Santora Ms Ruth Mary Hackler
For the accused Charles Ghankay Taylor:	Mr Terry Munyard Ms Amina Graham
For the Office of the Principal Defender:	Mr Silas Chekera

"Communication/lost wages/transport Assistance to Investigations"? Do you have any recollection of what it was that was involved in that? I make it quite clear that you were interviewed on 26 November 2007.

15:38:58 A. Well, on different occasions I have told you that I gave help to Prosecution. I helped the Prosecution. I gave them map on locations regarding call signs during various years, those things, and I recall that I gave them different other assistance. We drew the Sierra Leone map, I showed them different locations

15:39:26 where radio stations where - where they were, when and at what time within Sierra Leone - and I spent sometimes two days or three days on those things. From there the other time they called me again to go for some verification, so --

Q. And they - sorry, I didn't mean to interrupt you. And they

15:39:48 presumably wrote down where you were showing them on these occasions when you were showing them where radio stations were and so on? They'd have to make a note of it, wouldn't they, otherwise they might forget because it wasn't them who had identified them, it was you, do you agree?

15:40:09 A. Well, that is not my own side of it.

Q. And so we'd expect to see a note, "Mr Fornie took us out to this place and that place and identified this radio station and that radio station", wouldn't we?

A. Well, I have told you that it is not my own side of it to

15:40:33 answer to that question.

Q. Well all I can say, Mr Fornie, is we have had no such disclosure of you going round and showing them locations. I'm not disputing that you did. One thing I should make clear is that where it says on 28 November "Communications", it clearly

I N D E X

WITNESSES FOR THE PROSECUTION:

DAUDA ARUNA FORNIE	22130
CROSS-EXAMINATION BY MR MUNYARD	22130
RE-EXAMINATION BY MR SANTORA	22253

EXHIBITS:

Exhibit P-261 admitted	22261
Exhibit P-262 admitted	22261
Exhibit P-263 admitted	22261
Exhibit P-264 admitted	22262
Exhibits P-265A and P-265B admitted	22262
Exhibit P-266A and P-266B admitted	22262
Exhibit D-76 admitted	22263
Exhibit D-77 admitted	22264
Exhibit D-78 admitted	22265
Exhibit D-79 admitted	22265

C. (1)

iii. Trial Transcripts 2009

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

TUESDAY, 27 JANUARY 2009
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Richard Lussick, Presiding Justice Teresa Doherty Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr William Romans Ms Carolyn Buff Ms Sidney Thompson
For the Registry:	Ms Rachel Irura Mr Momodu Tarrawallie
For the Prosecution:	Ms Brenda J Hollis Mr Mohamed A Bangura Mr Nicholas Koumjian Ms Kathryn Howarth Ms Ruth Mary Hackler
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Mr Morris Anyah Cllr Laveli Supuwood

Q. Now you said there were two other vehicles behind. Do you mean behind --
A. Behind the Mercedes Benz car.
Q. And what kind of vehicle were those?
15:38:03 A. They were the same vehicles.
Q. Please give me just a second after I finish the question to answer.
A. Okay.
Q. Could you see whether there was anyone inside those
15:38:16 vehicles?
A. Well, inside those vehicles there were young men and young girls. They were shouting, they are going, they are going. So I was trying to go to my house. When all of the vehicles have passed, I went straight to the house.
15:38:40 Q. Okay. When you say that these three vehicles were ECOMOG vehicles, were they automobiles, were they pick-up trucks? How would you describe the vehicle?
A. They were big trucks which the ECOMOG were using before and these were vehicles that for the ECOMOG they will have carried
15:39:04 about 20-30 people. But for our situation they will even carry 90-100 people.
Q. Approximately how full were these vehicles that you saw?
A. They were really full with young men and young girls.
Q. Could you see if any of them were armed?
15:39:28 A. Yes, they were armed, those who were sitting at the back door. Because there were tarpaulin, but those at the back were with guns.
Q. Now after you returned to Makeni did you see any other ECOMOG vehicles besides these three trucks that you've described?

A. Well, after that night there was also an announcement from the People's Army that the people of Makeni should go to Teko and see their might, what they have done to ECOMOG, that a good number of them have been killed. Well people went there and I also went there, but when I looked at the first vehicle and saw the dead bodies packed there I decided to come back home without proceeding. Some of the other friends who came later, they told me there were also other two - why I didn't go so far. I said, "No, I can't bear the sight", and so I came back. They told me there was other two vehicles, but I saw the one loaded with the dead bodies.

Q. Could you identify anything about the bodies that were in the ECOMOG truck?

A. Well from what they, the RUF themselves, announced in Makeni that they were the bodies of the ECOMOG soldiers.

Q. Were the bodies in uniforms?

A. Some of them were in uniforms.

Q. Before Makeni was attacked in December 1998, do you know whether or not ECOMOG or the loyal SLAs had any armoured vehicles?

A. They had. They had many armoured vehicles, because they were going up and down.

Q. Did you see any of those vehicles after you came out of the bush on 28 December?

A. One was burnt very close to the compound of MCA secondary school.

Q. Did you see any other ECOMOG vehicles after you returned to Makeni?

A. A good number of them. A good number of those vehicles

I N D E X

WITNESSES FOR THE PROSECUTION:

PHILIP S PALMER	23592
RE-EXAMINATION BY MS HOLLIS	23592
TF1-062	23612
EXAMINATION IN-CHIEF BY MS HOWARTH	23614
CROSS-EXAMINATION BY MR GRIFFITHS	23616
RE-EXAMINATION BY MS HOWARTH	23641
TF1-174	23650
EXAMINATION-IN-CHIEF BY MR KOUMJIAN	23652

EXHIBITS:

Exhibit P-273 admitted	23605
Exhibit P-274 admitted	23605
Exhibit P-275 admitted	23606
Exhibit P-276 admitted	23606
Exhibit P-277 admitted	23606
Exhibit D-82 admitted	23608
Exhibit D-83 admitted	23608
Exhibit D-84 admitted	23608
Exhibit D-85 admitted	23608
Exhibit D-86 admitted	23608
Exhibit D-87 admitted	23608
Exhibit D-88 admitted	23608
Exhibit P-278 admitted	23645



Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

MONDAY, 6 APRIL 2009
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Richard Lussick, Presiding Justice Teresa Doherty Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr Simon Meisenberg Ms Doreen Kiggundu
For the Registry:	Mr Gregory Townsend Ms Rachel Irura
For the Prosecution:	Ms Brenda J Hollis Mr James Johnson Ms Kathryn Howarth Ms Ula Nathai-Lutchman Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Mr Terry Munyard Mr Morris Anyah Mr Silas Chekera

vis-a-vis through Sam Bockarie? We suggest that the evidence on the record shows the contrary.

In respect of the Freetown invasion your Honours have already determined as an adjudicated fact in this case that the 10:53:24 RUF troops played little or no role in this invasion. I am referring to the recently issued decision on 23 March this year. Indeed, I should cite the relevant portions of that decision.

One of the facts that were adjudicated is adjudicated fact number 15 which says, "Following heavy assaults from ECOMOG, the 10:54:05 troops were forced to retreat from Freetown. This failure marked the end of the AFRC offensive as the troops were running out of ammunition." We pause there. The troops in Freetown were running out of ammunition.

Another witness says Charles Taylor had sent ammunition to 10:54:26 Sam Bockarie. Your Honours have as an adjudicated fact the troops in Freetown were AFRC. I continue reading adjudicated fact 15:

"While the AFRC managed a controlled retreat engaging ECOMOG and Kamajor troops who were blocking their way, RUF 10:54:48 reinforcements arrived in Waterloo. However, the RUF troops were either unwilling or unable to provide the necessary support to the AFRC troops."

The law requires that Charles Taylor aid and abet a certain specific crime. What is the crime at issue vis-a-vis this 10:55:12 alleged armament and reorganisation of a group of soldiers? The soldiers apparently did not make it into Freetown. At least we submit that the Prosecution has not rebutted the presumption that an adjudicated fact is entitled to under these circumstances, so how can it be said that this allegation amounts to aiding and

abetting?

Adjudicated fact number 1 makes the point that, "As the founders of the AFRC belonged to the Sierra Leone Army and therefore had been fighting the RUF since 1991, the coalition between the two factions, following the 1997 coup, was not based on long-standing common interests. Both factions officially declared that they were joining forces to bring peace and political stability to Sierra Leone."

Let's pause there. The coalition between the two factions was not based on long-standing common interests. That signifies that these were two separate armed groups. Other evidence adduced confirms that it was the AFRC who went into Freetown. The adjudicated fact and other evidence confirmed that the RUF troops never made it past Waterloo.

So what is the specific crime that Charles Taylor is said to have aided and abetted in the context of the 6 January invasion of Freetown? It is the case that there are parts of the indictment that suggest that Charles Taylor would equally be responsible for the actions of the AFRC. The problem that the Prosecution has is that the evidence connecting Charles Taylor to the AFRC is extremely limited in this case, very tangential at best.

One witness spoke of a meeting in Liberia - and this is at page 8504 and 8506 - a meeting in Liberia with Johnny Paul Koroma, Daniel Chea, the defence minister for Charles Taylor, 11 other AFRC troops including the witness, where President Taylor said he had mobilised most of the SLAs who had come to Liberia and sent them back as reinforcements with arms, ammunition and food and that he continued to do so until the ceasefire.

MS HOLLIS: Yes, Mr President, we understand that.

PRESIDING JUDGE: All right, thank you. Well, we will adjourn this case until Thursday, that is this Thursday, 9 April, at 9.30 to hear the Prosecution response to the Defence submissions pursuant to Rule 98.

12:58:37

[Whereupon the hearing adjourned at 12.55 p.m. to be reconvened on Thursday, 9 April 2009 at 9.30 a.m.]



Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

THURSDAY, 9 APRIL 2009
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Richard Lussick, Presiding Justice Teresa Doherty Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr Simon Meisenberg Ms Sidney Thompson
For the Registry:	Ms Rachel Irura
For the Prosecution:	Ms Brenda J Hollis Mr James Johnson Ms Kathryn Howarth. Ms Ula Nathai-Lutchman Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Morris Anyah Mr Silas Chekera Ms Salla Moilanen

unable to reinforce their troops in Freetown.

There is additional evidence about the alliance in the north. TF1-143 testified at pages 8970 to 8985 that in September 1998 he was captured in Koinadugu District. He was 12 years old at the time. Others were captured, including boys and girls. And that after they were captured they were marked by their captors and that the first one who was marked was marked with an "AFRC" on his forehead and "RUF" on his chest and that this witness was marked with an "RUF" on his chest and they were told that now they were captives and they were now members of the group. The witness testified that those that captured him were under SAJ Musa and they were mixed AFRC and RUF and that Superman was also there with the group.

TF1-028 at pages 9205 to 9210 testified about the command structure at Eddie Town in Bombali District, including Colonel Eddie, Five-Five, Gullit and others and also Mohamed, indicating that is an RUF person, Mohamed's third group for Superman and that Superman was sending reinforcements to this group with a good amount of ammunition for the Freetown mission. He says there were more - there were about 100 and more RUF sent as reinforcements and that everyone was happy about this because now they had enough ammunition to go to Freetown.

Now the move on to Freetown, the attack on Freetown, this multi-facetted approach, there is also evidence of the alliance in place, both for the group that moved from the north to Freetown and the group that moved through Kono, Makeni on to the Freetown area.

There is ample evidence that RUF forces were among those who actually entered Freetown, in addition to the RUF who were

released from Pademba Road and joined the forces in Freetown. TF1-275 testified at pages 4548 to 4552 about this RUF and AFRC plan for the coordinated attack. He testified he was in the north and after he and his group had received information that 10:22:52 Foday Sankoh was condemned in Freetown that Sam Bockarie gave instructions to Superman to march on Freetown. He told Superman to get ready to go to Makeni and from there to Freetown.

Sam Bockarie also said that he had been in communication with Gullit and Gullit would move on Freetown and Sam Bockarie 10:23:13 had prepared Issa Sesay and Morris Kallon to move on Koidu Town and then on to Makeni.

The witness said that based on these instructions from Sam Bockarie Superman organised troops, went to Makeni and there on instructions of Sam Bockarie attacked Makeni, and he explained 10:23:31 that the group that captured Makeni included Superman's group and another group headed by Boston Flomo, that is Rambo as he was otherwise known, and he said that there were communications between Issa Sesay and Morris Kallon's group in Kono, communications with Superman, there were communications from the 10:23:51 group at Rosos to Superman, the communications were flowing back and forth.

TF1-584 testified at pages 12277 to 12278 that on 7 January 1999 she received a radio message in Lunsar from Sam Bockarie to Superman and RUF Rambo to join the men who had entered Freetown 10:24:17 and captured State House and that they left for Freetown with 200 combatants and ammunition arriving in Hastings on 9 January but then retreated to Yams Farm.

TF1-375 testified at pages 12608 and 12611 that at Waterloo Superman, Issa Sesay, Komba Gbundema and other senior officers

distributed the troops and that Colonel Babay and other commanders went to Benguema Barracks while RUF Rambo, and Rambo Red Goat and other commanders successfully cleared Hastings but got stuck at Jui. Issa Sesay then sent an order to RUF Rambo to 10:25:07 send Rambo Red Goat's group to Freetown to meet up with their brothers there while the rest of the group tried to clear the main road. Rambo Red Goat's group, which consisted of about 60 to 65 men from the RUF, the SLA and the Special Task Force successfully crossed into Freetown.

10:25:27 TF1-375 testified at page 12610 that the men in Rambo Red Goat's group were armed from their own commanders so the RUF in the group were armed from Issa Sesay and Superman and again reiterates that this group crossed successfully into Freetown.

TF1-360, an RUF member, testified at pages 3185 to 3186, 10:25:59 3213 and 3221, that he travelled with the group from Rosos - to Rosos from Koinadugu and that in the group were AFRC members, about 60 RUF members and Special Task Force members and that the RUF fighters were divided into the Red Lions, the big umbrella unit of the RUF, and a Cobra battalion. And the witness told you 10:26:24 this was part of the planning for the joint military operation to attack Freetown and that he and his group were part of the group that entered Freetown on 6 January and he worked communications after he entered.

At page 8288 and 8298 TF1-334 told you there were RUF among 10:26:45 those in Freetown and NPFL men as well, which we will discuss in a moment, and he told you of the radio broadcast of FAT Sesay that the AFRC and the RUF had taken over the State House. Prosecution exhibit 262 is that broadcast.

Now, in argument Defence counsel, at page 24080, discussed

with you a citation for a witness saying that the witness had testified that none of the senior RUF commanders were involved in the 6 January 1999 invasion of Freetown. If you look at page 2813, you will find that the witness was asked that question, whether any senior RUF commanders were involved in this invasion, but the witness's answer was that "involved" is vague. Involved in what sense? And then the witness clarified that as combatants, as fighters firing, none of the senior RUF commanders entered Freetown.

10:27:56 TF1-516 at pages 6943 and 6947 testified that Sam Bockarie gave instruction and strategy to those in Freetown during this Freetown operation and that when commanders were given ammunition for the operation of Freetown the AFRC and RUF were all mixed up together.

10:28:25 Now, in terms of the SLA's involvement in Freetown, TF1-334 at pages 8503 to 8516 talked about a meeting after Lome, a meeting where former SLA delegation including himself went to talk to Charles Taylor at Charles Taylor's request and that they met with Charles Taylor and Charles Taylor said - now this is 10:29:04 post-Lome - that he wanted to end the division between the RUF and the AFRC. He said he had been assisting the movement and he had mobilised most of the SLA who came to Liberia and sent them to Sam Bockarie in Kailahun so they could assist and reinforce the 6 January 1999 invasion. He said he was assisting both 10:29:23 groups and he said he was assisting them so they can remove the government in Freetown and the focus should be on putting the AFRC and the RUF in the seat of power, not on disputes. So Charles Taylor is telling this witness that he has SLA in Liberia and he is sending them to Sam Bockarie. The alliance is alive

and well.

Now, there was a question, and it is a legitimate question, why would Charles Taylor meddle, if you will, at this point? It is post-Lome. Why would he meddle? If we look at the situation post-Lome it is quite easy to understand in the context of the JCE why he would "meddle". Post-Lome there was a general amnesty. The RUF had positions in the government, including Foday Sankoh as the chairman of strategic resources, and the RUF had control of the diamond areas, so Charles Taylor benefited that there be no overt disruption of Lome, although there is indications that we will talk about later that they were covert efforts related to Lome.

Now, Defence Counsel also spoke about the SAJ Musa invasion of Freetown and, of course, that is not correct because SAJ Musa was killed prior to the invasion of Freetown and after SAJ Musa was conveniently killed Gullit took over and it was Gullit who was in command on the ground when those forces entered Freetown and when Gullit was in command he recommenced communications with Sam Bockarie and he followed the instructions of Sam Bockarie during the Freetown invasion. TF1-274 told you that at page 21726 to 21728, 22255.

We also have evidence of the large body of RUF who moved to Freetown to reinforce those who were fighting in Freetown and TF1-567, at page 12910 to 12911 and 12918, talks about that body. Prosecution exhibits 93 and 149 also talk about that body of fighters and the efforts to join up with the fighters in Freetown.

At page 6162 to 6163, TF1-532 told you that Rambo's forces fighting ECOMOG in Hastings - in the Hastings area - that was

important because eventually it allowed the men, when they retreated from Freetown, to use the forest to come towards their colleagues at Waterloo and he also told you that during this time the AFRC and the RUF had a cordial relationship. They had an understanding. They were together as one. There were no problems.

10:32:25

In relation to the overall situation between the AFRC and the RUF after the junta was pushed out, Prosecution exhibit D-85 is also of assistance to you. This is a comprehensive report to Foday Sankoh from Major Francis Musa, and at page 00009766 the report indicates that the consultation, coordination and cooperation among senior officers and other ranks brought about the recapture of Joru Jungle, Kono, Makeni, Magburaka, Segbwema, Tongo Field, Western Jungle and Freetown and many other places from the end of 1998 to early 1999, and at page 9767 he told you that about 95 per cent of the SLA brothers, including Akim Turay, Soriba, Dumbuya, Bakarr, Leather Boot and many others are loyal to the movement.

10:32:43

10:33:12

So the RUF and the AFRC, this evidence shows, continued to work together to regain control of the country after the junta were forced out. Both were involved in the movements to Freetown from the various axes were part of the group that entered Freetown, but even if it were not true that RUF were actually among those who entered Freetown, liability would still lie for the crimes committed in Freetown because of the continuing existence of the alliance of the participants in this joint criminal enterprise including AFRC and the RUF.

10:33:38

10:33:57

Now, this plurality also included people who were more directly subordinate to Charles Taylor and it included those from

the very beginning. Now, in terms of who was the leader of the NPFL, there is a lot of evidence about that, but perhaps we should look at the evidence of TF1-561 at pages 9804 to 9807, 9814 to 9815.

10:34:43 This witness told you that Charles Taylor, by his own words, made it very clear he was the leader of the NPFL and he talked about first seeing Charles Taylor in Libya, that there was a meeting Charles Taylor introduced himself and said, "I am Charles Taylor. This is my organisation." He said he was the 10:35:03 biggest man in the organisation. He was the only one that they would report to. Nobody else. And the organisation is named the National Patriotic Front of Liberia and he told you no-one would have questioned Charles Taylor's authority because the NPFL was a military organisation and you don't query authority. Everyone 10:35:26 called him chief.

Confidential exhibit P277 at page 14 shows that most of the initial fighters who went to Sierra Leone were Liberians, including hard core Charles Taylor fighters.

And now at page 4806 to 4807 you were also told about 10:35:57 Charles Taylor's initial involvement. That he arrested Sierra Leoneans, gave them over to Foday Sankoh, that he gave NPFL to Foday Sankoh for use in Sierra Leone and to train Sierra Leoneans, that he gave facilities and materials and supplies for training.

10:36:16 P54, the command chart, also shows the involvement of the NPFL early on.

At page 5669 TF1-532 told you that he was given to Foday Sankoh by Charles Taylor not just to go to Sierra Leone to fight, but also to train at Camp Naama.

a.m.]



Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

MONDAY, 4 MAY 2009
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Richard Lussick, Presiding Justice Teresa Doherty Justice Julia Sebutinde Justice Al Hadji Malick Sow, Alternate
For Chambers:	Mr Simon Meisenberg Ms Carolyn Buff
For the Registry:	Mr Gregory Townsend Ms Advera Kamuzora Ms Rachel Irura
For the Prosecution:	Mr Nicholas Koumjian Mr Mohamed A Bangura Ms Kathryn Howarth Ms Ula Nathai-Lutchman Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Ms Salla Moilanen

and foreseeable consequence of it, might be perpetrated by a member of the group or by a person used by the accused or another member of the group.

The accused must willingly take the risk that the crime might occur by joining or continuing to participate in the enterprise. The Trial Chamber can only find that the accused has the requisite intent if this is the only reasonable inference on the evidence.

Planning. Planning implies that one or several persons contemplate designing the commission of a crime at both the preparatory and execution phases. Responsibility is incurred when the level of the accused's participation is substantial, even when the crime is actually committed by another person. The actus reus requires that the accused, alone or together with others, designed the criminal conduct constituting the crimes charged. It is sufficient to demonstrate that the planning was a factor substantially contributing to such criminal conduct.

The mens rea requires that the accused acted with direct intent in relation to his own planning, or with the awareness of the substantial likelihood that a crime would be committed in the execution of that plan. Planning with such awareness has to be regarded as accepting that crime.

Instigating. Instigating means prompting another to commit an offence. The actus reus requires that the accused prompted another person to commit the offence and that the instigation was a factor substantially contributing to the conduct of the other person or persons committing the crime.

The mens rea requires that the accused acted with direct intent, or with the awareness of the substantial likelihood that

Africa reports, which are Prosecution exhibits P-263, P-348A and B, P-349A and B, P-350A and B, P-354A and B, P-356A and B, 357A and B and 358A and B, which exhibits were admitted into evidence regarding the crimes committed in Freetown in January 1999, together with the evidence of Witness TF1-561 and TF1-406 who testified that the accused listened regularly to the BBC.

10:14:23

The Trial Chamber is therefore satisfied that the Prosecution has adduced evidence capable of supporting a conviction against the accused on Counts 1 through 11 of the indictment based on his participation in a joint criminal enterprise.

10:14:48

Having so found, the Trial Chamber is not required by Rule 98 to consider whether there is evidence capable of supporting a conviction against the accused on any count based on any other form of criminal responsibility.

10:15:09

The Trial Chamber emphasises that a ruling that there is evidence capable of supporting a conviction on a particular count does not necessarily mean that the Trial Chamber will, at the end of the case, return a conviction on that count. This is so because the standard for determining sufficiency under Rule 98 is not evidence on which a Trial Chamber should convict, but evidence on which it could convict.

10:15:30

Having said that, for the reasons stated the Trial Chamber dismisses the Defence motion in its entirety.

10:16:00

Well, as the Trial Chamber indicated on 9 April, we intend to fix a date for the commencement of the Defence case today. Do you have anything you would like to say on that issue, Mr Griffiths?

MR GRIFFITHS: Mr President, your Honours, I caused to be

9.30 a.m.]



Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

TUESDAY, 14 JULY 2009
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Richard Lussick, Presiding Justice Teresa Doherty Justice Julia Sebutinde Justice El Hadji Malick Sow, Alternate
For Chambers:	Mr Simon Meisenberg Ms Doreen Kiggundu
For the Registry:	Mr Gregory Townsend Ms Advera Nsiima Kamuzora Ms Rachel Irura Mr Benedict Williams
For the Prosecution:	Mr Stephen Rapp Ms Brenda J Hollis Mr Mohamed A Bangura Mr Christopher Santora Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Mr Morris Anyah Mr Terry Munyard Mr James Supuwood Ms Salla Moilanen
For the Office of the Principal Defender:	Ms Claire Carlton-Hanciles

common enemy, happening to be ULIMO, we withdrew our men and ceased all, and I mean all, cooperation with the RUF.

Q. Did you thereafter provide any military assistance to the RUF?

09:45:55 A. None whatsoever.

Q. Were you thereafter aware of atrocities being committed in Sierra Leone?

A. Well, I put it this way: There is no one on this planet that would not have heard through international broadcasts or

09:46:29 probably discussions about what was going on in Sierra Leone. I would be the first to say yes, we did hear of certain actions that were going on in Sierra Leone that we - that were a little strange to us because those things did not occur in Liberia.

Q. What things?

09:46:51 A. Well, we heard that people were getting killed, women were getting raped and different things, and we couldn't understand it. I could not understand it, because these are things that we did not tolerate in Liberia and so for me it was unacceptable. But then again we had no way of verifying whether, you know,

09:47:17 these were true because we did not have anyone in there to tell us because, you know, these days when you see reports on television - I'm seeing on television this morning that I ordered people to cannibalise people in Sierra Leone, and when you begin to look at the different slants in the news, well, you hear them,

09:47:37 you cannot verify them, and it was not in my - it was not my duty to verify them, but I would say we did hear about those things in Sierra Leone.

Q. And had you ordered the RUF or any other group in Sierra Leone to carry out such actions?

I N D E X

WITNESSES FOR THE DEFENCE:

DANKPANNAH DR CHARLES GHANKAY TAYLOR 24324

EXAMINATION-IN-CHIEF BY MR GRIFFITHS 24324



Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

THURSDAY, 23 JULY 2009
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Richard Lussick, Presiding Justice Teresa Doherty Justice Julia Sebutinde Justice El Hadji Malick Sow, Alternate
For Chambers:	Mr William Romans Ms Sidney Thompson
For the Registry:	Ms Rachel Irura Mr Benedict Williams
For the Prosecution:	Ms Brenda J Hollis Mr Mohamed A Bangura Mr Christopher Santora Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Mr Morris Anyah Mr Silas Chekera

these people when it was convenient for him.

So all this stuff here that he is talking about, while it is true but I do not think he is forthcoming and he and I always used to have some tough arguments, so it's not new today. But the fact of the matter is Liberians did go back into Sierra Leone with their arms and don't let's forget we're talking about still this forest region on the border and going into Sierra Leone with guns really at that particular time, because of the conflict, would not have been a big issue. So they did return, yes.

13:16:14

13:16:42

Q. And as far as you're aware, Mr Taylor, did those people who returned receive any training in Sierra Leone?

A. No, no. The people that are returning to Sierra Leone don't need training. They are trained. These are fighting men that have come in. They are ULIMO fighters, very experienced.

13:17:08

And they go back and they don't really need - the only thing they need to do is to be handed - those without weapons to be handed weapons. They are trained.

MR GRIFFITHS: Could I have a moment, please, Mr President.

PRESIDING JUDGE: Yes.

13:18:11

MR GRIFFITHS: Yes:

Q. Let's start on 1997, Mr Taylor. What are you doing in January of 1997?

A. By January of 1997 the NPFL and all the warring factions are disbanded. We then begin the process of forming political parties.

13:18:40

Q. And what does that process actually involve?

A. It involved an order from the leadership of each of the factions that effective this day, the - in my case the National Patriotic Front of Liberia no longer exists. All soldiers have

I N D E X

WITNESSES FOR THE DEFENCE:

DANKPANNAH DR CHARLES GHANKAY TAYLOR 25081

EXAMINATION-IN-CHIEF BY MR GRIFFITHS 25081

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

MONDAY, 27 JULY 2009
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Richard Lussick, Presiding Justice Teresa Doherty Justice Julia Sebutinde Justice El Hadji Malick Sow, Alternate
For Chambers:	Mr Simon Meisenberg Mr Artur Appazov
For the Registry:	Ms Rachel Irura Mr Benedict Williams
For the Prosecution:	Ms Brenda J Hollis Mr Mohamed A Bangura Mr Christopher Santora Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Mr Morris Anyah Mr Silas Chekera

language - I grew up in Monrovia and I speak what we call Kpelle, which is the largest tribe in Liberia, but with this dialect here I understand some Loma, I understand some Vai, I surely understood - a lot of the Mende words are Kpelle words. A lot of
12:07:48 the other group that came here - the Temne. A lot of the Temne words, I could understand them because I speak Kpelle. So that is the same thing with the Mende Mair. So anyone coming from across the border here in this section coming all the way including this Guinean part, the Mende Mair people they have lost
12:08:11 the essence of the full language, but the different languages as broken down, you can understand a little bit of what everyone is saying. I couldn't attach a percentage. I would say 20/25. It is sufficient to get by; that is the point I am trying to make.

Q. Right. Now, Mr Taylor, you mentioned earlier the Poro
12:08:37 society. What is that?

A. The Poro society is a traditional social structure that is in place by the Mende Mairs. It is the same in Guinea; it is the same in Liberia; it is the same as Sierra Leone. Only Mende Mair are part of the Poro society, so people in the Nimba range coming
12:09:02 all the way down here, that is why Moses Blah could say here that he was not a member of the Poro, because he is from a different sector and so they are not a part of this Mende Mair social structure. That is why he was not. But there are - for official purposes, let's say, if you are a senior member of government and
12:09:24 because the Mende Mair are a group that constitute the majority of Liberia, and let me tell you what I mean by that. Because when you look at the Bassa, Grand Bassa, this entire region, when you look at Bong, Lofa, Grand Cape Mount, Bomi, when you look at here, most of the tribes in this section of the country

Let us pause there. Now, Mr Taylor, you see there at the beginning of that paragraph reference to the Committee of Four being set up to try and find a solution to this problem and negotiating directly with Johnny Paul Koroma, yes?

15:25:35 A. That is correct, yes.

Q. Now let us jump forward a little bit. When you or when Liberia became a member of an expanded Committee of Five, what were you mandated to do?

A. When I was put on this committee I was immediately made the

15:26:03 point individual on Sierra Leone and let me explain what I mean by point. When we go back to the Committee of Four, we will find out that la Cote d'Ivoire became the point country on the Committee of Four. That is they hosted the meeting that led to the agreement in November and so la Cote d'Ivoire is the point.

15:26:26 Immediately I come on I am now made the point man on Sierra Leone.

Q. And just give us a little preview, what does being the point man involve?

A. Well, you are almost like a mediator. I can only - the

15:26:51 best description in today's world is to look at what is happening I would say with the six party talks on North Korea where China is considered the point country in dealing with. So if you have messages, if you have any points to make, that individual is then to put things together and keep the committee informed for

15:27:29 finally giving it to the entire ECOWAS. You become the lead person in the crisis, so to speak.

Q. And help us. Here we have a situation where sanctions are proposed on the AFRC regime; furthermore, it has been decided as far back as June that the regime should not be recognised, but

I N D E X

WITNESSES FOR THE DEFENCE:

DANKPANNAH DR CHARLES GHANKAY TAYLOR 25205

EXAMINATION-IN-CHIEF BY MR GRIFFITHS 25205



Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

MONDAY, 31 AUGUST 2009
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Richard Lussick, Presiding Justice Teresa Doherty Justice Julia Sebutinde Justice El Hadji Malick Sow, Alternate
For Chambers:	Ms Sidney Thompson Ms Kate Gibson
For the Registry:	Ms Rachel Irura Mr Benedict Williams
For the Prosecution:	Ms Brenda J Hollis Mr Christopher Santora Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Mr Morris Anyah

Charles Normah.

Q. And AWOL?

A. That looks like Ericson C Mason; Francis Nye; Prince Heina; Albert Harris; Andrew Koinah; Sabentos Kamara; Normawolee Kollie. If you look at the first note, counsel, these people, they were sent to base for retraining. So they --

Q. And numbers 8 and 9 are who?

A. Under B?

Q. Under C.

A. I didn't look. I'm sorry, your Honour. I didn't look on the other side of the page. That is Terrino Kollie and Harris Paye.

Q. And the note at the bottom of the page, for completeness?

A. You have Helen Trygo as not being fit.

Q. Right. Let's look at the final page. Well, the penultimate page, yes? All fairly self-explanatory, but I'm interested in number 5 at the bottom of the page, Arms and Ammunition. Now, if we read that paragraph collectively, "Inspector Alex Y Francisco will request the below-listed items to enhance his assignment, Maryland County," and then amongst the items requested is arms and ammunition, yes?

A. Yes.

Q. So how did the system operate? Did a request have to be made in this way for arms and ammunition to be dispensed?

A. Oh, definitely. Any Secret Service personnel having possession of arms and - definitely listed the arm, the arm number, even the number of rounds of ammunition assigned to you, and even if you have - you have to account for those at every time of inspection and if you discharge one round, you have to

tell why it was discharged and you must report it.

Q. Now help me. From where did this arms and ammunition come?

A. The Secret Service have their own arsenal. They have their own weapons. They keep them, different types of weapons. They

10:55:50 are listed, but kept within their own custody.

Q. And for good reason I ask, Mr Taylor: Where was that Secret Service armoury?

A. The main armoury was at the Executive Mansion.

Q. Now, on the question of armouries, taking things slowly,

10:56:22 who was in control of that armoury at the Executive Mansion?

A. I really don't know who was in control of the armoury. I don't know, but I know who would be authorised to get anything from the armoury. But I don't know from time to time who is in charge.

10:56:45 Q. Well, who would be authorised?

A. Well, at that particular level the Director of SSS, what you call the head of the Secret Service, would have the ultimate powers to remove material from the armoury or authorise the removal.

10:57:05 Q. And whilst we're on the question of armouries, was there an armoury at White Flower?

A. At all of the White Flowers there was - I wouldn't call it an armoury. Arms were kept at White Flower A, B and C, that is, Monrovia, Arthington and Gbarnga. When - and it's important

10:57:34 because of your question, counsel. When the motorcade that is mentioned here, for your Honours, this motorcade, when the motorcade is travelling with the President, they travel with whatever they need to protect the President. It is not just sidearms. For the sake of the Court, historical fact, if we - in

fact, some people in the United States were caught a little short when the terrible incident happened when former President Reagan got shot, unfortunately. People in America, as though they did not know, were shocked when they saw machine guns coming out of
10:58:24 Secret Service guards, and people were like: Oh, my God, we didn't know. But the Secret Service takes along what it needs to protect the President, so that goes along. But on the ground - on the ground where the President may be most of the time or some of the time, you have a certain amount of arms and ammunition,
10:58:44 especially ammunition, kept there. For example, it is kept there that - say the President came under attack. The Secret Service will have to fight off that attack until a larger force like the army moves in. So they keep extra ammunition and different things on the ground in addition to what they travel with just
10:59:08 for protection, yes.

Q. And who would be in charge of those armouries at the three White Flower locations?

A. Well, when you say who would be in charge, there would be an inspector and those responsible for armoury. But in terms of
10:59:26 order for those armouries, the Director of SSS has the ultimate authority for those armouries.

Q. And who's that?

A. Benjamin Yeaten.

Q. Now, before we finally leave this document, Mr Taylor, we
10:59:49 have ad nauseam gone through the various names. Now, can I ask you this: Did you see the Joseph Zigzag Marzah anywhere on that list?

A. No, Marzah - these were not people that were considered Secret Service people. I mean, you may have people like - and

I N D E X

WITNESSES FOR THE DEFENCE:

DANKPANNAH DR CHARLES GHANKAY TAYLOR 27975

EXAMINATION-IN-CHIEF BY MR GRIFFITHS 27975

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

MONDAY, 14 SEPTEMBER 2009
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Richard Lussick, Presiding Justice Teresa Doherty Justice Julia Sebutinde Justice El Hadji Malick Sow, Alternate
For Chambers:	Ms Doreen Kiggundu
For the Registry:	Ms Rachel Irura Mr Benedict Williams
For the Prosecution:	Ms Brenda J Hollis Mr Mohamed A Bangura Mr Christopher Santora Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Mr Morris Anyah

Yeaten.

Q. How do you know about these communications?

A. I was in the radio room when the communication was going on."

11:16:03 Now, Mr Taylor, taking things in stages, did Benjamin Yeaten have a radio operator called Sunlight?

A. I don't know. He very well could have. I don't know, counsel. I don't know.

Q. Are you aware of communications, radio communications
11:16:20 between the RUF and Benjamin Yeaten through his radio operator at or about the time that Koidu and some Nigerian soldiers were captured?

A. No. But to be factual about it, I would not dispute that - well, the first thing is that Benjamin Yeaten, I mean, he as
11:16:49 director would have a radio operator. I don't know his code. The second thing factually is that I would not dispute the fact that the operator of Benjamin - because of Benjamin coordinating the security, it would not be out of reason for his operator to call Sam Bockarie, okay? So I don't - but I don't know the name
11:17:13 of the operator. So I wouldn't have the details, and so I don't have a quarrel with the fact that maybe there's communication. I don't.

Q. Well, help us with this, Mr Taylor: The witness speaks of the capture of Nigerian soldiers. Do you recall an incident when
11:17:33 some Nigerian soldiers were captured in Sierra Leone by the RUF?

A. No. There was no specific incident like that I recall, no.

Q. I ask because you were involved at some stage in the release of some UN hostages, weren't you?

A. Yes. But they were mostly - to the best of my

Q. Now, you said that Foday Sankoh left out of RIA airport. Who accompanied him to the airport?
A. I myself accompanied him to the airport, together with some Liberian securities. He was escorted to the airport. We were there when they departed. From there we returned to the guesthouse, I and Mosquito.
Q. When you reached RIA airport, did you see any securities around the airport?
A. Yes, I saw securities.
Q. Did you know who these securities were?
A. They were SSUs. SSU securities.
Q. You said that 'they' departed. Who are 'they'?
A. Foday Sankoh and Johnny Paul Koroma's group. All of them went.
Q. Now, you said that you and Mosquito went back to the guesthouse after this departure. What happened after that?
A. When we returned to the guesthouse, Benjamin Yeaten came and collected Mosquito. He said that they were to go and meet the Pa, Charles Taylor, to arrange about his return. So they went and met Charles Taylor. Mosquito returned to the guesthouse and said that the Pa had said they should try and return. The following day, Mosquito and I and Benjamin Yeaten went to Spriggs field. When we went to Spriggs field to accompany Mosquito, we boarded the helicopter that was to take Mosquito. In this helicopter, I saw Benjamin Yeaten - I heard Benjamin Yeaten saying, 'Mosquito, these materials have been given by my dad, Charles Taylor, because as my brother, Foday Sankoh, was going to Freetown, you should be keeping security and so

you should take along this ammunition to Buedu.' So from there we alighted the helicopter.

Q. Now, when you were in the helicopter, what did you see inside this helicopter?

12:38:26 A. I saw AK - I saw AK rounds in the tins. We used to call them sardine tins which contained the AK rounds. I saw up to 15. 15 of those tins. Then I saw RPG bombs with the TNT. It was - they were in the helicopter.

Q. Mr Witness, when you say you saw 15 tins, what were in

12:39:01 these 15 tins, if you know?

A. They contained the AK rounds.

Q. What kind of helicopter was this that these materials were in?

A. Well, this time it was a helicopter that had a

12:39:14 camouflage colour. It had a camouflage colour.

Q. And did you know whose helicopter it was?

A. Yes, Benjamin Yeaten told us that it was owned by his dad, Charles Taylor."

Pause there. Do you see what's being suggested there,

12:39:33 Mr Taylor?

A. Yes, I do.

Q. It is being suggested that, on the one hand, whilst Johnny Paul Koroma and Foday Sankoh were leaving Monrovia amidst much fanfare, and we've looked at the various press releases, haven't

12:39:54 we, you were at the same - on the other hand, providing arms in a helicopter for Mosquito to take back to Buedu. Did you do that?

A. I did not do that. And if that happened, then there must be complicity on the part of the UN because the helicopter that is being used to ferry RUF people, whether they're going to Vahun

or whether they're going to another place, the only helicopter that is available is a UN helicopter.

Q. But you've told us earlier, Mr Taylor, that UN helicopters are painted white.

12:40:30 A. Yes.

Q. The witness is suggesting this is a camouflage helicopter.

A. We do not have a helicopter. That's the point I'm making. We do not have a helicopter at this time with any camouflage. We don't have one.

12:40:41 Q. We're talking about October 1999, aren't we?

A. Yes.

Q. Early, 2nd, 3rd of October 1999.

A. Yes, that's what we're talking about.

Q. Did the Liberian government own a helicopter with

12:40:56 camouflage livery?

A. Yes, we owned one.

Q. At that time?

A. No, not at that time.

Q. When?

12:41:02 A. In 2000, we did. In 2000.

Q. Now, I need to clarify something you mentioned earlier, Mr Taylor. You said earlier that Sankoh, Joe Tuah, Yeaten and Mewon had trained together in Libya. This is at page 87 of the transcript, lines 1 to 7. What did you mean by "trained

12:41:35 together"?

A. Well, okay, that's a good question. They trained in the same camp. Not as a unit, okay. They trained in Tajura and they knew each other. They trained in Tajura.

Q. Now, as far as you're aware, Mr Taylor, were the Sierra

Leoneans and the Liberians in Tajura being trained together as a unit?

A. No, they never trained together as a unit, no.

Q. How do you know that?

12:42:18 A. Because I would have been told. I would have been told by my commander that they were training together with the Sierra Leoneans. After training they knew each other, and I think that's where Foday Sankoh made friends with some of them, but they did not train as a unit, no.

12:42:37 Q. Now, Mr Taylor, this is a serious allegation being made by this witness that you were, in the months immediately after Lome, in flagrant breach of the terms of that agreement you were providing ammunition and rocket propelled grenades to the RUF. Were you doing that, Mr Taylor?

12:43:05 A. No, I was not. It's a blatant lie. That is not true. That is not true.

Q. And then he continues:

"When we alighted the helicopter I returned to the guesthouse whilst Sam Bockarie and others went.

12:43:33 Q. Can you tell us who these others were that went with Sam Bockarie?

A. Sam Bockarie went with his bodyguards.

Q. What happened with Benjamin Yeaten?

A. Benjamin Yeaten did not go. He too returned to his

12:43:51 house."

Now, let's deal with something else. Question, page 12986 of the transcript:

"Q. Mr Witness, you have testified that Foday Sankoh left and went back to Monrovia. Before he left to go back to

I N D E X

WITNESSES FOR THE DEFENCE:

DANKPANNAH DR CHARLES GHANKAY TAYLOR	28689
EXAMINATION-IN-CHIEF BY MR GRIFFITHS	28689

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

WEDNESDAY, 16 SEPTEMBER 2009
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Richard Lussick, Presiding Justice Teresa Doherty Justice Julia Sebutinde Justice El Hadji Malick Sow, Alternate
For Chambers:	Ms Doreen Kiggundu
For the Registry:	Ms Rachel Irura Mr Benedict Williams
For the Prosecution:	Ms Brenda J Hollis Mr Mohamed A Bangura Mr Christopher Santora Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Mr Morris Anyah

Q. Being radio operators, they are the eyes and ears of the organisation, and this man, this radio operator, is saying that through that role he learned that you were the hidden hand behind all of this. Now, what do you say to that allegation, Mr Taylor?
10:22:26 A. That is totally untrue. I was not the hidden hand. And that's why some of these radio operators and [indiscernible], he talked about a lot of this being in log books. From the log books presented before this Court probably it would be good to go through to see. I don't know as to whether they have all of
10:22:45 their log books to see if some of these major allegations, he said that they were recorded, he learned some from log books. I don't know if we can probably go through those log books to see if this is true.

But this is one of the problems that you have with some of
10:23:01 these kinds of situations. Here is a radio operator someplace, not knowing what's going on, Sam Bockarie goes to Liberia. Now I am telling you, and everybody else, during the period that I mediated for ECOWAS in dealing with the RUF I tell this Court if I had given Sam Bockarie rice it would have been within my right
10:23:35 to do so. In fact, I would have felt that it was a good thing to do. And there would be nothing about that to hide from this Court, that I gave Sam Bockarie rice.

That period I did not give Sam Bockarie rice. I have even testified before this Court that during the very tough period I
10:23:57 permitted RUF injured persons to take treatment in Liberia, okay. So what would be rice? Of course, non-lethal thing as rice if I give it to them why would I say I didn't?

Sam Bockarie then came to Monrovia, they did a lot of shopping. They did a lot of shopping. They came to Monrovia,

A. No. At any time we had serious wounded fighters, they would take them to Liberia for treatment. Those who had problems would be taken to Monrovia, Liberia. The helicopter would take them to Monrovia."

Is that true?

11:04:48

A. Well, he's got the - part of the information true, but he's got it all mixed up. We don't get a helicopter until about 1999, and so in 1999, just before we finally organise this final beginning of April meeting in Lome, as a part of that pacification we do let some wounded RUF individuals and some other Sierra Leoneans civilians that were injured to be treated in hospitals in Liberia. So if he is talking about a helicopter, he is talking about 1999, so - and this happened, I would say - I would put it to about February/March 1999, and all of these little pacifications helped to get that April process going where we begin to move people to Lome to start something. So this is 1999. This is what they do. He has some information, that he ties it up to a different story to make people know that he is a little radio operator someplace that knows everything is in senior staff meetings. I don't know, but there are RUF people that are brought to Liberia in 1999, yes.

11:05:18

11:05:44

11:06:08

Q. Now, Mr Taylor, if that is right, then there seems to be a certain congruence between what you are saying and what this witness is saying. Because what the witness is saying - remember the sequence - Bockarie goes to Monrovia. He is given a plan. He returns and organises a meeting. Part one of the plan is Fitti-Fatta, you provide a herbalist. Part two is Freetown invasion. But also part of the arrangement is any serious wounded will be taken to Monrovia. Now, you are telling us that

11:06:31

in February/March 1999, i.e. just after the Freetown invasion, wounded soldiers were being taken to Monrovia. Do you see?

A. Well, no, I don't see. I don't see the congruence that you describe, no. By February/March 1999, in fact, the individuals - there are civilians, I say, and RUF people that are being treated in hospitals, okay, that we, for humanitarian purposes, bring them over. It's got nothing to do - I am not sure if the RUF - from all information that I have, the RUF was not involved in the Freetown invasion. I am explaining that here is a situation where you have two sets of facts: You have one fact that yes, during the period of my mediating, we let some wounded individuals come to hospitals in Liberia. That's a fact.

There is another fact, that there is an invasion in January. So somebody takes that information. It's like saying Charles Taylor, as President of Liberia on a date, got in a black jeep and he drove to a football stadium, and while at the football stadium he saw the game, but while watching the game, he saw X number of persons. Now, there are several facts in there, but not all of them are true. Yes, Charles Taylor went to the football game, but Charles Taylor didn't see those people that the person described.

So what I am saying about this witness here - and this is why I am here to tell the Court exactly what happened and I am not here to - I am already in jail. I am not here to hide information. I am saying here that when you look at the fact of a helicopter, the Liberian government does not have a helicopter, okay, before 1999. So if he says that a helicopter is evacuating wounded, this has been to be in 1999. So 1999 at this particular period, February/March, we are busy now trying to tie some final

pieces in getting Lome together. So for me, whether they are civilians, bringing some cases to Liberia for humanitarian purposes that we needed to do to pacify the RUF, I say we did. I didn't ask whether - because I know the RUF was not involved in
11:09:43 Freetown. I didn't ask how they got hurt or where they got hurt. If you were a civilian individual and you had a case where we felt that could be done in a hospital, we assisted.

So we don't have any problems with that. We provided fuel for hospitals to keep light going for injured civilians and other
11:10:00 people. So he has got some information, but he's got it mixed up. This is not because of some arrangement that Sam Bockarie comes and gets instructions and he carries it out. I was not involved in any planning of any invasion in Freetown. And I tell you, you know, one would have to know maybe the mindset of
11:10:25 individuals in dealing with some of these matters with some of these simple, simple lies.

Look, in 1996 if Charles Taylor had planned with any human for an invasion of Freetown, there are several questions, to even believe this story, that would have to be asked. Number one,
11:10:54 what would Taylor do? I would want to make sure that the mission would be successful. You understand me? Because we are talking about a time in 1999, I am already President for almost two years. I would definitely make sure that there are - that they have the capabilities of carrying out such a mission. That would
11:11:20 that would be the first thing that any sensible person would want to do. I have heard stories here --

Q. Are you talking about 1996, Mr Taylor?

A. No, 1999. Okay? 1999. So any sensible person would be, yeah, I have it here, Charles Taylor makes a plan to invade

Q. Was there a great deal of radio traffic between you and Bockarie and the RUF in that period?
A. By "you" - not personally, but there was communication. Not by me now.
14:52:01 Q. Not by you, I understand that. Was there communication between the Government of Liberia and Bockarie in that period?
A. Yes. In January of 1999 there was communication I would say immediately after the Freetown invasion and into the negotiation for the ceasefire which occurred, I would say, around
14:52:23 the middle of January. Yes, there were communications.
Q. So during that period there's communication going on?
A. Yes.
Q. But no visit?
A. No visits, no. Strictly communication.
14:52:33 Q. So then we come down to April, and there's a lot of activity and a visit by Bockarie?
A. Yes.
Q. Yes?
A. Yes.
14:52:40 Q. Then we have June, July: Lome?
A. Yes.
Q. August, Johnny Paul Koroma comes to Monrovia?
A. That is correct.
Q. Then we know Sankoh comes to Monrovia in September?
14:53:00 A. That is correct.
Q. Bockarie comes then, you tell us?
A. In September. He does come, yes.
Q. That's number five?
A. Yes.

I N D E X

WITNESSES FOR THE DEFENCE:

DANKPANNAH DR CHARLES GHANKAY TAYLOR 28989

EXAMINATION-IN-CHIEF BY MR GRIFFITHS 28989



Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

THURSDAY, 17 SEPTEMBER 2009
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Richard Lussick, Presiding Justice Teresa Doherty Justice Julia Sebutinde Justice El Hadji Malick Sow, Alternate
For Chambers:	Ms Doreen Kiggundu
For the Registry:	Ms Rachel Irura Mr Benedict Williams
For the Prosecution:	Ms Brenda J Hollis Mr Mohamed A Bangura Mr Christopher Santora Ms Ruth Mary Hackler
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Mr Morris Anyah

Q. When did you discover that he had been to Libya?
A. Upon the return, my protocol officer briefed me that - because I wanted to find out why did the trip take so long. He said no, they were not in Burkina Faso. Sam Bockarie left them
15:09:24 and he went to Libya and came back.
Q. Did Musa Cisse accompany Mosquito, Sam Bockarie, to Libya?
A. No, he did not go to Libya.
Q. Now, on his return did he stay long in Monrovia?
A. No, no, no. Sam Bockarie came back and he continued on to
15:09:43 Sierra Leone. They came back a little early. He came and he met with me to thank me for, you know, sending Musa and - you know and helping in arranging this trip with the - you know, to make it possible with the chairman of the OAU and that they had had very fruitful discussion and he was on his way. He left the same
15:10:08 day for Sierra Leone.
Q. Now, when he returned, Mr Taylor, did you demand from him a debrief?
A. No, no, no, no, no. I didn't. No, no. There was none. If I wanted to know anything, I would have found out from the
15:10:26 chairman himself or from Musa Cisse. And as a matter of fact, let me just add, when Sam Bockarie came back, I was not - I was not in Monrovia. I was not in Monrovia itself. I was on the outskirts of Monrovia. At this particular time if my recollection is correct, I was involved in the polio - I was
15:10:59 involved in the polio campaign in Liberia at that time. So it was just they came to the location where I was and, you know, thanked me because I was very busy - it was during the polio campaign time - and then he continued.
Q. Now, bearing all of that in mind, Mr Taylor, let us now

A. He was away for longer than a week. Two weeks, to be exact. Bockarie was out of my presence and my information for two weeks. Because if he had come back, I would have known. Like I say, I was dealing with the polio vaccination campaign at the time of the return. But it was about two weeks.

Q. Now, were you aware that whilst he was away in - outside of Liberia, that he was in regular contact with a radio operator in Monrovia?

A. No, I wouldn't know. I didn't know that.

15:31:55 Q. Would it surprise you if he was?

A. No, it wouldn't surprise me. If Bockarie had no contacts in Sierra Leone on getting information behind him, then it's possible that he could have had somebody, that his radio operator in Monrovia, he could call and provided the radio operator had a second satellite telephone. I don't know how they work out their arrangement, but I will be fair and say it's possible that he could have called his radio operator in Monrovia, and the radio operator in Monrovia, having access to radio communication in Sierra Leone, could tell him what happened. I don't fuss with that possibility.

Q. Now, let's pick up the account following Bockarie's return to Monrovia. Page 21547, line 18:

"Q. Okay. Before you go on, before you actually left, when the group returned from Ouagadougou, who was in the group, do you recall?

A. Well, at Benjamin's house, where they met me, Mosquito was in a group with Benjamin, Eddie, and General Ibrahim.

Q. Who is General Ibrahim?

A. General Ibrahim, I knew him to be a Gambian who used to

I N D E X

WITNESSES FOR THE DEFENCE:

DANKPANNAH DR CHARLES GHANKAY TAYLOR 29141

EXAMINATION-IN-CHIEF BY MR GRIFFITHS 29141

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

TUESDAY, 22 SEPTEMBER 2009
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Richard Lussick, Presiding Justice Teresa Doherty Justice Julia Sebutinde Justice El Hadji Malick Sow, Alternate
For Chambers:	Mr Simon Meisenberg Ms Sidney Thompson
For the Registry:	Ms Rachel Irura Mr Benedict Williams
For the Prosecution:	Ms Brenda J Hollis Mr Mohamed A Bangura Mr Christopher Santora Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Mr Morris Anyah Mr Terry Munyard Mr Silas Chekera

Tuah during the Freetown fighting?

A. Yes.

Q. Do you know when the Freetown fighting occurred?

A. It started in January. It was on 6 January that they called from the State House saying they were in control of the State House.

Q. What year?

A. That was in 1999, sir."

Now, Mr Taylor, you understand the implication of that, don't you? That senior members of your regime were in contact with Bockarie during the Freetown invasion. Is that true or false.

A. I would say totally false, because they would have no reason to be in touch with Sam Bockarie during the Freetown invasion. None whatsoever. I would say it's false.

Q. But he continues. Page 2022:

"Q. What did Bockarie tell you? What did you hear him say to Benjamin Yeaten?

A. I heard Bockarie and Benjamin Yeaten conversing about the progressive move that RUF has made. I didn't hear any instruction from Benjamin Yeaten to Bockarie to say do this or do that at the time.

Q. During the fighting in Freetown in the January offensive did you play any part in that? What was your assignment?

A. I told you I was assigned to Segbwema, Bunumbu just in case any wounded soldier came. I will take that wounded soldier to Buedu where he could be treated at the rear. Even Mano, I made civilians to make a hammock so they can

I N D E X

WITNESSES FOR THE DEFENCE:

DANKPANNAH DR CHARLES GHANKAY TAYLOR 29286

EXAMINATION-IN-CHIEF BY MR GRIFFITHS 29286



Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

MONDAY, 26 OCTOBER 2009
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Richard Lussick, Presiding Justice Teresa Doherty Justice Julia Sebutinde Justice El Hadji Malick Sow, Alternate
For Chambers:	Mr Simon Meisenberg
For the Registry:	Ms Rachel Irura Mr Benedict Williams
For the Prosecution:	Ms Brenda J Hollis Mr Christopher Santora Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Mr Terry Munyard Mr Morris Anyah Mr Silas Chekera

were from Nimba and you learned that Ganta was under attack, of course the chances are that you would join the fight. I would - I'm in no position to say that that did not happen. Yes, it could have happened.

10:33:23 Q. Now, the final matter I want to give you an opportunity to deal with is this: Now, the witness says that she learnt that Sam Bockarie and his family had been killed, and the account unfolds in this way. I am looking at page 15769, line 20:

"Q. Did he tell you who had killed Sam Bockarie and his family?

10:34:00 A. Well, he told me that it was 50, but he said it was an order from Charles Taylor.

Q. When you spoke to Toasty, this is the person who supplied this information, and he also - he confirmed this

10:34:17 information to you, did Toasty tell you who killed Sam Bockarie and his family as well as all the other fighters that he told you had been killed?

A. Yes, he told me it was 50, but it was Charles Taylor's order."

10:34:32 Taking matters in stages: Firstly, who is Toasty?

A. I have no idea. I do not know a Toasty.

Q. Did you give an order for Sam Bockarie to be killed?

A. The last person on this planet that I wanted killed was Sam Bockarie. I never gave any such order. Sam Bockarie's death

10:34:57 hurt me. Sam Bockarie was someone that I actually liked, and I can tell the world about this, and I did not want him dead. And let me just go further, because I really want it to be clear. Even if Sam Bockarie had been arrested and brought to me, I had no intention of giving him to Kabbah, okay? So this nonsense I

have been hearing about Sam Bockarie being ordered - I never wanted that boy dead. I liked him like a son. I never wanted him dead, and I never intended to give him to Tejan Kabbah either. I would have brought Sam Bockarie to Monrovia and to
10:35:36 expel him back out of the country. Never gave any such order that Sam Bockarie should be killed. Never.

Q. Well, Mr Taylor, let us be blunt about it, because we need to deal with this suggestion. The suggestion clearly is that you decided to kill Bockarie because he knew too much and you were
10:36:00 killing him, in effect, to silence him. Do you follow?

A. Yes, I follow that, but that --

Q. Well, deal with that.

A. That's nonsense. Well, who knows more than Issa Sesay? Who knows more than all of the RUF people - the senior RUF people
10:36:16 that are on trial in Sierra Leone, who knows more than them? Sam Bockarie was not - in fact, the person that dealt even longer with the crisis, Issa Sesay dealt with the RUF issues longer than Sam Bockarie. Sam Bockarie left in 1999; Issa Sesay stayed all through, okay? But we've heard all kind of mention - remember
10:36:34 there's a witness that sat here that is a protected witness whose name I cannot call that said he shot Sam Bockarie dead centre in the forehead. Nonsense. We know from the autopsy he was never shot in the head. There have been different versions of people being brought over here to lie and carry on. What did Sam
10:36:53 Bockarie know that all the other senior people do not know? What? Nothing.

Q. Well, the cynic would say, Mr Taylor, you didn't have an opportunity to kill the others, but you had one to kill Sam Bockarie. What do you say to that?

A. Well, when did I leave Liberia? I left in 2003 and by the time I left Liberia, remember, Sam Bockarie was not even in Liberia when the Sierra Leonean court started. He was not in Liberia. Issa Sesay visited Liberia many times throughout 2001, 10:37:23 2002. Why didn't somebody kill him? This is total nonsense. You know, I know lawyers - and this is not - you know, lawyers are well trained and they are trained to turn black to white and white to black. That's what --

Q. Does that include me?

10:37:41 A. Well, you know, I mean, no, not directly. But I mean, you know - but this - you know, sometimes it's just so - look, I loved that boy and I am saying - you didn't ask me this question; I volunteered. I would have never turned him over to Tejan Kabbah, you understand me? And I have my reason, and we'll get 10:38:04 to it, and I will talk about it.

So this thing about wanting Sam Bockarie killed, there was no such thing. I was upset - very, very upset about the death of Sam Bockarie when Moses Blah came and brought the body to Monrovia and reported to me that Sam Bockarie had been killed, 10:38:18 because I sent him there to prevent the killing of Sam Bockarie. I sent him there to prevent that. You go, you are an experienced man, you're the Vice-President, you're a soldier; go and make sure that this matter is done calmly, and you bring Sam Bockarie to Monrovia. If I wanted Sam Bockarie killed, I would have never 10:38:36 sent Moses Blah to Nimba. That lie he told here about he was just in the area, it's a blatant, blatant lie. He was sent by me there to prevent this very situation. I did not want that boy killed.

Q. Very well. That's all I'll ask you about that - the

I N D E X

WITNESSES FOR THE DEFENCE:

DANKPANNAH DR CHARLES GHANKAY TAYLOR 30191

EXAMINATION-IN-CHIEF BY MR GRIFFITHS 30191

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

TUESDAY, 27 OCTOBER 2009
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Richard Lussick, Presiding Justice Teresa Doherty Justice Julia Sebutinde Justice El Hadji Malick Sow, Alternate
For Chambers:	Mr Simon Meisenberg
For the Registry:	Ms Rachel Irura Mr Benedict Williams
For the Prosecution:	Ms Brenda J Hollis Mr Christopher Santora Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Mr Morris Anyah Mr Terry Munyard

were ammunitions and the ammunitions were handed over to the G4 in Buedu called Captain Felix."

Yes, Mr Taylor?

A. Totally no. At the time - except the helicopter he is talking about is a bird, as in a real bird. Because by this time in 1999, early - because the invasion of Sierra Leone is January 1999 - the Liberian government, my government, does not have a helicopter at this time. So I don't know what helicopter he is talking about. We do not, N-O-T, do not have a helicopter at this time, so that's got to be a lie. We don't have a helicopter at this time, no.

Q. Well, there is a couple things there, Mr Taylor. Did you receive a visit from Sam Bockarie at or about the time of the Freetown invasion, January 1999?

A. No, did not receive a visit from him in January.

Q. And did you provide Bockarie with ammunition in or about that time?

A. No, not at all. No.

Q. And again with this witness, Mr Taylor, when we go to page 6976, line 17 of the transcript, we see this allegation again being made against you:

"Q. When you say he", that being Sam Bockarie, "could come on the radio and give instructions, what do you mean by 'could'?

A. Bockarie used to come on the radio to issue instructions relating to strategy.

Q. Do you recall specifically what orders Bockarie gave at any particular time?

A. Yes. When the forces of the AFRC/RUF entered Freetown,

after some time they went under serious pressure by the ECOMOG forces and they were out of ammunition, so the commander who was leading that group, Gullit, decided to retreat a little bit to a particular location and to collect materials, ammunition. So the other forces were left at a particular position in Freetown and reported that they were persistently attacked and Sam Bockarie came on the radio and told Gullit to instruct the men to burn down areas, in fact the government buildings, so that will raise alarm in the international community."

Now, what do you know about that, Mr Taylor?

A. Absolutely nothing. Absolutely nothing.

Q. Because it continues, you see, this vein:

"Q. Now, this communication which Bockarie had with Gullit, my question was, do you recall a situation where after communicating on a two-one with 020 in Liberia, do you recall a situation where Bockarie came back and gave an order?

A. Yes, sir.

Q. Do you recall any other communication that Bockarie had during this period with 020?

A. Communication was going on with 020 and base 1 and some of those communications were like one I have explained and the other was the instructions to Gullit to report with the POWs who were released were the prison. I mean the prisoners who were released from Pademba Road prison, that they were to be taken to Bockarie's location."

Now, Mr Taylor, was it you ordering Bockarie to do all of those things?"

A. No. I was not in contact with Bockarie at all, no.
Q. Now, going on to page 6999, line 8:
"Q. You mentioned a name this morning as one of those who also brought supplies from Liberia, Sampson Weah. Do you recall?
A. Yes, sir.
Q. Who was he?
A. Sampson Weah was assigned to Benjamin D Yeaten.
Q. As what?
A. He was a soldier assigned to Benjamin Yeaten and besides Sampson Weah was a brother of Benjamin Yeaten, that was what I got to know when I crossed into Liberia."
Now, you have told us that to be true, haven't you, Mr Taylor?
A. That's correct, yes.
Q. Now, the witness goes on:
"Q. Now, who else was assigned to Benjamin Yeaten of the men who brought supplies across to Liberia apart from Sampson Weah? Was there anybody assigned to Benjamin Yeaten?
A. He had bodyguards that I knew, but those who came with materials to - I mean with ammunitions to Buedu, the only person I can recall is Sampson.
Q. Now these are other names that you mentioned of men who brought material to Buedu, do you know on whose instruction they were acting when they brought this material? You mentioned Zigzag Marzah, you also mentioned Dopoe Menkarzon and you mentioned Roland Duoh?
A. Those were Liberian soldiers and they operated under

I N D E X

WITNESSES FOR THE DEFENCE:

DANKPANNAH DR CHARLES GHANKAY TAYLOR 30343

EXAMINATION-IN-CHIEF BY MR GRIFFITHS 30343

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

THURSDAY, 19 NOVEMBER 2009
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Richard Lussick, Presiding Justice Teresa Doherty Justice Julia Sebutinde Justice El Hadji Malick Sow, Alternate
For Chambers:	Ms Erica Bussey
For the Registry:	Ms Rachel Irura Mr Benedict Williams
For the Prosecution:	Ms Brenda J Hollis Mr Mohamed A Bangura Mr Christopher Santora Ms Ruth Mary Hackler
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Mr Morris Anyah

regarding some Sierra Leoneans. The issue of any member of the black race getting citizenship in Liberia is a matter of 48 hours you can obtain it, and you are to be given land immediately. Upon gaining citizenship you can even be given up to - I think
13:03:14 it's 15 acres of land for resettlement from any part of the world.

Q. Mr Taylor, even with this procedure you're talking about, this executive order, it requires some additional steps before that person is granted citizenship, does it not?

13:03:29 A. No.

Q. There has to be a formal hearing, does there not?

A. No.

Q. And someone has to attest that the person is of good moral character, isn't that correct?

13:03:40 A. No. The executive order that is issued by the President under the constitution of Liberia does not require any hearing, because good moral is a question - for example, there was a resettlement of individuals from the Caribbean islands. The constitution of Liberia - I'm sure at some point it can be
13:03:59 produced - is very, very, very clear. The constitution was set up - Liberia was set up as a place of asylum for the black man. So if you came from any part of the world, it was not a matter of moral. If it was felt that you were being persecuted in any way, you could be given citizenship, and that was the prerogative
13:04:20 under the constitution of the President of Liberia. It's been used by the present President of Liberia regarding Sierra Leoneans that have been given citizenship and given land in - I think right now it's in - it used to be called Bensonville in Liberia. They've been resettled and granted citizenship. It's

a --
Q. So your testimony is while you were President, by executive order there was no requirement of a formal hearing and there was no requirement of an attestation that the person was of good
13:04:57 moral character?
A. That is my testimony, yes.
Q. What sort of documentation was a person given when they were awarded this citizenship?
A. Once you are awarded the citizenship, the executive order
13:05:11 was published. You could follow up. If you wanted to, you could follow up and go and ask for a certificate, or some people really never bothered to get - to go and get a formal - you know, a certificate of citizenship. Some people never went to get it. You could also use a copy of the order just in case you were
13:05:35 asked, and it depends on the period of time. Some people never followed through with it.
Q. So in relation to Sam Bockarie, you issued an executive order awarding him citizenship?
A. And his men, yes.
13:05:48 Q. All of his men?
A. All of his - and they were informed.
Q. And their families?
A. And their families, and they were informed.
Q. Did you keep copies of those executive orders in your
13:05:57 archives?
A. I didn't bring a copy of it in my archives. I'm sure if they search properly in the mansion, there should be one. I hope they can - it's there.
Q. Were these people required to have any sort of proof of

I N D E X

WITNESSES FOR THE DEFENCE:

DANKPANNAH DR CHARLES GHANKAY TAYLOR	32099
CROSS-EXAMINATION BY MS HOLLIS	32100



Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

WEDNESDAY, 25 NOVEMBER 2009
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Richard Lussick, Presiding Justice Teresa Doherty Justice El Hadji Malick Sow, Alternate
For Chambers:	Ms Doreen Kiggundu
For the Registry:	Ms Rachel Irura Mr Benedict Williams
For the Prosecution:	Mr Nicholas Koumjian Mr Christopher Santora Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Mr Morris Anyah Mr Terry Munyard

amputations, correct?
A. It depends on when. You've been switching me between '99 and '98. February, the intervention - you've been switching me between the intervention and the 6 January invasion and so it
11:14:23 depends on now - by the intervention time, if you read the Secretary-General's report - because I know of that report. We've presented copies here. Following the intervention - most of the issues that came up following the intervention that Liberia was concerned with was the presence of Liberians and
11:14:47 that's what we were seized with at that time. So I'm not aware of the details. Following the 6 January '99 situation, yes, that's a different story. We begin to get more details based on even what - if you read the Secretary-General's report, what we all received, that's what I'm talking about.
11:15:09 Q. So in your role as a contact person with the parties to the conflict - do you accept that word? I'll use whatever you choose. Point man. Which word would you like me to choose, Mr Taylor?
A. Yeah, I would like to say the point President, yeah,
11:15:26 responsible.
Q. Point President?
A. Yeah.
Q. Sir, as the point President in the negotiations, wouldn't it be important to understand who you're dealing with on the
11:16:05 various sides?
A. Yes, it would be very important.
Q. So did you read up about what the RUF - who they were and what they were doing?
A. Yes. Whatever reports came I read the reports from ECOMOG,

yes.
Q. And did ECOMOG give you reports that the RUF were a good organisation, that they were kind to civilians?
A. No, that was not - that type of comment was not - being
11:16:31 kind was not one of the comments that ECOMOG used to describe the RUF.
Q. In fact, didn't they report that they were committing atrocities against civilians?
A. I'm not disputing that, Mr Koumjian.
11:16:41 Q. Mr Taylor, isn't it interesting: Didn't you notice that throughout the conflict in Sierra Leone even though, as you say, ECOMOG had committed some offences, the civilians are always fleeing to ECOMOG and away from the rebels? Have you noticed that?
11:16:56 A. By "notice", no. I didn't notice that. But it would be clear to say that from what we were told that yes, they went to the Kamajors and they went to ECOMOG, so we - I mean, ECOMOG was supposed to be a last resort, I would say, yes.
Q. Can you remind me when it was that you were appointed the
11:17:21 point President? It was after your election?
A. I would put that all the way back to 1997. Late 1997.
Q. Approximately when in 1997?
A. I said late 1997.
Q. Thank you. Sir, then it was only about two years after the
11:17:38 Dayton Accords - and I know you're very knowledgeable on world affairs, so you're certainly aware of the Dayton Accords --
A. Dayton, Ohio.
Q. -- and the negotiations to end the war in Bosnia?
A. Yes.

Q. Do you recall that the President of Serbia, who was not a party to - supposedly - claimed not to be a party to that conflict - was invited to Dayton because of his obvious influence over one of the warring parties, the Bosnian Serb entity? Do you
11:18:07 recall that?
A. Yes, if you are speaking about Mr Milosevic?
Q. Yes.
A. Yes.
Q. Was that the President that caused you to be selected as
11:18:15 the point President to deal with the RUF?
A. I would say no. I would say totally no. I think I was invited for several reasons. What my colleagues said - and I have told this Court - my colleague said to me, "Well, you're a former rebel. You know how to deal with rebels, so we want you
11:18:37 to come on this committee to help us, because you would know how to deal with them." In the case of Milosevic, from my understanding of Milosevic, Milosevic, being President of Greater Serbia, was brought in because of his military prowess and his capacity as leading Serbia at the particular time. Two different
11:19:03 reasons.
Q. Well, he was the President of the former Yugoslavia. He had never been in the army, sir, but he certainly had influence over military affairs, and there's plenty of precedents of that, aren't there?
11:19:16 A. No, well --
Q. Civilian Presidents with influence over military affairs?
A. Well, most civilian Presidents - in fact, the whole essence of democracy means that the military submits to the civilian head. That's the essence of the democratic process.

Q. Did you read the United Nations reports about atrocities committed in Sierra Leone?
A. Yes, the Secretary-General's report, I read them, yes.
Q. Did you read reports or get summaries of reports of the
11:19:51 international human rights community, people like Amnesty, Human Rights Watch, and their reports that of the atrocities that were being carried out by the RUF and its allies in Sierra Leone?
A. No, no, I did not. I only read the Secretary-General's reports.
11:20:09 Q. Did you read the reports in Liberian newspapers about the atrocities being committed against the civilians in their neighbouring country, Sierra Leone?
A. Well, I received briefings on the reports. I did not very rarely grab up a whole bunch of papers to read. I had people
11:20:25 that would summarise the important issues. But I received reports of what was reported in the papers as being reported in the international media, yes.
Q. Let's look a little bit at that situation after the intervention. The RUF was on the run, isn't that right?
11:20:47 A. When you say "on the run" --
Q. Thank you. That's a fair question. I'll try to clarify it. The RUF is militarily weakened?
A. Well, I would say I don't know. The intervention was against the junta and if you want to ask me if the junta - well,
11:21:09 your question was the RUF. I don't really know, Mr Koumjian, if they were weakened or not.
Q. Was the junta weakened?
A. Well, I would say yes, they were destroyed.
Q. They were destroyed. In fact, the AFRC and the RUF, the

allies, had lost most of their heavy weapons that were in Freetown during the intervention. You knew that, didn't you?
A. No, I did not know.
Q. As the point person on peace, wasn't it important to understand the strategic situation?
11:21:30
A. Well, one could say that. But if your question is did I ask how many guns, how many pieces of artillery did they lose, I didn't get into that. For ECOWAS, driving the junta out of power was something that was agreed upon by ECOWAS. So for me strategically I did not ask for the military and intricacies of loss of equipment. I didn't really get into that.
11:21:49
Q. You understand strategically the junta, the RUF and its AFRC allies, were retreating and weakened, correct?
A. Definitely. We received reports on that, yes.
Q. Sir, let me ask you this: At this point - let's even get a date so it will be clear to you. Let's say by April 1998, was it clear to you that anyone who continued to provide support to the RUF and the AFRC would be supporting a group engaged in a campaign against the civilian population of Sierra Leone?
11:22:11
A. Well, I would say no because I was not aware that - I was not aware of anyone that was giving - as you put the question, giving support to be aware that anyone that would continue. So I really don't know how to answer this question. To the best of my knowledge from reports that reached to the Heads of State, we did not get an indication that they were receiving support from outside.
11:22:32
Q. Sir, my question is: Would anyone who gave support to the RUF be giving support to a force that was carrying out a campaign of atrocities against civilians as of April 1998?
11:22:54

I N D E X

WITNESSES FOR THE DEFENCE:

DANKPANNAH DR CHARLES GHANKAY TAYLOR 32334

CROSS-EXAMINATION BY MR KOUMJIAN 32335

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

THURSDAY, 26 NOVEMBER 2009
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Richard Lussick, Presiding Justice Teresa Doherty Justice Julia Sebutinde Justice El Hadji Malick Sow, Alternate
For Chambers:	Ms Doreen Kiggundu
For the Registry:	Ms Rachel Irura Mr Benedict Williams
For the Prosecution:	Mr Nicholas Koumjian Mr Mohamed A Bangura Mr Christopher Santora Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Mr Terry Munyard

A. Not exactly. Probably I did, but I relied on news briefings that would come.
Q. Do you recall, for example, the recording from Focus on Africa played in this courtroom where from the State House
14:50:59 Colonel Sesay announced the takeover and he was asked by the BBC announcer, I believe it was Robin White, who has taken over, and he said the combined forces, the combined force of the RUF and the AFRC? Do you recall that, hearing that?
A. I heard the tape here in this courtroom, yes.
14:51:24 Q. Do you recall hearing that in 1999?
A. No. I don't listen to Focus on Africa, really. That was not my - Focus was the simplest thing for me, no. I never listened to Focus on Africa.
Q. Did your national security adviser advise you that morning
14:51:42 the RUF and the AFRC have invaded Freetown?
A. I have just answered that, yes.
Q. Did you receive reports from any means, your national security adviser or otherwise, Sam Bockarie was on the air threatening to burn various parts, embassies, in Freetown?
14:52:00 A. Well, I got a report that Bockarie had made some statements on the air, yeah. I don't remember the exact details, but I did get a report that he had spoken on the BBC.
Q. And what did you, the President point man for peace, do about this while Freetown was literally burning?
14:52:18 A. Nothing. What did you expect me to do except contact other colleagues to find out what was their take on it, what was ECOMOG doing. That's all I could have done.
Q. Well, you told us you thought Sam Bockarie was a very reasonable man, correct?

chairman of ECOWAS, was speaking to him. I had my task. I performed my task. My task was to help in whatever way that I could and get them - there was no reason to get to him. None. Others were speaking to him.

10:32:02 Q. Because you were so close to Sam Bockarie, the person in charge of the military machine for the RUF, correct?

A. No, no. What do you mean by "so close"? I was not so close.

Q. You loved him like a son?

10:32:14 A. Well, in our African way, we take everybody to be a son.

Q. You loved him like a son?

A. Yes, in an African way. Not maybe in another way. I don't know what you mean, but I am speaking strictly in an African sense. We're like people - like sons and brothers. People that

10:32:34 are not even blood related, we call them our brothers.

Q. Mr Taylor, when was the next time you saw Sam Bockarie?

A. After Lome, when Foday Sankoh arrived in Liberia in September 1999, Sam Bockarie came to Liberia. And by the way, on this issue on yesterday you asked me questions about it and you

10:33:02 tried to infer that - when I say Sam Bockarie reported to Sankoh, you tried to infer that the report had been written in Liberia. I said no such thing. He returned in September 1999 to meet his leader.

Q. By the way, did you meet with your Defence team last night?

10:33:30 A. No, I did not meet with them. Neither this morning. And if I had met with them, if you are trying to infer that they would coach me, I think I am better than that.

Q. What was the - sorry, let me go back to your answer. So in September 1999 you met with Sankoh and Bockarie in Monrovia. You

I N D E X

WITNESSES FOR THE DEFENCE:

DANKPANNAH DR CHARLES GHANKAY TAYLOR	32513
CROSS-EXAMINATION BY MR KOUMJIAN	32513



Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

WEDNESDAY, 2 DECEMBER 2009
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Richard Lussick, Presiding Justice Teresa Doherty Justice Julia Sebutinde Justice El Hadji Malick Sow, Alternate
For Chambers:	Ms Sidney Thompson
For the Registry:	Ms Rachel Irura Mr Benedict Williams
For the Prosecution:	Mr Nicholas Koumjian Mr Christopher Santora Ms Kathryn Howarth Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Mr Morris Anyah Mr Terry Munyard

Prosecution what evidence is capable of not only impeaching the credit of the accused but of going to proof of his guilt. You're all lawyers and you can see that without being told and we simply say that documents falling in that category should have been served. That's our order. Now, I'm not going to argue about our decision now. We've told you you can't use it because it hasn't been served and you can move on.

MR KOUMJIAN:

Q. Mr Taylor, you told us last week about bribing officials in foreign governments in order to allow arms to transport those countries; do you recall that?

A. Yes.

Q. Who were the people that you used to bribe the foreign officials you used to convey the money to them?

A. I've said I gave the money to the defence officials at the time and I don't know who they used specifically. In terms of names, I don't know the names.

Q. My question, if I wasn't clear, was: Who did you use to carry out to convey the money or to arrange the bribe from your government? You didn't do it yourself. You didn't hand money yourself?

A. No.

Q. Who did you use?

A. Well, I gave the money - the money went through my chief protocol to the Defence Department, you know, to pay for whatever they wanted to do.

Q. That is Musa Cisse?

A. Yes.

Q. What years did Musa Cisse carry out this task for you?

I N D E X

WITNESSES FOR THE DEFENCE:

DANKPANNAH DR CHARLES GHANKAY TAYLOR 32841

CROSS-EXAMINATION BY MR KOUMJIAN 32841

C. (1)

iv. Trial Transcripts 2010

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

WEDNESDAY, 24 FEBRUARY 2010
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Julia Sebutinde, Presiding Justice Richard Lussick Justice Teresa Doherty Justice El Hadji Malick Sow, Alternate
For Chambers:	Ms Erica Bussey
For the Registry:	Ms Rachel Irura Ms Zainab Fofanah
For the Prosecution:	Mr Nicholas Koumjian Mr Mohamed A Bangura Ms Kathryn Howarth Ms Maya Dimitrova
For the accused Charles Ghankay Taylor:	Mr Morris Anyah Mr Terry Munyard

MR ANYAH:

Q. And was that an official Government of Liberia building?

A. No, that building was rented.

Q. Rented for what purposes?

13:08:25 A. It was rented to serve as warehouse and to serve as office for the SSS around the White Flower.

Q. Were its occupants employees of the Government of the Republic of Liberia?

A. They were members of the SSS, yes, employees of the

13:08:44 Republic of Liberia.

Q. You said there was a warehouse there?

A. Yes.

Q. And you said there were offices there?

A. Yes, the SS had an office there - has offices there I

13:09:01 should say.

Q. What was contained in the warehouse, if you know?

A. A lot of things were contained in the warehouse.

Q. Things like what?

A. Things like food, clothing, supplies for the SSS.

13:09:14 Q. What sort of supplies besides food and clothing, if you know?

A. You have supplies like arms and ammunition supplies for the SSS.

Q. During your tenure as assistant director did you have

13:09:27 occasion to go into that warehouse?

A. Yes, I had occasion to go into the warehouse.

Q. Are you familiar with the interior of that warehouse?

A. It's just any normal warehouse. It's just a big warehouse.

Q. Are you familiar with the interior of that warehouse?

A. Yes, I'm familiar with the interior of the warehouse.
Q. Did the warehouse have a superintendent or somebody who oversaw the warehouse?
A. Yes, the warehouse had a - yes, you had somebody - there
13:09:55 were people that were taking care of the warehouse, yes.
Q. What was the protocol to obtain supplies from the warehouse for SSS personnel?
A. The protocol would be supplies for the SSS would be by the director - the director would make a request before any supply
13:10:15 could be given.
Q. Could an assistant director make a request for supplies from the warehouse?
A. No.
Q. Could a --
13:10:25 PRESIDING JUDGE: Could the witness repeat, "The protocol would be supplies for the SSS" would be what? Who would make a request?
THE WITNESS: He asked the question whether supplies for the SSS - I said the director of SSS would make that request.
13:10:45 MR ANYAH:
Q. And to whom would the request be sent or directed?
A. The request would be sent to President - he would sent the request to the President. I mean it's approved, he would go and get the supplies.
13:11:02 Q. If the director wanted to obtain a single uniform from the warehouse would that type of request be sent to the President of the Republic of Liberia?
A. No, he could just go there and just request for it from the managers of the warehouse.

I N D E X

WITNESSES FOR THE DEFENCE:

YANKS SMYTHE 35838

EXAMINATION-IN-CHIEF BY MR ANYAH 35838



Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

THURSDAY, 11 MARCH 2010
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Julia Sebutinde, Presiding Justice Richard Lussick Justice Teresa Doherty Justice El Hadji Malick Sow, Alternate
For Chambers:	Ms Sidney Thompson
For the Registry:	Ms Rachel Irura Ms Zainab Fofanah
For the Prosecution:	Ms Brenda J Hollis Mr Nicholas Koumjian Ms Kathryn Howarth Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Mr Morris Anyah Mr Terry Munyard Mr Silas Chekera Ms Logan Hambrick

struggle?
A. Come again?
Q. You needed the RUF arms to survive, to gain territories, correct?
15:27:41 A. Yes, we need the arms to gain territories.
Q. It was the arms and ammunition that allowed you to control territories, correct?
A. Yes, in some cases. Not in all cases. Because there are certain cases where you - you can go, you scare the enemy and the
15:28:00 enemy goes off, then you don't need no arms. You just come and control that area without even firing two, three shots. As soon as they hear that the RUF is coming, by virtue of the perception that they have heard about the RUF, that they are murderers, they are rapists, you see, they abandon their post. And then if you
15:28:22 come, there is no need - we did not have supply lines for bullets or ammunitions coming from any other - where it was virtually what we capture from military or army or other troops that were around helping the government.
Q. So that's why it would help to make an area fearful,
15:28:44 because when an area is fearful, there is no opposition, the people run away, correct?
A. They had already a fixed perception, you see, about the RUF. But those who lived with the RUF, they knew their only difficulty was maybe attacks from government helicopter, gun
15:29:05 ships, fighter jets, you know, and lack of other facilities. That was the only problem with people living in RUF areas. Like medicines were not easy to come by, you see.
Q. So that's why civilians kept running to the ECOMOG lines, away from the RUF, correct, because of this reputation that you

said that they had been brainwashed with?
A. Yes, that was one of the reasons.
Q. Where do you think they got this information, this fear of the RUF?
15:29:41 A. Maybe from the soldiers.
Q. The ECOMOG were even foreigners, correct? They weren't even from Sierra Leone.
A. Of course. But before they come to Sierra Leone, they must talk with - before they go into the forest of Sierra Leone, they
15:30:00 are guided by Sierra Leoneans.
Q. And some of those ECOMOG soldiers or even their officers, they didn't treat civilians so great. They even stole from the civilians, correct?
A. I cannot say for them because I was not there.
15:30:15 Q. But still the civilians ran towards these foreigners, away from the RUF, isn't that true?
A. There are people who are afraid of ECOMOG, even in Freetown.
Q. Sir, let's go back to the document. First, before I do
15:30:39 that, sir, what is the term "food-finding mission"? Are you familiar with that term?
A. It's to go in search of food to eat.
Q. Is that something that would be organised?
A. You have to - any programme or anything - even if you have
15:30:59 the food, before you cook it, you need to organise yourself. So you cannot be going to find something that you have not kept, you did not organise yourself.
Q. Let's take a look at this list that's on page 25589 at P-51. We see - I'll just read a few names and correct me if I

I N D E X

WITNESSES FOR THE DEFENCE:

DCT-068	37010
EXAMINATION-IN-CHIEF BY MR MUNYARD	37011
CROSS-EXAMINATION BY MR KOUMJIAN	37074



Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

TUESDAY, 23 MARCH 2010
9.00 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Julia Sebutinde, Presiding Justice Richard Lussick Justice Teresa Doherty Justice El Hadji Malick Sow, Alternate
For Chambers:	Ms Erica Bussey
For the Registry:	Ms Rachel Irura Ms Zainab Fofanah
For the Prosecution:	Ms Brenda J Hollis Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Terry Munyard Mr Silas Chekera

in Tongo?
A. Yes, my Lord.
Q. Are you able to help us with when this was?
A. That was around June, around June, around May - from
12:01:02 May - from May to June. From May to June, anyway. Around that.
Q. Well, you told us where you were on 25 May when you heard news of the coup and from there you moved over a short period of time to Freetown.
A. Okay. No, no. May 25, June in Kenema - June to July. It
12:01:35 was in the rainy season that we entered Tongo. It was in the rainy season. I do not know the time now, but it was raining at that time.
Q. I didn't actually ask you when you say you cleared the Kamajors, in the course of clearing the Kamajors did you capture
12:01:56 anything from them?
A. There were some SSDs, some single barrels and some SSD personnel. The SSDs who were there surrendered to us including all their weapons. They were with us.
Q. And the SSDs are who?
12:02:19 A. They are the Sierra Leone police.
Q. So what weapons did you get from them when they surrendered to you?
A. They had LAR and RPG. Just that.
Q. Did you get anything other than those weapons when you
12:02:51 cleared the Kamajors away?
A. Except - those are the materials, even the men and their weapons. We did not disarm them. They surrendered to us. The single barrels - we got the single barrels from the Kamajors but the single barrels did not material - they were not important to

Q. So why were you moving from one place to another?
A. I was trying to go to Kono where most of my brothers were.
Q. Did you eventually get to Kono?
A. Yes, my Lord.
13:11:15 Q. Are you able to recall now when that was?
A. I think it was somewhere in 1998. It was in 1998 because we have completed '97. We are now in '98.
Q. Can you help us with when in 1998 you got to Kono after you had retreated from Hastings?
13:11:52 A. I can't tell you the date.
Q. Was it the dry season, the rainy season, or was it after the rainy season?
A. It was in the - it was during the dry season.
Q. So you finally get to Kono. And what happens when you get
13:12:13 there?
A. Well, I met Superman in Kono. They said they met Kamajors in Kono and they attacked them and dislodged them from Kono. There were a lot of RUF personnel in Kono when I went there.
Q. Were there any AFRC personnel there when you went there?
13:12:42 A. Yes. They too were there.
Q. Now, you have told us Superman said that they had dislodged the Kamajors. Did that mean that Kono was safe for you or not?
A. Well, when I knew that the men were there, Kono was safe for me because Superman had dislodged them from there. There
13:13:12 were no enemies there. Kono was safe then.
Q. Were you attacked at all while you were in Kono?
A. Yes.
Q. By whom?
A. ECOMOG jets.

Q. And what did the ECOMOG jets do?
A. It was dropping cluster bombs.
Q. Where were they dropping cluster bombs?
A. Those areas where AFRC lodged, the houses where AFRC people
13:13:55 lodged. That was where the bombs were dropped.
Q. Is this in a town, a village or what?
A. In the main Koidu Town, the town itself. That was where
the bombs were dropped. That is Koidu.
Q. And were these bombs only landing on AFRC lodging houses or
13:14:19 were they landing on other places as well?
A. They were landing at different locations. Some places
where civilians were, it landed there. And some where AFRC were.
They were launching at every place in Kono.
Q. And so what did you all decide to do as a result of being
13:14:45 bombed by the Alpha Jets?
A. I decided to take all my family from around me to the bush.
Q. And where did you go? To what part?
A. I sent them to the Guinea Highway.
Q. Did you go with them?
13:15:15 A. I just left them there and came back to Koidu because of
the jets raid.
Q. Did you continue to stay in Koidu or did you move to some
other place?
A. We left Koidu --
13:15:42 THE INTERPRETER: Your Honours, can he kindly be requested
to remove his arm from under his chin. He is not very clear.
PRESIDING JUDGE: [Microphone not activated] if you take
your arm away, you can speak more clearly. Repeat your answer,
please. We are almost there. Only 15 minutes left. Please

I N D E X

WITNESSES FOR THE DEFENCE:

DCT-146 37806

EXAMINATION-IN-CHIEF BY MR MUNYARD 37807



Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

FRIDAY, 26 MARCH 2010
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Julia Sebutinde, Presiding Justice Richard Lussick Justice Teresa Doherty Justice El Hadji Malick Sow, Alternate
For Chambers:	Ms Sidney Thompson
For the Registry:	Ms Rachel Irura Ms Zainab Fofanah
For the Prosecution:	Mr Nicholas Koumjian Ms Kathryn Howarth Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Mr Terry Munyard Mr Morris Anyah Mr Silas Chekera Ms Kathryn Hovington

Q. Thank you, Mr Vincent. Now going back to this vanguards meeting - or this meeting involving vanguards, you said it was called by Sam Bockarie and it took place in Buedu, yes?
A. Yes.
10:48:21 Q. Was there a particular place in the vicinity of Buedu or within Buedu that this meeting was held at?
A. This meeting was held in an area called Waterworks. It is an area where water purification was done. That was where water was supplied to the surrounding villages or towns. That was
10:48:53 where this meeting was held.
Q. How many persons, to your knowledge, were in attendance at this meeting?
A. In the meeting we were well over 200.
Q. Was Issa Sesay present at that meeting?
10:49:16 A. Yes. I said a meeting of all vanguards.
Q. And when you refer to vanguards, are you referring to those who were trained at Crab Hole?
A. Yes, those who were trained by Mr Sankoh himself.
Q. What was discussed at this meeting?
10:49:45 A. Well, the discussion at this meeting was that we should launch a serious offensive, because at that time our leader was not with us. I'm talking about Mr Sankoh now. So two days' offensive, probably the international community would know and intervene so as to bring peace and Sankoh would be released. So
10:50:24 it was an operation to free Sankoh.
Q. Was the release of Foday Sankoh the only objective or purpose of this meeting?
A. Yes, yes. Because during the discussion at the meeting we planned to attack and make sure that we captured major areas that

will cause some concern for the international community.
Q. What were some of those major areas that you were planning to capture?
A. As far as Makeni. Kono, Makeni.
10:51:18 Q. Did the plan to capture major areas include a plan to capture Freetown?
A. No, that was the initial stage so we could not have gone to Freetown, so that was the first mission - target that was set. So when we would have gotten Makeni, the next place would have
10:51:38 been to go close to Freetown or to Freetown itself.
Q. But the question I'm asking is at that meeting when you were planning these operations, was there on the table a plan to attack Freetown in addition to Kono and Makeni?
A. No.
10:52:03 Q. Where was the RUF getting its arms and ammunition at this particular time in 1998 when this meeting took place at the Waterworks?
A. At this time there were many ways that we went about it. Selling produce, that is cocoa and coffee. We had other people
10:52:34 who were making deals at the Guinean border. We were getting arms and ammunition from them also. There was some NPFL territory that we were getting these things from. That was the deal that was going through Timothy Fayah. He used to help us too. He used to get some things for us and we would give him his
10:53:01 own share and he would give us whatever he was able to give us. Because at that time General Timothy Fayah was the one taking care of Foya.
Q. Mr Vincent, please pause and just remember to go slowly. Let's consider some of what you have said. You mentioned Timothy

I N D E X

WITNESSES FOR THE DEFENCE:

DCT-215 38069

EXAMINATION-IN-CHIEF BY MR ANYAH 38069

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

MONDAY, 12 APRIL 2010
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Julia Sebutinde, Presiding Justice Richard Lussick Justice El Hadji Malick Sow, Alternate
For Chambers:	Ms Erica Bussey
For the Registry:	Ms Rachel Irura Ms Zainab Fofanah
For the Prosecution:	Ms Brenda J Hollis Ms Kathryn Howarth Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Mr Terry Munyard

threat in November 1998, weren't you?
A. Well, now you've come to the point that I want when you've mentioned Foday Sankoh. I know that Sam Bockarie can - would even say more than this. The date Foday Sankoh was captured he
10:56:19 made that threatening remark against the country, yes. Now that you've mentioned Foday Sankoh, yes, Sam Bockarie would do that. Yes, he said that. He would do it.
Q. Indeed, Mr Ngebeh, that wasn't the only threat that Sam Bockarie made to attack Freetown in 1998, was it?
10:56:39 A. Yes, I told you Sam Bockarie - I told you that since '97 he was a bad leader. I told you. I told you in my statement. He was a bad leader. He can make any remark. Even those of us who were fighting, he threatened us. Who else? Now that you've called Pa Sankoh's name I have got the gist of it. He just made
10:57:02 that statement.
Q. In fact, Mr Ngebeh, several times in December 1998 Sam Bockarie threatened to attack Freetown. Isn't that correct?
A. Hey mama, I don't want to tell lies. I have taken an oath. I have seen - I have heard Sam Bockarie say words even more than
10:57:26 this. Let's go ahead. He was a wicked commander.
Q. Mr Witness, answer the questions that I give to you. In fact, Mr Witness, several times in December 1998 Sam Bockarie threatened to attack Freetown. Isn't that correct?
A. Yes, he used to attack not just Freetown. Kono,
10:57:47 everywhere, he said until Foday Sankoh is released. He said they should release Foday Sankoh. If anything happened to Foday Sankoh he will not spare anyone. He said that. He said because he was the leader, he brought the war, if they wanted peace they should release the Pa. He said that.

Q. And, indeed, at this forum and this briefing, he indicated that this mission would be referred to as a Do or Die mission, correct?
A. This mission hadn't a code name, because that code name, we
11:00:33 used it once and it was not good for us. We just used it to capture Kono by all means, not to do or die, because Fitti-Fatta had failed us. I did not know any code name for that last mission in Kono. I did not know it.
Q. Mr Witness, you were at this forum, were you not?
11:00:55 A. I have told you that I was at the forum. The code name that you've given for this mission, I don't know about it. I don't know.
Q. And Issa Sesay also referred to this mission as Operation Free the Leader. Isn't that right?
11:01:15 A. Yes. We were to fight to free Pa Sankoh, yes, to free our leader.
Q. At that time where was Pa Sankoh?
A. Pa Sankoh was in Nigeria in prison.
Q. In December 1998? Are you sure about that, Mr Witness?
11:01:39 A. 1998. I knew that Pa Sankoh, after the coup, we negotiated for him to come. They did not bring him until the time we retreated. He was in jail. It's the time that you've called. You know, I was not recording dates, but it was in Nigerian prison.
11:02:01 Q. That's not true, is it, Mr Witness? In fact, by December 1998, Foday Sankoh had been brought back to Sierra Leone, tried and found guilty. Isn't that right?
A. I knew that Foday Sankoh was in prison. I knew that.
Q. But you didn't know where?

2nd Brigade adjutant?
A. You are correct.
Q. Now, while you had this forum for this operation, you were given some directives related to this operation. Isn't that
11:10:29 correct?
A. Yes.
Q. And one of these directives you were given was that no looting would take place until the mission was accomplished. Isn't that right?
11:10:41 A. You are correct.
Q. You were also given a directive that all government properties should be reported to the mission commander. Isn't that right?
A. That's correct.
11:10:55 Q. And it was the 2nd Brigade commander who was the overall commander for this mission. Isn't that right?
A. Correct. Rambo.
Q. And the object of that operation was to go all the way to Freetown. Isn't that right?
11:11:26 A. Correct.
Q. Now, you have told the Court that after Koidu was captured, the operation continued to Makeni through Masingbi and other places. Do you remember telling the Court that?
A. Yes.
11:11:45 Q. And at Masingbi, RUF and AFRC fighters had already taken the town. Isn't that right?
A. You are correct.
Q. In fact, the CDF fighters had surrendered to the combined AFRC and RUF forces. Isn't that right?

I N D E X

WITNESSES FOR THE DEFENCE:

DCT-146 38620

CROSS-EXAMINATION BY MS HOLLIS 38620



Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

TUESDAY, 13 APRIL 2010
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Julia Sebutinde, Presiding Justice Richard Lussick Justice El Hadji Malick Sow, Alternate
For Chambers:	Mr Artur Appazov
For the Registry:	Ms Rachel Irura Ms Zainab Fofanah
For the Prosecution:	Ms Brenda J Hollis Mr Nicholas Koumjian Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Mr Terry Munyard

he became a very senior person. That was where he started becoming the devil he was.

Q. You describe him as a devil.

A. Yes, I do. Yes.

15:40:56 Q. Why?

A. Because when I persuaded that man to respect the Abidjan peace process by taking over from Foday Sankoh when he was arrested in Nigeria, he took that as a betrayal of his boss and he arranged to have me arrested, Mr Deen-Jalloh - he arranged to

15:41:42 have me arrested, Mr Deen-Jalloh, Juliet Gbessay James; Gbessay is G-B-E-S-S-A-Y; Dr Mohamed Barrie, B-A-R-R-I-E; Philip Palmer, and the then ambassador - the then Sierra Leone ambassador to Guinea, Mr Jabbi. I and the four others were with him, for two and a half years, from March 29 --

15:43:30 Q. Which year?

A. 1997.

Q. Until?

A. August 1999. And during that period we underwent a lot of punishment, torture. We were tortured almost every day, both

15:44:01 mentally and physically.

Q. On whose orders?

A. On Mosquito 's orders, that's Sam Bockarie.

Q. Now, we'll pause there for a moment. We'll deal with something now whilst - and then we'll come back to your account

15:44:26 of that period later. Now, for now, as a result of the punishment you received from the man you call the devil, Sam Bockarie, do you today bear any scars?

A. Yes, I do. It was to show these scars I decided to wear my short sleeve today. There was a day when - there was a day when

President Kabbah called Mosquito on the field radio and attempted to persuade him to have us released. After the conversation, Mosquito came to ourselves and asked us to tell him how much money President Kabbah and the United Nations had given us to
15:45:47 betray Foday Sankoh because they were saying that we were responsible for Foday Sankoh's arrest.

Q. Where?

A. In Nigeria. I told him, "If this is the moment for us to die, then we are more than prepared for that. But there is no
15:46:22 way we can decide to tell you the wrong thing. We are simply behind you people to honour the peace accord." So he told his boys to tie us. We were in tie-bay. We were tied for almost four hours.

Q. You were in?

15:46:50 A. Tie-bay.

Q. How do you spell that?

A. They used to spell it T-A-B-E.

Q. And what does that mean?

A. When you are tied. They tie you with cord.

15:47:01 Q. How do they tie you with cord?

A. They tried to put our elbows together and tie it completely until the rope entered my skin and I started bleeding. But I was lucky because my - the thing did not effect my nerves. It was only my bones. My bones were dislocated. This one there, up to
15:47:22 now it's like that.

PRESIDING JUDGE: Mr Witness, you said you wanted to show your scars, but I can't see the scars.

THE WITNESS: The black scar is here.

PRESIDING JUDGE: No, it's okay. You don't need to - just

pull your sleeve back. Yes, perhaps we can see.

THE WITNESS: This black thing.

PRESIDING JUDGE: And on the other side?

THE WITNESS: This one here. Here.

15:47:49 PRESIDING JUDGE: Yes. I think the witness is showing two black scars around the joint --

MR GRIFFITHS: Inner circumference of his elbow, both elbows.

PRESIDING JUDGE: Exactly.

15:48:08 THE WITNESS: That is not the only place I have scars. I have scars on my back too. There was another day Mosquito and Issa Sesay went to the village where we were imprisoned in Kangama. When they went they told Johnny Paul Koroma, whom they had also arrested, they told him to give them instructions to

15:48:35 kill us. Johnny Paul told them he would not do that. He said there is no way he would do that because he was of the SLA and we were in the RUF, so he would not risk his own name. He would not place his own name at all at risk by giving him instructions to kill us. So they went to the place. It was a court barri.

15:49:00 So they told myself, Palmer and Mr Deen-Jalloh to go and hold the pillar, the pillar of the barri, and then they asked one of the soldier, because by then they were mixed, AFRC and the Sierra Leonean RUF, they told an SLA soldier, a Sierra Leone government soldier, they told him to beat us with the military

15:49:36 belt, the belt that has the iron at the end. We were beaten until our backs could get soaked - until our clothes could get soaked. So if you see my back skin you will see that my skin at the back looks like a tiger.

MR GRIFFITHS:

Q. Maybe you might want to take off the headphones, put them down and go closer to the front bench, with your Honour's leave, so that your Honours can see what you're talking about.
A. We were beaten that day until the shirt that we wore got
15:50:28 soaked in blood.
Q. Can you indicate where the scars are? Can you yourself point to them?
A. The scars are all over. The scars are all over. Wherever you see the skin is coloured different.
15:50:42 PRESIDING JUDGE: Perhaps the witness could also go to the Prosecution side. It's not very clear. Some of my colleagues have seen the scars, but perhaps the Prosecution would like to see. It's more like a mild discolouration that we saw.
MR GRIFFITHS: Which appears to be in straight lines on
15:51:12 more than one place on his back.
PRESIDING JUDGE: Yes. Thank you, Mr Witness. Please take your seat again.
MR GRIFFITHS:
Q. So your final assessment of the man who did that to you,
15:51:28 Sam Bockarie.
A. Sam Bockarie, I have started and I will end with this: He is - he was a devil.
Q. Now, I want to clarify one matter with you before we go on to one or two other individuals. And, Mr Fayia, if you are cold
15:51:49 you can put your jacket back on. Although, if you're comfortable with it off --
A. It's okay.
Q. Fine. Earlier this afternoon - and I have a reference on the transcript which I'm looking at on the screen - you told us

I N D E X

WITNESSES FOR THE DEFENCE:

DCT-146	38770
CROSS-EXAMINATION BY MS HOLLIS	38770
RE-EXAMINATION BY MR MUNYARD	38818
DCT-306	38833
EXAMINATION-IN-CHIEF BY MR GRIFFITHS	38833

EXHIBITS:

Exhibits P-516 to P-520 admitted	38832

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

WEDNESDAY, 21 APRIL 2010
9.33 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Julia Sebutinde, Presiding Justice Richard Lussick Justice Teresa Doherty Justice El Hadji Malick Sow, Alternate
For Chambers:	Mr Artur Appazov
For the Registry:	Ms Rachel Irura Ms Zainab Fofanah
For the Prosecution:	Mr Nicholas Koumjian Mr Mohamed A Bangura Ms Kathryn Howarth Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Mr Terry Munyard Mr Morris Anyah Mr Silas Chekera

A. Yes.
Q. Can I also ask you to speak very clearly when you give your answers and also to direct your answers to the justices that you are facing. Do you follow me?
15:15:35 A. I got you.
Q. Thank you. Can you tell the Court your full name and spell your name for us, please?
A. My full name is Martin George.
Q. Can you spell your names for us?
15:15:54 A. I can spell my name.
Q. Please do so, sir.
A. Martin, M-A-R-T-I-N.
Q. Do you have a middle name?
A. Yes, I have a middle name. Martin Flomo George.
15:16:21 Q. Can you spell Flomo for us, please?
A. F-L-O-M-O, Flomo.
Q. And can you spell your last name for us?
A. G-E-O-R-G-E, George.
Q. Thank you, Mr George. Can you tell us how old you are?
15:16:48 A. Yes. I was born on 15 June 1970.
Q. And where were you born?
A. I was born in Bong County. Gbarnga, Bong County.
Q. Where do you currently reside, which country?
A. I live in Liberia.
15:17:20 Q. And do you belong to any ethnic groups in Liberia?
A. I belong to the Kpelle tribe in Liberia.
Q. And I believe the spelling of Kpelle is on the record. Do you speak any languages besides Liberian English?
A. The only language I speak is Mende and Krio.

I N D E X

WITNESSES FOR THE DEFENCE:

DCT-306	39480
CROSS-EXAMINATION BY MR KOUMJIAN	39480
RE-EXAMINATION BY MR GRIFFITHS	39559
DCT-062	39589
EXAMINATION-IN-CHIEF BY MR ANYAH	39589

EXHIBITS:

Exhibits P-521 to P-531 admitted	39587

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

FRIDAY, 23 APRIL 2010
9.34 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Julia Sebutinde, Presiding Justice Richard Lussick Justice Teresa Doherty Justice El Hadji Malick Sow, Alternate
For Chambers:	Ms Doreen Kiggundu
For the Registry:	Ms Rachel Irura Ms Zainab Fofanah
For the Prosecution:	Mr Nicholas Koumjian Mr Mohamed A Bangura Ms Kathryn Howarth Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Terry Munyard Mr Morris Anyah

discuss how to maintain the ground.
Q. Well, let's talk about this meeting Sam Bockarie held. You said it was the first meeting he ever called. Was it before the two meetings at Superman Ground, or was it after those two
10:48:37 meetings?
A. After all our two meetings at Superman Grounds, that was the time that he called the meeting - the general meeting. The general meeting was held in Kailahun - I mean, in Buedu at Waterworks.
10:48:57 Q. Now, this is the third meeting, you said, held in Kailahun. That is Kailahun District, yes?
A. Yes.
Q. You referred to a place called Waterworks. Is that a place that is different from the Dawa crossing point, or are they one
10:49:15 and the same area?
A. Dawa crossing point is far off, but it's the same road from Buedu Town to Waterworks, it's just like from here and outside. But Dawa crossing point is far away.
Q. We have now talked about three meetings, maybe four, and I
10:49:37 want to clarify. You have mentioned two meetings amongst commanders at Superman Ground; you have mentioned a general meeting called by Sam Bockarie in Buedu, Kailahun District, in the vicinity of a place called Waterworks. Was there a fourth meeting held at the Dawa crossing point in relation to the
10:50:01 re-taking of Kono?
A. The fourth meeting we had was in Kono for the recapture of Kono.
Q. Well, let's talk about the Waterworks meeting. Sam Bockarie called this meeting. Did you go for that meeting?

A. I went there. I was not the only person who went. We were many who went.
Q. Who were some of the senior RUF commanders present at that meeting?
10:50:35 A. John Vincent, some AFRC soldiers like Leather Boot, Akim, Superman, Issa Sesay. A lot of commanders went. Because all the commanders wouldn't leave their front line, some stayed behind to maintain the situation.
Q. What happened at the meeting?
10:51:15 A. Sam Bockarie called this meeting. We all assembled there. We passed the night, and the following morning we went to Waterworks on the road leading to Dawa crossing point. The purpose of this meeting was how to re-attack Kono.
Q. Why did you and the others in the RUF want to re-attack
10:51:58 Kono? Why?
A. We wanted to be based in the town, and we were based there before and we were dislodged, so we want to recapture there. It wasn't just Kono. We wanted to advance as far as Makeni and Lunsar.
10:52:20 Q. Very well. What was the significance of Kono? You wanted to be based there, but was Kono of some particular significance or importance?
A. Kono, as people know, is a mining area. When you talk about capturing Kono, people would only think that you want to
10:52:54 mine diamond. But Kono was a target ahead of us. We cannot jump over Kono and go to Makeni. We had to start from Kono to establish a base before we spread out. That was the more reason why we wanted to capture Kono first.
Q. You said you also wanted to advance as far as Makeni and

Lunsar. What was the purpose of advancing to both of those places?

A. We wanted to gain grounds. We controlled the ground before and we were pushed out, so we needed to regain it from the enemy. That was what we were fighting for.

Q. Thank you, Mr George. Was an attack on Freetown discussed at this Waterworks meeting?

A. No, no, no, no.

Q. Where were you to get the arms or ammunition - well, arms and ammunition - to re-take Kono? Was that discussed at this meeting?

A. I said it was one of the most important things for the meeting. What we were to do to capture Kono, where would we get the arms and ammunition from to capture Kono? Because we had a lot of arms. We had captured from it from the enemy, but we needed ammunition. That was the most important part of the meeting.

Q. And what was said in relation to ammunition that was to be used to re-take Kono during the meeting?

A. During the meeting I met a guy - we met a guy. It was not me alone, because it was a meeting called by Mosquito. He was called Abu Keita, a former general for ULIMO or Alhaji Kromah's general. We met him at that meeting.

Q. Meeting this fellow Abu Keita at that meeting at the Waterworks, had you met him before whilst serving with the RUF from 1991?

A. That was my first time of meeting him, because he never fought for my unit, so I did not know him. I was not used to him. It was at that meeting that I got to know him and other

I N D E X

WITNESSES FOR THE DEFENCE:

DCT-062 39744

EXAMINATION-IN-CHIEF BY MR ANYAH 39744



Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

WEDNESDAY, 7 JULY 2010
9.05 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Julia Sebutinde, Presiding Justice Richard Lussick Justice Teresa Doherty Justice El Hadji Malick Sow, Alternate
For Chambers:	Mr Simon Meisenberg
For the Registry:	Ms Advera Kamuzora Mr Alhassan Fornah Ms Zainab Fofanah
For the Prosecution:	Ms Brenda J Hollis Mr Nicholas Koumjian Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Ms Silas Chekera Ms Logan Hambrick Ms Fatiah Balfas

the north Colonel Banya and the SOS. We went to receive the ammunition but these officers went by road whilst I and SO Williams were airlifted by the helicopter from Cockerill to Magburaka at the airfield.

09:58:36 Q. Now, one other detail I want you to help us with. Who arrived on the aircraft at Magburaka?

A. Well, when we landed at the airfield we met - I met our own RUF commander Kailondo from Makeni, he was the RUF commander in Teko Barracks. We also had Rambo.

09:59:06 Q. Which Rambo?

A. Daniel Wankay, that is Foday Sankoh's bodyguard commander - former bodyguard commander. He was the commander in Magburaka. So the two of them were at the airfield with me. So when the plane landed at the airfield, I saw Fonti Kanu, Ibrahim Bah.

09:59:27 They came with the crew of the plane.

Q. And the crew of the plane were from which country?

A. Well, they looked like Russians, because they did not speak English. They just said hi. I did not talk to them.

Q. How many truckloads of cargo were brought by that flight?

09:59:56 A. When the cargo arrived, we off-loaded. When we off-loaded - there were two trucks anyway, but when we off-loaded - when the flight was leaving, about five minutes later the Alpha Jets appeared. It was after the Alpha Jet had bombarded that we were able to load the arms and ammunition into the trucks. Two

10:00:19 trucks there were.

Q. So the Alpha Jets came from Lungi and bombarded what?

A. It bombarded the airfield.

Q. Was the aircraft which brought the arms and ammunition still on the ground when that bombardment took place?

I N D E X

WITNESSES FOR THE DEFENCE:

DCT-172 43845

EXAMINATION-IN-CHIEF BY MR GRIFFITHS 43845

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

THURSDAY, 8 JULY 2010
9.04 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Julia Sebutinde, Presiding Justice Richard Lussick Justice Teresa Doherty Justice El Hadji Malick Sow, Alternate
For Chambers:	Mr Simon Meisenberg
For the Registry:	Ms Advera Nsiima Kamuzora Ms Zainab Fofanah
For the Prosecution:	Ms Brenda J Hollis Mr Nicholas Koumjian Ms Kathryn Howarth Ms Maja Dimitrova
For the Office of the Principal Defender:	Ms Claire Carlton-Hanciles
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Mr Silas Chekera Ms Logan Hambrick Ms Fatiah Balfas

A. No, there were no rockets or bombs. The only ammunition the RUF used to have at this time, from the ammunition they bought from Voinjama, from the ex-ULIMO fighters, and those ammunition did not contain bombs. They were only ammunition, G3 rounds, AK rounds, and HMG rounds.

16:06:12

Q. Now, at this time - and bear in mind this is the time where the Guinean troops have crossed the border in Kailahun, were you able to trade across the Guinea border to buy ammunition at this time?

16:06:33

A. No. At this time, it was not possible. It was not possible because the Guineans had crossed over to Yanga and into Mafindor. We repelled them from Mafindor and they crossed again into Kono.

Q. So at this time, what was the source of ammunition for the RUF?

16:06:54

A. At this time, it was difficult, except when we would set ambush and we would capture ammunition from there. Those were the things that - things that Mike Lamin went and bartered that machine to get ammunition.

Q. And remind us, when did he do that?

16:07:19

A. Mike Lamin? It was around August - no, around September. But I also used to leave Pendembu to go to Vahun to the commander who was there. He was called Major Tengbeh. I used to buy one or two or three sardine tins from him, at times one box or two box. We used to buy that from him because he was the commander there from Vahun until Masabulahun. He was the commander there. So I used to come from Pendembu, drive my pick-up, and I would go to Bomaru and meet him and I would buy those little amounts of ammunition and I will buy some other basic things and I would

16:07:43

return to Pendembu.

Q. Carrying on:

"In the light of this, sir, I am hereby appealing and requesting that you please meet the President and explain things to him in detail for his immediate attention."

16:08:21

Now, Mr Sesay, can you help as to why that paragraph is written in that way:

"I am hereby appealing and requesting that you please meet the President and explain things to him in detail for his immediate attention."

16:08:55

So where it says "explain things to him," who is the "him" from your understanding of this letter?

A. This, except if you say we should go through what - what is in this document, but I can tell you that at the time that they

16:09:19

wrote this document I was in Pendembu. But if you say I should comment on what they have written in this document then that wouldn't be a problem.

Q. So who is the him being - explain things to him. "Him" who?

16:09:34

A. Well, the letter was addressed - he sent the letter to the President, then I think they are referring to the President for the protocol to talk to the President for him to understand the situation. Something like that.

PRESIDING JUDGE: Mr Griffiths, allow me to interrupt. The

16:10:00

witness was talking of buying sardine tins from a commander in Vahun. This commander was a commander of what group? I'm looking at page 148 at the beginning.

Mr Sesay, commander from what group?

THE WITNESS: This commander was a company commander for

AFL. He was working under the battalion commander of Lofa. They called him Major Tengbeh.

MR GRIFFITHS:

Q. And who was the battalion commander of Lofa?

16:10:34 A. At this time it was a former old Doe soldier called Colonel Togba. He was the battalion commander in Lofa.

Q. And help us, this transaction that you had with Major Tengbeh, describe what kind of transaction was that? Was Major Tengbeh acting on behalf of someone, was he ordered by someone,

16:11:15 or was he doing this in a private commercial capacity with you? Which?

MR KOUMJIAN: Objection. Leading.

PRESIDING JUDGE: Mr Griffiths, you could have asked in what capacity, without suggesting the various capacities that

16:11:32 exist. Rephrase, please.

MR GRIFFITHS: I gave him a choice.

PRESIDING JUDGE: Rephrase the question, please.

MR GRIFFITHS:

Q. Mr Sesay, help us, please. What was the nature of that

16:11:46 deal you were having with Major Tengbeh? Help us.

A. Major Tengbeh's business, I and Mike used to go to Vahun. It was purely Major Tengbeh who was doing it undercover on his own. The ammunition that they were giving him for the borderline, that was what he was selling to us. So he was doing

16:12:10 it secretly and he didn't want his colleagues to know about it. So it was like --

Q. Which colleagues?

A. Like his soldiers who were deployed on the ground with him. It was a small border - it was only his small brother who knew

the business when he was selling the ammunition to us, but the other soldiers like his deputy, his clerk, they only knew that we were going to buy condiments with which Tengbeh was assisting us with, including fuel. But Tengbeh was keeping it secret so that 16:12:51 people would not know. That was a personal deal that he was making.

PRESIDING JUDGE: When the witness says buying sardine tins, I assume these were tins of sardines, fish.

THE WITNESS: No, my Lord, the ammunition - sorry, my Lord. 16:13:09 The ammunition, one box contains two tins. Those are the tins we refer to as sardine tins. Sardine tins of AK round, sardine tins of HMG rounds. It's not sardine to be eaten. It contains ammunition.

MR GRIFFITHS:

16:13:34 Q. When you refer to condiments, Mr Sesay, what are you talking about?

A. I'm talking about salt, Maggi.

Q. And help me, that phrase "sardine tins" as used by combatants in the RUF, does it refer to tins of fish or does it 16:13:58 refer to something else?

A. No, this was sardine tins that contained ammunition in them. Because the tin was sealed. When you open it - when you open it you would see the ammunitions in packets. Each contained 20 rounds. One sardine tin contained some boxes - some sardine 16:14:25 tins contained 30 and others 35 and 40, sometimes 20 rounds in each packet.

Q. Those things they call sardine tins that you've just described, what material are they made out of?

A. It's a tin. It's metal. When you open it just like

sardine, you open it, you turn it and it rolls. But it's a thick metal.

Q. And what do you use to open this sardine tin as described?

A. It had its key that could be plugged on its side and you press it and it opens the tin and it gets to the edge, then you open it.

Q. Is it like those keys that they have on sardine tins which do contain fish?

A. No, it's different. This one that had the sardine that had fish, you have somewhere to hook it up and turn it and roll it. It's not like that. This one has - the key is an eye and you plug it on the side of it, you hit it, it would make a hole in the tin, then you start moving it until it cuts it right around and it would open up.

Q. And when you pull it open does it open like a sardine tin which contains fish? Do you pull it back?

A. Yes, when you open it it opens like this and it would open flat. Sometimes you would cut it out and remove the entire top and the tin would be left open and you can take the ammunition out.

Q. And what kind of ammunition would come in such a sardine tin?

A. AK rounds, G3 rounds, HMG rounds. They used to be in such sardine tins. And even BZT rounds could be in those sardine tins.

Q. And tell me, what were you buying from Major Tengbeh, sardines or ammunition?

A. Ammunition. AK rounds. We used to buy them. Sometimes when I go there I get one or two sardines, I and Mike Lamin would

bring that to Pendembu up to the time that he transacted that business with the battalion commander for Bomi Hills when the two of them met at ULC camp.

Q. How did you first establish that contact with Major Tengbeh?

16:17:20

A. Well, before this time after the retreat before I was posted to Pendembu business was going on at the border between the RUF security and Tengbeh's men. Civilians were doing business in that Vahun area.

16:17:40

THE INTERPRETER: Can he kindly repeat the two places he has just spoken about.

MR GRIFFITHS:

Q. Pause there. Civilians were doing business in that area, and you named two places. What are they?

16:17:49

A. Folima in Liberia. That's the last village from Liberia to enter Sierra Leone. Bomaru is the last village in Sierra Leone to go - when you cross the border that's the last village, Bomaru. So at the border where there are no villages that's where they used to meet to transact those businesses.

16:18:16

Q. Pause. That village, the last village in Liberia, what's it called?

A. F-O-L-I-M-A.

Q. And just give us a time frame for when that trading began?

A. I think that business started around - around March, ending

16:18:45

April they were doing that business.

Q. Which year?

A. 1998. Because when you look at the people who were along that border, on the Sierra Leonean side they were Mende people. When you cross into Vahun they were Guma Mende people. They were

the same Mende people. They were transacting business along that border.

Q. And how did you personally come to meet Major Tengbeh?

A. Well, when Bockarie posted me and I was now in Pendembu, in May I went to visit Bomaru and I met the commander in Bomaru and I asked him how the business was along the border and he said the business was going on well, there was no problem. So he told me that he had met with the company commander that was in Vahun, that they have met there two or three times.

16:19:43 Q. What was the name of the company commander in Vahun?

A. I said his name was Major Tengbeh.

Q. Thank you. Go on?

A. While the commander who was in Bomaru for the RUF was Vandy Kosia, so it was Vandy Kosia who sent Tengbeh when the two of us met after had I come from Pendembu. So we met at the border, we became friends. Then I told him that I would like to be buying two or three items. Then he said whenever you want to come to Vahun, the only thing that you would do is to come late in the evening and when you come late in the evening I wouldn't have any problems. So we used to come late in the evenings. After we had bought what we wanted to buy then we would return at night. Sometimes we would come around 7 o'clock and we'll be there until 9 o'clock then we would return. Tengbeh used to send his younger brother called Patrick. He used to come and spend two to three, four, five days with us in Vahun and then he would return.

Q. And what was the cost? How much would you pay for a sardine tin of ammunition?

A. Well, I at that time used to talk to the RUF in Pendembu who had retreated with bikes, generators. Those were the things

we used to give - those were the things I used to give. Because if you had a bike in Pendembu and you do not have petrol and you were in Baima, the area was small and you couldn't use it. So we would talk to you to sell it so that we can have basic items for the front line and the soldiers used to agree to that. Those are the things we used to use, I and Mike, to sell in exchange.

Q. Mike being who?

A. Mike Lamin. Who used to meet me in Pendembu and the two of us used to go to Vahun.

16:21:43 Q. Let's go back to the letter, shall we. The document in front of you. This Alhaji Musa Cisse, is he related to you?

A. Oh, no. He's not my relation.

Q. I think we had reached the fourth paragraph:

"We appreciate the assistance we have been receiving and we 16:22:23 want you to believe that we have nowhere else to go to cry to for help besides you and His Excellency."

Pausing there, Mr Sesay, were you aware of any assistance being provided by either Alhaji Musa Cisse or Dr Charles Ghankay Taylor prior to this letter of June 1998?

16:22:57 A. No, I was not aware of any assistance that Mr Taylor had given us before this time. The only time I was aware of was in 1991, 1992 after the withdrawal of the Liberians. I did not know of any other assistance up to this time of this letter.

Q. "We usually receive materials without bombs and not even up 16:23:24 to 20 boxes which makes the operation to capture and defend any strategic point difficult."

Who were you receiving materials from at this time?

A. Well, I understand - I did not know if he was receiving material. The ammunition that we used to buy --

Q. And can you assist before we dispense with this document as to why it's unsigned? Can you help us?
A. I don't know, because if it was Bockarie who sent the letter, he would have appended his signature. Because you saw
16:26:40 the salute report that he sent to Mr Sankoh, he signed it. So if he was going to send an important letter in relation to the shortage of ammunition and his signature is not on it, I don't seem to understand this letter.
Q. Because let's look again, please, at - let's put that one
16:26:58 away and look at exhibit D-9. Let's look at the last page of that document. We've looked at this document on several occasions and we know that it's a salute report from Sam Bockarie to the leader. Whose signature is that?
A. This is Bockarie's signature.
16:27:54 Q. Now, knowing Sam Bockarie as you did, Mr Sesay, would Sam Bockarie write to the President of Liberia through Musa Cisse, the chief of protocol, and not sign the letter?
A. No, I think if it was a letter that he himself sent it, he would have signed it. And if you look at the letterhead, it said
16:28:26 from the brigade commander from brigade headquarters Buedu. Buedu was not the brigade headquarters at this time. At this time people were calling Buedu - everybody in the RUF was calling Buedu as defence headquarters, not brigade headquarters. By this time in June brigade headquarters was to be Pendembu but not
16:28:49 Buedu because Buedu was defence headquarters, not brigade.
Q. Finally before we depart from these matters, the dealings with Major Tengbeh, Mr Sesay, was that something you were directly involved in, or was that something you were told about?
A. I used to go to Vahun, I and Mike went to Vahun on

different occasions. The only one that I was not involved in was when Mike went to the machine from Baiwala and sold to Dixon at ULC. But I and Mike used to go to Vahun. Because we used to go there to buy condiments and ammunition from Tengbeh.

16:29:48 PRESIDING JUDGE: What machine is this that he is referring to that Mike sold?

MR GRIFFITHS:

Q. What machine did Mike sell, Mr Sesay? Remind us?

A. My Lord, it was a machine that used to dig water wells. A

16:30:06 machine that used to dig water wells, but I did not know its name but I had seen the machine at Baiwala when it was parked there.

Q. And when was it taken by Mike to Liberia?

A. I said Mike took it to Liberia around September when he transacted that business.

16:30:26 Q. With whom did he transact that business?

A. With the AFL battalion commander for Bomi Hills, Bob Dixson.

Q. Was that a person who Mike Lamin knew from before?

A. I believe that Mike had known him before.

16:30:53 Q. From where?

A. Well, Mike withdrew in October 1999, went through Liberia and disarmed to ECOMOG and went to Monrovia. So he passed through Gbarnga and went to the Ivory Coast, then he came back, passed through - even at the time that he was coming in that 1997

16:31:21 it was through Bomi Hills that he passed and crossed into Kailahun, Baiwala, then he entered Sierra Leone. So I believe that he had known Bob before that time.

MR GRIFFITHS: Thank you very much. Would that be a convenient point?

I N D E X

WITNESSES FOR THE DEFENCE:

DCT-172 43987

EXAMINATION-IN-CHIEF BY MR GRIFFITHS 43987



Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

FRIDAY, 9 JULY 2010
9.04 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Julia Sebutinde, Presiding Justice Richard Lussick Justice Teresa Doherty Justice El Hadji Malick Sow, Alternate
For Chambers:	Mr Simon Meisenberg
For the Registry:	Ms Rachel Irura Ms Zainab Fofanah
For the Prosecution:	Mr Nicholas Koumjian Ms Ruth Mary Hackler
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Ms Logan Hambrick Ms Fatiah Balfas

A. Yes, Senegalese, yes.
Q. What was that link?
A. Well, Senegalese was at the Mano River with the ULIMO-K forces, the time the RUF crossed around that November 1996, when
11:54:41 Mike Lamin and others surrendered to the ULIMO. That was the first time Senegalese had a contact with the RUF. So in 1997, when Mike Lamin left Liberia to come, he came along with Senegalese to Sierra Leone. From that time, Senegalese was in Kenema with Sam Bockarie during the AFRC period. And when the
11:55:09 intervention happened, Senegalese withdrew with Sam Bockarie to Kailahun, and he was in Kailahun before we arrived there. If you see in that report that Sam Bockarie wrote to Mr Sankoh, that salute report, he said he had sent people to Superman to receive ammunition that he captured during the Fitti-Fatta attack, and
11:55:40 Superman seized the people. Senegalese was among that group. He was in that group, and he went to Superman. He was with Superman until December. Senegalese came to Makeni with Superman, and I was in Makeni when Superman went to Lunsar. So Senegalese was in Sierra Leone from 1997, before this invasion in Freetown which
11:56:12 occurred in 1999, January.
Q. The second question: Have you heard of a Red Goat Battalion?
A. Yes. That battalion operated with the Mani group in Koinadugu. I heard about that name in December 1998 when we met
11:56:47 at Makeni.
Q. Who made up that Red Goat Battalion?
A. They were the RUF soldiers.
Q. Were they Liberians?
A. No.

I N D E X

WITNESSES FOR THE DEFENCE:

DCT-172 44119

EXAMINATION-IN-CHIEF BY MR GRIFFITHS 44119

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

WEDNESDAY, 14 JULY 2010
9.03 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Julia Sebutinde, Presiding Justice Richard Lussick Justice Teresa Doherty Justice El Hadji Malick Sow, Alternate
For Chambers:	Ms Erica Bussey
For the Registry:	Ms Rachel Irura Ms Zainab Fofanah
For the Prosecution:	Ms Brenda J Hollis Mr Nicholas Koumjian Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Ms Terry Munyard Mr Silas Chekera Ms Logan Hambrick Ms Fatiah Balfas

A. I remember.
Q. And you told us that the border remained closed until when?
A. I said after Ibrahim Bah passed through the border, from December it was only Ibrahim Bah who had passed there. From
15:05:37 December 1999 to May 2000 that border was closed.
Q. Thank you. Now, in May --
PRESIDING JUDGE: Excuse me, Mr Griffiths. How does this witness know, unless he was stationed at the border? How does he know it was only Ibrahim Bah who passed through that border? How
15:06:01 can he tell that?
MR GRIFFITHS:
Q. Well, you answer that question, Mr Sesay. How do you know that?
A. Well, my lord, the commander in Buedu used to report to me,
15:06:12 and, secondly, when Mr Taylor called me in late May 2000, I understood from even the Sierra Leone civilians who were refugees across the Liberian border, that they wanted to go back home but the border was closed, and even the civilians who were in Buedu who had their family members in Liberia, who wanted to return to
15:06:43 Sierra Leone, they told me, when I got to Buedu - and I was the first person who used a vehicle on that road from that time that Ibrahim Bah left the border. So the border was closed.
JUDGE LUSSICK: What's the connection with the border being closed with Mr Taylor phoning the witness in late May 2000?
15:07:04 MR GRIFFITHS: I am coming to that:
Q. In late May 2000, Mr Sesay, did you speak to Mr Taylor?
A. No, I did not talk to Mr Taylor. I spoke to Mr Taylor when I went to Monrovia.
Q. In late May 2000, did you speak to anyone?

A. No, on telephone in Liberia, no, no.
Q. How did you come to cross the border, as you told the learned judges, in May 2000?
A. After the incident, that is the arrest of the UNAMSIL
15:07:56 peacekeepers, I was in Makeni in late May 2000 because the incident happened early May. I was in Makeni when I got the radio message from the commander who was in Pendembu, and he was called Denis Lansana. Now, he sent a radio message to me.
Q. To do what?
15:08:17 A. He said a helicopter had landed in Pendembu and the person that landed in Pendembu with the helicopter was Benjamin Yeaten. He said when he came, he asked for him, the commander, and he told him - he asked for me and the commander told him that I was in Makeni.
15:08:37 Q. Go on.
A. Benjamin in turn told him that he should inform me that President Taylor wanted to see me, so I should come because President Taylor wanted to see me. That was how I got the information and travelled to the border from Makeni.
15:08:54

JUDGE LUSSICK: Look, I definitely heard the witness say, "When Mr Taylor called me in late May 2000," and when you tried to expand that, Mr Griffiths, the witness said, "I did not talk to Mr Taylor."
15:09:09 MR GRIFFITHS:
Q. Well, when you said --
PRESIDING JUDGE: Can I refer you precisely to the text? That is at page 109, at line - it begins at line 18.
MR GRIFFITHS: 109.

PRESIDING JUDGE: Yes, line 18, where the answer is: "Well, my Lord, the commander in Buedu used to report to me and, secondly, when Mr Taylor called me in late May 2000. I understood from even the Sierra Leone civilians who were refugees," et cetera, et cetera.

15:09:53

MR GRIFFITHS:

Q. Mr Sesay, let us clarify this. When in answering that question, you said, "When Mr Taylor called me," What did you mean by "When Mr Taylor called me"?

15:10:15

A. What I mean, when he sent for me, when he sent for me, because that was the only means Mr Taylor used to call me when he sent for me to go to Monrovia.

Q. Now, just so that we are clear about this, because I don't want to go into the details of this now, I want to deal with things sequentially. When Sam Bockarie left in December 1999, did he take his satellite phone with him?

15:10:39

A. Yes, he went with the satellite phones.

Q. After Bockarie left in mid-December 1999, did you, Issa Sesay, have a satellite phone?

A. Yes, Mr Sankoh sent a satellite phone for me in January 2000 in Makeni with his bodyguard. He was operating a satellite phone.

15:11:06

Q. Now, this was the satellite phone - because you remember a few days ago we discussed satellite phones; do you remember?

A. Yes, I remember.

15:11:26

Q. Was this the satellite phone which you tell us had no credit on it?

A. That's the phone, yes. It was only Mr Sankoh who called me on that phone until that May incident when he was arrested, and

there was no credit in the phone for me to make a call. That's the phone.

Q. Right. And the reason why I don't want to open up this issue of you going to Monrovia in too much detail is because we need to deal with the issue of Sankoh's arrest and deal with matters sequentially. So, just to clarify this issue: That satellite phone which Sankoh gave you in January 2000, as far as you were aware, did Mr Taylor have the number of that phone?

A. No, no, he did not have it.

Q. Did Mr Taylor ever call you on that phone?

A. Never, he did not call me on that phone.

Q. So when, in late May, you say Mr Taylor called you, what did you mean?

A. Well, I mean that he sent someone to invite me because, honestly speaking, had Mr Taylor had my satellite phone number or if any of his commanders had my satellite phone number then there would haven't been the need for Mr Taylor to send a helicopter with Benjamin to come to Pendembu to invite me. But it was Benjamin who used the helicopter. He landed in Pendembu and told the commander, Denis Lansana, to call me, saying that Mr Taylor wanted to see me and that was the only means by which they could reach me. So Denis sent a radio message to Makeni and that was the reason why I travelled to the border.

THE INTERPRETER: Your Honours, could the interpreter just make the something clear. The word "call" in Krio could either mean invited me or called me. So that was where I think the misunderstanding was. But in this sense he is talking about invitation.

JUDGE LUSSICK: I'm just trying to make sense out of the

I N D E X

WITNESSES FOR THE DEFENCE:

DCT-172 44394

EXAMINATION-IN-CHIEF BY MR GRIFFITHS 44394



Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

WEDNESDAY, 4 AUGUST 2010
9.00 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Julia Sebutinde, Presiding Justice Richard Lussick Justice Teresa Doherty Justice El Hadji Malick Sow, Alternate
For Chambers:	Ms Doreen Kiggundu
For the Registry:	Ms Rachel Irura Ms Zainab Fofanah
For the Prosecution:	Mr Joseph F Kamara Mr Nicholas Koumjian Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Mr Morris Anyah Mr Silas Chekera Ms Logan Hambrick

the other operations that we had undertaken because we want to make sure that we take Freetown and hold on to power.

Q. Mr Witness, are you telling us now when you talk about the plan for a fearful operation, that this is what Bockarie told you he discussed with Charles Taylor?

A. Yes, that was what Sam Bockarie said."

Now, what do you understand by the use of the word "fearful", Mr Sesay?

A. Well, fearful - fearful. Fearful is to do terrible things beyond expectation, that is what you call a fearful thing, because the context in which "fearful" is used is to go and fight, the way he used it.

Q. So if you made an operation fearful, what kind of operation would that be?

A. Well, that was - here it was committing crimes against the people, the civilians and even against the troops that you are fighting against. Because if you said to go and make something fearful at the battlefront, that is what it means; destruction.

Q. Now, you have learnt, have you not, Mr Sesay, even though you were, yourself, not present, that some fearful things were done in Freetown during the invasion in January 1999. You know that, don't you?

A. Yes, yes. I know that.

Q. Now, I want you to understand what this witness was telling these judges, so let's put it together, shall we. One, the plan to attack Kono, Makeni and on to Freetown came from Charles Taylor, brought by Sam Bockarie; Liberians were also supposed to be involved in this operation; and the operation was to be made fearful and, again, that was a suggestion originating from

I N D E X

WITNESSES FOR THE DEFENCE:

DCT-172 45328

EXAMINATION-IN-CHIEF BY MR GRIFFITHS 45328



Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

FRIDAY, 6 AUGUST 2010
9.00 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Julia Sebutinde, Presiding Justice Richard Lussick Justice Teresa Doherty Justice El Hadji Malick Sow, Alternate
For Chambers:	Mr Simon Meisenberg
For the Registry:	Ms Rachel Irura Ms Zainab Fofanah
For the Prosecution:	Mr Joseph F Kamara Mr Nicholas Koumjian Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Silas Chekera Mr Michael Herz

the newspaper article that you've referred to? On the face of the document itself. I don't want you to repeat in detail the evidence you've already given. On the basis of the document itself, what makes you conclude that it is a forgery?

12:50:36 A. Well, I cannot append my signature when my name is being spelt wrongly. Since I was going to school, since primary school I knew that I used to spell my name with an "I", not an "E", so I cannot look at my name being spelt wrongly and then I append my signature there, no.

12:51:06 Q. Now, Mr Sesay, was it practice in the RUF to sign operational orders or documents before any attack?

A. My dad, this is my first time of seeing this kind of thing. That in the RUF operation to say before the operation commenced you will write a document and sign it, but throughout the RUF we

12:51:36 did not have such a system. We have a meeting, we plan the operation and we give orders to the commanders before - the commanders who carry out the operation, that was the period. But we did not make documents, append our own signatures. For instance, Mr Mr Sankoh was within the RUF, when he was at Zogoda,

12:51:54 he used to direct the war at that time, if it was for the northern jungle, the Kangari Hills, if he wanted Mohamed Tarawalli to attack Kabala he will send a message, a coded message, he will say attack so and so place, but we did not append signatures on documents to carry on with operations, no.

12:52:16 Q. We are talking in general terms. Let's talk about the time that you were leader of the RUF. Did you ever sign any operational order relating to any attack during the time that you, Issa Sesay, were the leader of the RUF?

A. I never signed operational orders. I never signed

I N D E X

WITNESSES FOR THE DEFENCE:

DCT-172 45574

EXAMINATION-IN-CHIEF BY MR CHEKERA 45574



Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

WEDNESDAY, 11 AUGUST 2010
9.00 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Julia Sebutinde, Presiding Justice Richard Lussick Justice Teresa Doherty Justice El Hadji Malick Sow, Alternate
For Chambers:	Mr Simon Meisenberg
For the Registry:	Ms Rachel Irura Ms Zainab Fofanah
For the Prosecution:	Ms Brenda J Hollis Mr Nicholas Koumjian Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Mr Terry Munyard Mr Silas Chekera Ms Logan Hambrick Mr Michael Herz

Ivory Coast with Maada Bio to the peace talks, so they left us." Go on, continue from there.

A. Yes. I said they left me in Abidjan and they were on their way to Libya, Mr Sankoh, Fayia Musa, Deen-Jalloh, Peter Vandi and others. So, when they got to Burkina Faso, Mr Sankoh said Peter Vandi should return, because at that time Peter Vandi was the area commander for the Kailahun District. So, Peter Vandi returned to Abidjan where he met me, and Mr Sankoh communicated with Dr Barrie, saying that he should provide transportation for myself and Peter Vandi, that we should come through Guinea and to return to Kailahun, Sierra Leone, because he had given an assignment to Peter Vandi to do. That was the first time Peter Vandi came. When Peter Vandi came we started to construct the field in Buedu.

15:24:46 PRESIDING JUDGE: Mr Sesay, I don't know why you're all of a sudden rushing just because you're now being examined by Mr Griffiths. You were doing very well in the morning. Now, please slow down again. There is no need for you to rush your testimony.

15:25:04 MR GRIFFITHS:

Q. Mr Sesay, tell me, in or about May of 2000, did you have a satellite phone?

A. May 2000, yes, I had the phone that Mr Sankoh had given to me in January 2000.

15:25:20 Q. That phone that you had in or around May 2000, did it come from Liberia?

A. No, no. It was the phone that Mr Sankoh gave to me.

Q. Well, not according to this witness; 5 February 2008, page 3083, line 13:

"Yes, the time Sam Bockarie left and went to Liberia to Mr Taylor, and again when Foday Sankoh was arrested in Freetown during the May incident 2000, Issa took over as a leader, as acting leader of the RUF. During that time again, Issa had a satellite phone through Liberia. So he himself was talking to Mr Taylor, so whatever they discussed, he would do the same thing by sending messages to all commanders through field radio communication, and even if the RUF spokesman or whomsoever was representing BBC Focus on Africa or the VOA, they would use the same satellite phone to talk."

Is that true?

A. That is a lie, because that person testified against me as Prosecution witness, but he did not say that at the time that he was testifying against me, no. And I did not have a satellite phone in - from Liberia in May 2000. All of those things that he was saying that I communicated with Mr Taylor on the telephone, he testified against me as a Prosecution witness, but he did not mention those.

Q. Now, were you given - ever given any order by Charles Taylor, and I mean you personally, Mr Sesay, to hold - to organise - to reorganise in Kono?

A. No, no. Mr Taylor never gave me such orders because, from the time RUF captured Kono, that was how it was up to the time of the disarmament, so how could we have reorganised? I did not receive such orders from Mr Taylor.

Q. Page 3102 testimony of 5 February 2008, line 10:

"Immediately we got to Koidu, there was a now communication between the authorities, Issa Sesay, Superman and Sam Bockarie for them to reorganise and base in Kono. For us not to lose

I N D E X

WITNESSES FOR THE DEFENCE:

DCT-172 45945

EXAMINATION-IN-CHIEF BY MR CHEKERA 45945

EXAMINATION-IN-CHIEF BY MR GRIFFITHS 46039



Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

THURSDAY, 12 AUGUST 2010
9.00 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Julia Sebutinde, Presiding Justice Richard Lussick Justice Teresa Doherty Justice El Hadji Malick Sow, Alternate
For Chambers:	Ms Sidney Thompson
For the Registry:	Ms Rachel Irura Ms Zainab Fofanah
For the Prosecution:	Ms Brenda J Hollis Mr Nicholas Koumjian Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Ms Silas Chekera Ms Logan Hambrick Mr Michael Herz

captured in Kono was what we used to enter Makeni, and the material and ammunition that we captured in Teko Barracks, yes, those are the ones we used to go to Masiaka and Waterloo, but not Freetown.

14:47:57 Q. Thank you. And you said you went to Waterloo because you were going to Freetown, that was the seat of power. That's what you told the Court, correct?

A. Yes, that was what I said.

Q. So this attack aimed at Freetown that reached all the way

14:48:12 to Waterloo came through the ammunition that Sam Bockarie brought back from Liberia. We agree on that, don't we?

A. Well, the ammunition that Bockarie brought, we used that in Kono. That one got finished in Kono. The ammunition that we captured in Kono was what we used to go up to Makeni.

14:48:37 Q. Because you told us the RUF was desperate for ammunition before that time, you didn't have any before Bockarie brought back this ammunition, correct?

A. Yes. In '98, we had ammunition constraints.

Q. So all that attack on Koidu Town, Kono, Magburaka, Makeni,

14:48:58 all the way up to Waterloo, none of that would have happened without the ammunition Sam Bockarie brought back from Liberia, correct?

A. Well, yes, because we captured Kono. But if we were not successful in capturing Kono, we wouldn't have gone ahead with

14:49:24 the attacks. But the ammunition that we captured in Kono was what we used to go up to Makeni.

Q. Now, sir, I don't want to repeat reading transcripts, but transcripts have been read to you, and you've heard of witnesses, such as TF1-338, Karmoh Kanneh, that's Eagle, Daf, Zigzag Marzah,

I N D E X

WITNESSES FOR THE DEFENCE:

DCT-172 46083

EXAMINATION-IN-CHIEF BY MR GRIFFITHS 46083

CROSS-EXAMINATION BY KOUMJIAN 46147



Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

FRIDAY, 13 AUGUST 2010
9.00 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Julia Sebutinde, Presiding Justice Richard Lussick Justice Teresa Doherty Justice El Hadji Malick Sow, Alternate
For Chambers:	Mr Simon Meisenberg
For the Registry:	Ms Rachel Irura Ms Zainab Fofanah
For the Prosecution:	Mr Nicholas Koumjian Mr Mohamed A Bangura Ms Kathryn Howarth Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Ms Silas Chekera Ms Logan Hambrick Ms Elizabeth Espinosa

me go through quickly, P-430B, P-430D and P-431.

Q. While that's being prepared, Mr Sesay, you still haven't answered my question: Sam Bockarie was proud of the fact that people knew he was evil. He was proud of being feared. Isn't that true?

09:56:23

A. Yes. I know that people used to fear Sam Bockarie.

PRESIDING JUDGE: I don't know if the interpreter is interpreting the questions properly. Mr Sesay, that's not what you were asked; whether people feared Bockarie. The question related to Sam Bockarie's - his pride and his own view of himself.

09:56:45

Please repeat, Mr Koumjian, the question.

MR KOUMJIAN:

Q. Mr Sesay, Sam Bockarie was proud of being feared?

A. Yes. He used to feel powerful of himself.

09:57:04

Q. And he wanted people to know how violent he could be, isn't that true?

A. Yes. That is true.

Q. I'll start with 431, please. Doing these in chronological order. I'm going to page 2, please, if the witness could be shown page 2. Sir, I'm going to read from the middle of the page, the sixth paragraph:

09:58:00

"Even as Sankoh was being whisked from the courtroom to an undisclosed place of detention on September 4, RUF's second in command, Colonel Sam Bockarie, alias Mosquito, threatened to wage a campaign of genocide if the rebel leader was not immediately released. I will order my troops to kill every living thing, including chickens, if our leader is not released. He was quoted as saying by a leading European radio station monitored here."

09:59:22

I N D E X

WITNESSES FOR THE DEFENCE:

DCT-172 46195

CROSS-EXAMINATION BY MR KOUMJIAN 46196



Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

THURSDAY, 19 AUGUST 2010
9.00 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Julia Sebutinde, Presiding Justice Teresa Doherty Justice El Hadji Malick Sow, Alternate
For Chambers:	Ms Erica Bussey
For the Registry:	Ms Rachel Irura Ms Zainab Fofanah
For the Prosecution:	Mr Nicholas Koumjian Mr Mohamed A Bangura Ms Kathryn Howarth Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Silas Chekera Ms Logan Hambrick

that SAJ Musa is dead, so Bockarie now saw that, because Gullit was his friend, he was ready to work with him. And he said, "If SAJ Musa is dead, so wait there, let me tell my men in Makeni so all of you could meet up together to go and attack Freetown." But Gullit did not wait and he went ahead to go and attack Freetown, my Lord.

PRESIDING JUDGE: Okay. Thank you.

MR KOUMJIAN:

Q. I would like at this time to ask the witness some questions. Did you hear about a radio broadcast and I'm just --

JUDGE DOHERTY: Mr Koumjian, just before you do.

Mr Sesay, counsel asked you a question, I'm referring here to page 88, line 8. "You sent Rambo to Waterloo." And your answer is, "Rambo came to Waterloo." Did you send him or did he go on his own, a frolic of his own?

THE WITNESS: My Lord, after the failed attack on Port Loko, at that time the AFRC were in Freetown. It was Bockarie who gave the instructions that Rambo and others should go towards Waterloo. And when Rambo and others went to Waterloo, they met the ECOMOG there, the Guineans, and they fought for two weeks before they could get Waterloo. And when they got Waterloo, it was in February and when the AFRC was retreating from central Freetown.

JUDGE DOHERTY: Mr Sesay, I'm asking about the order. Are you saying now that you didn't order Rambo, but Sam Bockarie ordered Rambo?

THE WITNESS: My Lord, the instructions came to me from Sam Bockarie for Rambo to go to Waterloo.

PRESIDING JUDGE: And you, in turn, ordered Rambo to go,

yes?

THE WITNESS: Yes, my Lord, yes.

MR KOUMJIAN:

Q. And the instruction, Mr Sesay, was, "Go to Freetown. Take Waterloo and go to Freetown." Correct?

A. Well, the instruction was, you know, if you could get Waterloo then you could go to Freetown. But if you could not get Waterloo you could not go to Freetown. And even when we got Waterloo we could not go because ECOMOG was in Hastings and in Jui, so they could not go further than that.

Q. The purpose of attacking Waterloo was to get to Freetown, to seize the capital, the seat of power, correct?

A. Yes.

Q. And that was the order you gave to Rambo that came from Sam Bockarie, correct?

A. Yes.

MR KOUMJIAN: Could we please play a radio clip, P-279, the transcript is - that's 279A is the radio clip and B is the transcript.

And while that's being done, we played a video, December '98, and I'd ask that video be marked for identification. Also we had a satellite photograph 16H, in tab 16H, where Port Loko and surroundings areas, Lungi and Conakry, are depicted --

PRESIDING JUDGE: Mr Koumjian, first of all, in relation to that video clip, we are not agreed as to what that video clip depicts. I asked you and you still wouldn't tell me. So unless and until I understand what it is we are admitting in evidence, I can't admit it in evidence. What does that video clip depict?

behind Hastings, he was based there. Because ECOMOG was in Hastings so he withdrew to behind Hastings towards Rokel, he was there with his men.

Q. The RUF camp and the AFRC - or the Gullit camp at Benguema, it was just a ten-minute walk in between, correct?

16:02:11

A. Where the RUF was in relation to where Gullit was is more than a ten-minute walk. Benguema and the area in Waterloo where they were, like where Rambo was, it was long - it could be around 30 minutes, around that, over 30 minutes' walk because Superman too was across the street in Waterloo, in the town, so it was a bit far, it's about a 30-minute walk.

16:02:43

Q. Before we leave this document, I just want to briefly touch on something you said. You said someone was based in Makeni. You're talking about Major Mannah, he was based in Makeni, correct?

16:03:06

A. Yes. It's Major Mannah, the late Major Mannah.

Q. But we see in this report, this is a report approved by Major Mannah and it's signed by Lieutenant Raymond Kartewu, do you see that?

16:03:26

A. Yes, I've seen it.

Q. Just as you would approve a report by Rambo but you were based in Makeni, correct?

A. Well, yes, I could approve report for Rambo when I was in Makeni but the Raymond that I knew as a Black Guard was assigned with Kennedy, he was with the mining unit. He did not come to Makeni during the fighting. He was part of the mining, with Kennedy in Kono.

16:03:51

Q. When the - Rambo and Superman fought for two weeks against these ECOMOG troops in the Waterloo/Hastings area, they were

trying to get to Freetown. That was the mission given Rambo and Superman, correct?

A. Yes. That was the purpose of the mission, but they could not gain control over Hastings. Hastings remained in the hands of ECOMOG, including Jui, until the time the AFRC attackers withdrew from Freetown.

Q. Now, one group did get through to Freetown, that was with the Rambo and Superman forces, and that was a group of men under the command of Rambo Red Goat, correct?

16:05:01 A. Well, I did not know about that, because I did not send anyone.

Q. Did you know that Rambo Red Goat reached Freetown with some troops?

PRESIDING JUDGE: You mean Rambo Red Goat?

16:05:21 MR KOUMJIAN: I thought I said Rambo Red Goat.

Q. Rambo Red Goat. Did you know that Rambo Red Goat commanding some soldiers reached Freetown?

A. Well, at that time, I did not know. It was only during my trial that one of the AFRC junior commanders who were in Freetown

16:05:51 said that during the time they retreated from Congo Cross Bridge to Calaba Town and to Allen Town, that was the time Rambo Red Goat met them in Calaba Town, so all of them joined troops to leave Freetown but during the time they came there, they entered there, I didn't know, at the time they came and met the AFRC at

16:06:22 Allen Town because that was almost out of Freetown. He said that was where they met them.

Q. Well, this Rambo Red Goat was one of those responsible for some of the worst atrocities in Freetown. You heard that, didn't you?

the first page or what?

MR KOUMJIAN: At this point, your Honour, could we just mark the first page, the photograph, please?

PRESIDING JUDGE: Very well. The photograph depicting a person that Mr Sesay has confirmed is Rambo Red Goat is marked MFI-27.

MR KOUMJIAN:

Q. I want to try to read two witnesses' testimonies to you, Mr Sesay, and see if we can do this before the end of the day. On 6 October 2008, page 17977, and I'm going to start reading from the bottom, from about five lines up, thank you, line 25:

"Q. What happened when you got there to Issa's house?

A. Well, they took us there, they assembled us there, and our number increased and they provided trucks in which we were loaded to be taken. Three trucks. When we got to Lunsar, our own truck, one of them, stopped there. That was where we disembarked, and we stayed there together with Superman. They said those who had come from Kabala should stay, so we stayed while others went ahead."

And then he was asked to go over the answer a bit. He was asked:

"Q. Before you left Makeni, did anyone tell you where you were going or what the mission was?

A. Yes. Issa, in front of his house, that was where we were assembled and that was where he told us.

Q. What did Issa say?

A. He said we should take reinforcements to Freetown.

Q. Did all the trucks go together, the three trucks to Lunsar?

A. Yes.

Q. What happened at Lunsar?

A. Well, when we got to Lunsar we were stopped there, they said those of us who had come from Kabala should stay, stop there and other truck with some people went ahead and one of my friends, they went. He was asked the name of the friend.

A. Rubber Rubber. He was asked if they knew where they were going and he said 'they went to Freetown'."

16:30:48 Going to the next page, in the middle of the page, he was asked at line 11:

"Q. What did Rubber Rubber tell you after he returned about what happened?

A. He said well when he came I asked him, I asked him 16:31:08 about the mission they had taken along, and he said they went but they stopped at Waterloo. He said not all of them were able to go to Freetown. He said they took - they used a bypass and went to Freetown. He said when they went, they met Five-Five and others. At the time that they went 16:31:28 SAJ Musa had already died."

Mr Sesay, is that correct, that in Makeni, you sent trucks of reinforcements, three trucks, and they went to Lunsar, one went to Lunsar and two went on to Waterloo?

A. No, Mr Lawyer. I did not send any reinforcement and this 16:31:54 witness testified against me. He testified against me. It was the same witness that said that he saw me - even when he had not known me at that time he said he saw me kill five people. This same witness testified during my trial, but it's not true. I did not send any reinforcements to Freetown.

I N D E X

WITNESSES FOR THE DEFENCE:

DCT-172 46674

CROSS-EXAMINATION BY MR KOUMJIAN 46674



Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

MONDAY, 23 AUGUST 2010
9.00 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Julia Sebutinde, Presiding Justice Richard Lussick Justice Teresa Doherty Justice El Hadji Malick Sow, Alternate
For Chambers:	Mr Simon Meisenberg
For the Registry:	Ms Rachel Irura Ms Zainab Fofanah
For the Prosecution:	Ms Brenda J Hollis Mr Nicholas Koumjian Ms Kathryn Howarth Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Silas Chekera Mr Terry Munyard Ms Logan Hambrick

do this time because you were doing what Charles Taylor told you to do, isn't that correct?

A. No, no, no. I totally disagree because I knew that during the Lome Accord the ECOMOG mandate had been changed, especially the Nigerians from a fighting force to a peacekeeping force. So the Nigerian leader at that time, President Obasanjo from the Lome Accord, he had interest in seeing peace prevail in Sierra Leone. And he had interest in the Lome - to see that the Lome Accord is - were able to accomplish the peace mission in Sierra Leone. So that was not to say when I was fighting against them in '98 I should continue, because their mandates had changed. So I was still supposed to continue working with them.

Q. Mr Sesay, you could contact any of them by telephone, you had a satellite phone, didn't you?

A. Yes, I had a sat phone but --

Q. Go ahead.

A. But before these meetings, my sat phone did not have credit.

Q. Well Charles Taylor gave you another satellite phone, didn't he?

A. Well, that was during Abuja II, when I went to escort the delegation was the time he gave me that phone - I mean, sorry, Abuja I.

Q. If you needed credit, you could purchase credit from Freetown or from Monrovia. There was --

A. Well --

Q. Excuse me, let me just start again. The satellite phones, the credit you got from scratch cards; is that correct?

A. Well, they used to buy it for me. I never bought it to

know the procedure, how it was being filled, because at the time Mr Sankoh gave us the phone, it hadn't any credit, and I never used to buy credit for it.

Q. If you were going to go and visit Monrovia - you told us about a total of five trips, is that correct, Mr Sesay, that you made to Monrovia? Would it be right to say you claim that you made three trips - well, let's go through them. You said you went one time in May 2000, regarding the peacekeepers, correct?

A. My Lord, I think I said I made six trips.

15:14:27 Q. Okay. So after the appointment as interim leader at the second meeting at RIA, when you came back, when they had the letter, you made three more trips?

A. Well, the meeting at RIA was the third trip.

Q. What trips did you make after that?

15:14:56 A. After that, I made the Abuja I trip, and after the Abuja I trip, I made another trip during which Mr Taylor invited me, regarding Sam Bockarie's return, and I also made another trip in March of 2001, but by then I did not see Mr Taylor.

Q. So on - you made three additional trips after being the

15:15:24 leader, but you're saying that you maintained a permanent presence of RUF in Monrovia and a house for you to stay just so you could come three times to Monrovia? Wouldn't it have made more sense to stay at a hotel?

A. Well, a hotel would have been expensive than to pay rent,

15:15:59 because every day you pay in the hotel, but when you rent a house, people will stay there.

Q. Mr Sesay, how many days did you spend in Monrovia after becoming the interim leader?

A. Well, like the trip for Abuja I, I was in Monrovia until

I N D E X

WITNESSES FOR THE DEFENCE:

DCT-172 46806

CROSS-EXAMINATION BY MR KOUMJIAN 46806

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

FRIDAY, 27 AUGUST 2010
9.00 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Julia Sebutinde, Presiding Justice Richard Lussick Justice Teresa Doherty Justice El Hadji Malick Sow, Alternate
For Chambers:	Ms Sidney Thompson
For the Registry:	Ms Rachel Irura Ms Zainab Fofanah
For the Prosecution:	Ms Brenda J Hollis Mr Nicholas Koumjian Mr Mohamed A Bangura Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Morris Anyah Mr Silas Chekera Ms Logan Hambrick Mr Simon Chapman

Honours wanted to pose.

PRESIDING JUDGE: Well proceed, Mr Anyah.

MR ANYAH:

Q. Mr Witness, a couple of clarifying questions about what you have just said.

A. Yes.

Q. Before the question that was first posed by his Honour, Justice Lussick, I had asked you about whom you meant by, "These people" that Musa Cisse had been in contact with and you said Musa Cisse had been in contact with Sam Bockarie or the RUF, this was through Jungle.

Now a couple more questions. You referred to secret deals. You said, "Mostly the selling of ammunition to Sam Bockarie for cash."

A. Yes.

Q. To your knowledge in which year and in which month did these secret deals begin?

A. Okay. In late 1998, like I said, after Sam Bockarie's first visit to Monrovia, Sam Bockarie and Benjamin Yeaten were very close and Benjamin Yeaten will send ammunition using Jungle or Sampson. Jungle or Sampson will take the ammunition to Sam Bockarie and sometimes they were picked up from Benjamin Yeaten's yard and sometimes they were picked up from Musa Cisse's yard at night. Everything they did, sometimes we discussed about it, like especially me, most times Jungle told me about these things.

Q. Remember to go slowly, Mr Witness, we are following you.

A. I am sorry, if I am going too fast.

Q. Now, what sorts of ammunition?

PRESIDING JUDGE: Mr Anyah, just before - the witness said, or he referred to what he called the first visit by Sam Bockarie to Monrovia.

Mr Witness, how do you know that this was Sam Bockarie's 12:33:58 first visit to Monrovia? Is it possible that he could have visited before? Was this the first visit that you were aware of or could there have been earlier visits than late 1998 that you didn't know about?

THE WITNESS: Jungle, who was the runner for Sam Bockarie 12:34:26 was the one who told me that it was Sam's first visit, so I got to know that. So I believe that his first visit was that of September.

MR ANYAH: Madam President, I don't know if that satisfies your Honour.

12:34:41 Q. Now, Mr Witness, you referred to the ammunition being taken at night from either Benjamin Yeaten's house or Musa Cisse's house. What amount of ammunition are we talking about?

A. Okay. For the one that I saw, at the time they were leaving I saw something like five boxes of AK-47 rounds and few 12:35:24 RPG rockets in rice bags. And Jungle said this is what we would take - we would carry later. And the movement was always done at night by Sampson and Jungle because these were the people that Benjamin Yeaten normally sent. And sometimes there - they would be escorted by Zigzag Marzah, who was one of the drivers.

12:35:59 Q. What sorts of cars would they use to transport this ammunition?

A. Sometimes they used Ben's pick-up and some of the time they used a Nissan pick-up, it had four tyres. It was a pick-up four-wheel drive.

I N D E X

WITNESSES FOR THE DEFENCE:

DCT-172	47322
RE-EXAMINATION BY MR CHEKERA	47322
FURTHER RE-EXAMINATION BY MR CHEKERA	47358
DCT-008	47370
EXAMINATION-IN-CHIEF BY MR ANYAH	47370

EXHIBITS:

Exhibits D-434 to D-436 admitted	47360
Exhibits D-437A to E admitted	47360
Exhibit D-438 admitted	47361
Exhibits D-439A to C admitted	47361
Exhibit D-440 admitted	47361
Exhibits D-441A to E admitted	47361
Exhibits D-443 and D-444 admitted	47361
Exhibits P-561A and B admitted	47362
Exhibits P-562 to P-568 admitted	47363
Exhibits P-569A and B admitted	47363
Exhibits P-570 to P-590 admitted	47366
Exhibits D-445 to D-447 admitted	47367



Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

FRIDAY, 3 SEPTEMBER 2010
9.00 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Julia Sebutinde, Presiding Justice Richard Lussick Justice Teresa Doherty Justice El Hadji Malick Sow, Alternate
For Chambers:	Ms Doreen Kiggundu
For the Registry:	Ms Rachel Irura Ms Zainab Fofanah
For the Prosecution:	Ms Brenda J Hollis Mr Mohamed A Bangura Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Morris Anyah Mr Michael Herz

THE WITNESS: Yes.

PRESIDING JUDGE: Please continue.

MS HOLLIS: Thank you.

Q. Now, Mr Witness, just to be sure the document can stand on its own, if you would, in fact, draw another line from the Thuraya sat phone and write that on the side margin, please.

Now, could you bring that down, please, so that we can see the cap again.

Mr Witness, is there any rank shown anywhere on that cap?

09:46:51 A. I can't identify the inscription on the cap, so what is written, I do not recognise it. It is not clear.

Q. You have written "General Benjamin Yeaten". When you say "general" what do you mean? Was he a brigadier general at this time, a major general, a lieutenant general, a general?

09:47:22 A. He was a general at this time and a lieutenant - lieutenant general.

Q. And then if you could take that again and put "lieutenant general" and you can simply put "LT" before "general".

PRESIDING JUDGE: Ms Hollis, when the witness says "at this

09:47:45 time" what time are we talking about?

MS HOLLIS: That's what I'm going to follow.

Q. And when you say "at this time", Mr Witness, what time are you talking about?

A. I am talking about from '99 up to 2003.

09:48:04 Q. And this rank of lieutenant general, it went with what position that he held?

A. He was the general front line supervisor.

Q. A general front line supervisor for whom?

A. For the Government of Liberia.

A. Yes, it is a satellite phone.
Q. Thank you. And, Mr Witness, if you could on the back of that photograph put DCT-008 and today's date.
MS HOLLIS: Madam President, I ask that that be marked for identification.
PRESIDING JUDGE: The photograph with the serial number P-0000877 that has now been marked by the witness is marked MFI-5.
MS HOLLIS: Thank you, Madam President.
09:51:58 Q. Mr Witness, you said that the radio operators at the Executive Mansion in Monrovia after Charles Taylor was President, that those radio operators worked in shifts. Do you remember telling the Court that?
A. A point of correction. I did not say - the shift started - 09:52:26 I did not say the shift started after Charles Taylor became --
THE INTERPRETER: Your Honours, could the witness be asked to repeat this area slowly.
PRESIDING JUDGE: Please pause. Mr Witness, the interpreter cannot keep up with your speed. Please slow down and 09:52:41 repeat your answer. Start from the beginning.
THE WITNESS: Okay. I said the radio operators at the Executive Mansion of the Republic of Liberia were running three shifts, but I did not say after the elections of Charles Taylor, but I said they were working in shifts. Three shifts.
09:53:11 MS HOLLIS:
Q. Well, Mr Witness, do you know whether they worked in shifts before the election of Charles Taylor?
A. I got there when the shift was in place. Yes, they were working in shifts before the election of Charles Taylor because I

met the system in place.
Q. And during the presidency of Charles Taylor at the Executive Mansion, these radio operators worked in shifts, is that correct?
09:53:42 A. Please say that again.
Q. Certainly. During presidency of Charles Taylor, the radio operators at the Executive Mansion worked in shifts, correct?
A. Correct.
Q. And how many operators would work on each shift at the
09:54:00 Executive Mansion?
A. I know about my shift that I served during the time.
Q. So how many worked on your shift?
A. Well, for my shift, at times we were four, at times three, and at times five. It was somehow irregular.
09:54:32 Q. Now, did you always work on the same shift, for example, the day shift, or did you rotate shifts?
A. It was rotational.
Q. And when you worked on any of these shifts you would have sometimes four, sometimes three, sometimes five. Is that
09:54:54 correct?
A. Yes.
Q. And what about the other shifts; do you know how many worked on the other shifts?
A. No.
09:55:06 Q. Wasn't there some sort of roster that showed shift assignments?
A. They had assignment listing, but I was concerned with my assignment and the time I work.
Q. So your story to the judges is you didn't know how many

Q. When the RUF came to Monrovia, did they have identification cards that would have allowed them to enter the Executive Mansion?
A. Repeat your question.
10:15:40 Q. Certainly. When the RUF came to Monrovia, did they have identification cards that would have allowed them to enter the Executive Mansion?
A. When they came to Monrovia, at what time?
Q. Let's talk, first, about 19 - the end of 1999, mid-December
10:16:05 and thereafter.
A. The RUF that entered the Executive Mansion Grounds were people - were those that had already been enlisted into the security forces and they had ID cards.
Q. And what about in 1998?
10:16:26 A. I - 1998, when, like, the trip that Sam Bockarie made to meet the President in relation to the peace process, it was - I don't know how to say it - it was diplomatic or what, so I don't - there was security in place in order to permit them into the Executive Mansion, but it was official.
10:17:04 Q. So VIPs or others who were visiting in an official capacity, they would have access to the Executive Mansion?
A. VIPs or foreign guests who visit the Executive Mansion would be escorted by the security of the Republic of Liberia who would identify them to let them in.
10:17:35 Q. So if a person was being escorted, and this person did not have an identity card, this person would have to be identified to the security personnel at the Executive Mansion before they were allowed into the Executive Mansion, is that right?
A. In the first place, before a guest or an official - a

foreign official enters the Executive Mansion, the Government of Liberia had - is already aware that that person is entering the country officially or legally. So the Government of Liberia provides security to that official and the security is the one who leads the official in. I don't know whether he or she had identification, but the Government of Liberia is made aware and the Executive Mansion is made aware of the appointment.

10:18:16

PRESIDING JUDGE: Mr Witness, I'm going to remind you to slow down again, because what you are saying is being recorded as well as interpreted. Don't forget that.

10:18:37

MS HOLLIS:

Q. So when this guest came into the Executive Mansion, it would have to be verified that they were a member of a group or that they individually were known to be an official guest before they could enter the Executive Mansion, is that correct?

10:19:04

A. What I am saying is that any official or foreign guests or officials who visit the Executive Mansion on an official visit, the Government of Liberia is made aware of the person, so the Government of Liberia provides security for that guest; and, if the guest had to visit the Executive Mansion, the security provided by - provided by the guest from the Government of Liberia, and then a system is put in place in order to allow the guest in. There was a system.

10:19:31

Q. So when they came to enter the Executive Mansion, the guard or the supervisor there, would have some type of written document indicating that this person was allowed to come into the Executive Mansion, is that right?

10:20:00

A. At least there would be a document to show that this person was visiting the Executive Mansion.

Q. And would the escort of the visitor have that document that would have to be shown or would the guards at the Executive Mansion have that document?

A. The escort for such a guest is the one who would explain to the guys at the Executive Mansion that this is the VIP, this is the official that I'm travelling with, and he is here for so and so reason, and this is the document to show that he is here for so and so reason; I believe that this is the system.

Q. So they would show them the document which would allow this person to enter the Executive Mansion? The escort would show the guards the document which allowed the guest to enter the Executive Mansion, correct?

A. Yes, the escort would do everything that he should do in respect of his duty, and he will go by whatever instruction that he'd had from his boss or that he was performing in accordance with his duties.

Q. Now, let's go back to this document, section 2.41, Appointment and duties of Director, and we see the first sentence says:

"The President, with the advice and consent of the senate, shall appoint an administrative head of the service who shall be designated as the director".

And in Mr Taylor's time, that was Benjamin Yeaten, correct?

A. Yes.

Q. Now, this section goes on to say:

"He", meaning the director, "shall be responsible to the President through the Director General of National Security for the administration of the Special Security Service but shall report directly to the President should the President so direct."

who is saying the truth or who is not saying the truth.
Q. Well, Mr Witness, during the direct examination on many occasions you said that a certain person giving evidence, that that information wasn't correct or it wasn't the truth. So why
12:49:32 can't you say that now?
A. I am saying I am not in a position to judge when somebody says Sampson and Marzah did not carry ammunition, that would be his testimony, that would be his view, but what I'm sure of and what I know, as far as my knowledge is concerned, Sampson and
12:49:58 Marzah transported - they were used by Ben to carry this particular consignment that I spoke - that I saw and spoke of.
Q. Zigzag Marzah, he was notorious in Charles Taylor's forces, wasn't he?
A. I don't know what you mean by that. Please come again.
12:50:28 Notorious in terms of what?
Q. In terms of his conduct.
A. His behaviour, such as what?
Q. Well, Mr Witness, he had a reputation as being wicked and practising cannibalism, didn't he?
12:50:59 A. I don't know whether it was known within the government but I personally, I observed him of being someone who practised cannibalism because I saw it.
Q. That wasn't my question, Mr Witness. Mr Witness, Zigzag Marzah had a reputation as being wicked and practising
12:51:25 cannibalism, didn't he?
A. Yes, he had that reputation because I saw it.
Q. You understand what a reputation is, Mr Witness?
A. Yes.
Q. And he had that reputation, isn't that correct?

I N D E X

WITNESSES FOR THE DEFENCE:

DCT-008 47866

CROSS-EXAMINATION BY MS HOLLIS 47866

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

MONDAY, 6 SEPTEMBER 2010
9.00 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Julia Sebutinde, Presiding Justice Richard Lussick Justice Teresa Doherty Justice El Hadji Malick Sow, Alternate
For Chambers:	Ms Doreen Kiggundu
For the Registry:	Ms Rachel Irura Ms Zainab Fofanah
For the Prosecution:	Ms Brenda J Hollis Mr Mohamed A Bangura Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Morris Anyah Mr Simon Chapman

days in a row?
A. Yes.
Q. And that was with Silas and Logan. Is that correct?
A. Correct.
12:21:56 Q. Now, Mr Witness, after you came here to The Hague and began meeting with Defence counsel here, you have basically re-invented your story. Isn't that right?
A. Yes, I changed some parts of my story.
Q. And, in fact, Mr Witness, you have changed the most
12:22:25 important parts of your story, haven't you?
A. I changed some of my stories that I gave to them, I changed them.
Q. Indeed, Mr Witness, most of the important things you have told this Court are new since 12 May of this year. Isn't that
12:22:48 correct?
A. I don't know what you mean. But I changed some parts of my testimony that I had given in Monrovia - when I got here, I changed it.
MS HOLLIS: Madam President, if we could go into private
12:23:14 session, and this is protect the identity of the witness.
PRESIDING JUDGE: Very well. For that reason, we will go into a brief private session, please.

I N D E X

WITNESSES FOR THE DEFENCE:

DCT-008 47941

CROSS-EXAMINATION BY MS HOLLIS 47941



Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

TUESDAY, 7 SEPTEMBER 2010
9.00 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Julia Sebutinde, Presiding Justice Richard Lussick Justice Teresa Doherty Justice El Hadji Malick Sow, Alternate
For Chambers:	Ms Doreen Kiggundu
For the Registry:	Ms Rachel Irura Ms Zainab Fofanah
For the Prosecution:	Ms Brenda J Hollis Mr Mohamed A Bangura Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Morris Anyah Mr Simon Chapman

Madam Court Manager, perhaps you might assist us.

MS IRURA: Your Honour, I am contacting the technicians.

PRESIDING JUDGE: Yes, Mr Anyah.

MR ANYAH: Yes, Madam President, I merely rise to indicate that Mr Taylor's LiveNote is also not working but mine is. Thank you.

PRESIDING JUDGE: Ms Hollis, I suppose you may commence. Excuse me, sir, is Mr Taylor's - yes, now it is working.

Okay, Ms Hollis, please.

14:37:09 MS HOLLIS: Thank you, Madam President.

Q. Mr Witness, your new version of events includes quite a number of admissions, and we have talked about several of those. You also now admit that in 1998, ammunition was provided to the RUF by Benjamin Yeaten, correct?

14:37:39 A. I said I saw that in late 1998.

Q. And this was provided from Benjamin Yeaten's house, correct?

A. I saw it at Benjamin Yeaten's house, but it was not provided - this is the ammunition that I said he sent people to

14:38:02 get from the southeastern part of Liberia and that of Lofa.

Q. And this ammunition you admit would be taken late at night from Benjamin Yeaten's house, correct?

A. Yes.

Q. And that among those who were involved in taking this

14:38:26 ammunition from Liberia to Sierra Leone were Sampson and Zigzag Marzah, correct?

A. Well, it was Sampson and Jungle, and Zigzag Marzah escorted them as driver.

Q. And you have also told these judges that, in your view, you

I N D E X

WITNESSES FOR THE DEFENCE:

DCT-008	48083
CROSS-EXAMINATION BY MS HOLLIS	48084
RE-EXAMINATION BY MR ANYAH	48223

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

MONDAY, 1 NOVEMBER 2010
9.00 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Justice Julia Sebutinde, Presiding Justice Teresa Doherty Justice El Hadji Malick Sow, Alternate
For Chambers:	Ms Doreen Kiggundu Mr Artur Appazov
For the Registry:	Ms Rachel Irura Mr Alhassan Fornah
For the Prosecution:	Mr Nicholas Koumjian Ms Kathryn Howarth Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Terry Munyard Mr Silas Chekera Ms Logan Hambrick Ms Kimberley Punt

A. I was based there from Manowa to Pendembu, I moved to Pendembu and based there, I come back to Manowa, I was based there.

Q. Let me just see if I fully understand that. You've told us before that you were sent to Manowa Ferry as a senior adviser in relation to some artillery pieces, yes?

A. Yes.

Q. Then you say by 6 January 1999 you moved to Pendembu and were based there and you come back to Manowa and you were based there. Do you mean you had two bases and you moved between them?

A. Yes, my family were at Pendembu, I come there and go back to the riverbank.

Q. And by the riverbank what do you mean?

A. Manowa Ferry.

Q. Thank you. So on 6 January 1999 you tell us you were in Pendembu. Were you with your family there?

A. Yes, I said my family were there. I go there and go back to the river. I was in Pendembu with my family, yes.

Q. Right. Now, from your knowledge did you hear anything about an invasion of Freetown on 6 January 1999?

A. Yes.

Q. And what did you hear about it and how did you hear about it?

A. Well, Johnny Paul from the army in Kangama and Mosquito with some other loyal AFRC officers and soldiers that were in Kailahun like Akim and Leather Boot, they all were in Kailahun where they plan general attack, then they instructed Issa and Rambo, Morris Kallon. While the discussion was going on in Kailahun they were giving the update to them in Makeni to move to

Freetown and then when they moved to Freetown, SAJ Musa had already been ahead.

Q. Sorry, pause there. Who moved? You say when they moved to Freetown.

12:55:09 A. When they were moving to Freetown.

Q. Who were moving to Freetown?

A. The RUF. When they were on their way going to Freetown SAJ Musa from the north, the northern province, because earlier when we retreated he went on his own and he and Mosquito were not

12:55:28 friend.

Q. Pause there for a moment. I want to know from whom you've heard this? You're in Manowa Ferry and Pendembu between the two, how did you get this information about what went on in January of 1999.

12:55:53 A. I had a radio assigned with me and don't forget the RUF, the communication was their most powerful weapon so for every time anything goes on everybody gets around the radio. So it was from the radio or monitor.

Q. Let's just look at what you've said then. You've said that

12:56:23 Johnny Paul from the army in Kangama. What did you mean Johnny Paul from the army in Kangama. What did you mean by that?

A. Johnny Paul Koroma, he was residing in Kangama.

Q. And Mosquito with some other loyal AFRC officers and soldiers that were in Kailahun?

12:56:47 A. No, Buedu.

Q. Well I'm just reading what you said a moment ago.

A. Yes, yes, yes.

Q. They were in Kailahun where they plan a general attack, yes? When you say they were in Kailahun, which part of Kailahun?

A. In Buedu.
Q. They plan a general attack, they instructed Issa and Rambo, which Rambo is this?
A. Rambo from the RUF.
12:57:17 Q. Morris Kallon. While discussion was going on in Kailahun and they were giving the update to them in Makeni, who are the people you describe as them in Makeni?
A. Rambo, Issa, Morris Kallon and other officers.
Q. So those people are in Makeni and what group do they belong
12:57:46 to?
A. They were the RUF.
Q. You went on to say then when they moved towards - they were moving to Freetown. You then went on to mention SAJ Musa?
MR KOUMJIAN: Excuse me, counsel misread a little bit the
12:58:05 answer. It wasn't they were moving. It said update to them in Makeni to move to Freetown.
MR MUNYARD: He then went on if you look at the next line - I corrected myself because page 105, line 6 - well, I'll start at line 4 actually. Sorry, pause there. Who moved. You say when
12:58:25 they moved to Freetown. The witness then said they were moving to Freetown.
THE WITNESS: I said they were moving to Freetown.
MR MUNYARD:
Q. Yes, you did. Now who was it --
12:58:38 A. The RUF.
Q. -- who was moving to Freetown?
A. Rambo and others were instructed to move.
Q. Right. At that point on page 105 you then said SAJ Musa from the north, the northern province, because earlier when we

I N D E X

WITNESSES FOR THE DEFENCE:

DCT-102 48365

EXAMINATION-IN-CHIEF BY MR MUNYARD 48366

C. (1)

v. Trial Transcripts 2011



Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

FRIDAY, 11 FEBRUARY 2011
11.30 A.M.
PROCEEDINGS

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice El Hadji Malick Sow, Alternate
For Chambers:	Mr Simon Meisenberg Ms Doreen Kiggundu
For the Registry:	Ms Fidelma Donlon Ms Rachel Irura Mr Alhassan Fornah
For the Prosecution:	Ms Brenda J Hollis Ms Leigh Lawrie Ms Maja Dimitrova
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Mr Terry Munyard
From the Office of the Principal Defender:	Ms Claire Carlton-Hanciles

question. We are not asking for a stay of these proceedings, we are asking for an adjournment of them. I have not, on behalf of the Defence this morning, addressed at all the second issue on the agenda for today.

11:56:48 PRESIDING JUDGE: We will come to that in due course, Mr Munyard. I should say that in my view, and I made it clear in the directive, that Mr Griffiths, on the day, was refused permission to withdraw and he was subsequently directed to sit down and he left in defiance of those two directions or orders.

11:57:11 However, I do see merit in the fact that he has a right to be heard and a right to have his views taken into account. I agree there is no clear procedural mechanism laid down in the rule. However, there is an overriding right in any person or counsel to be heard fully in a matter that may lead to a disciplinary or may

11:57:43 not - I am not making any conclusions - he was requested to give a apology and similarly, as you have alluded to it would have been dealt with as in August, you have given me the date. However, I see merit in your application and I will defer this matter for two weeks. I will now - sorry.

11:58:10 MR MUNYARD: We are very grateful for that, Madam President.

PRESIDING JUDGE: Now, that means I have to set a date. Today is Friday, the 11th. Two weeks is a period, I presume calendar weeks, of 14 days. What date do you have in mind?

11:58:25 MR MUNYARD: That would be the 25th, if I've got my sums correct.

PRESIDING JUDGE: I have been helpfully reminded by our senior legal officer that there are Special Tribunal for Lebanon hearings possibly scheduled. I will therefore provisionally set

it for the 25th. I will seek assistance of our Registry and staff to ensure that that date is available, and if it is not, the parties will be informed accordingly.

MR MUNYARD: Certainly.

11:59:07 PRESIDING JUDGE: This matter is therefore - I have not lost sight of the fact, Mr Munyard, that it is imperative to have this dealt with expeditiously as it involves a right of appearance. I will now move to the second item on the agenda, which is the application by counsel for the Prosecution - for the

11:59:33 Defence, and I quote, "A request for ancillary relief in conjunction with the Defence motion seek leave to appeal."

We note, my learned colleagues and I, that the Defence at paragraph 5 of that document requests the Trial Chamber to stay the proceedings pending resolution of the motion for

11:59:52 certification, and further on, in the same paragraph, refers to "and/or related decisions by the Appeals Chamber."

There is some ambiguity and I would ask you first to clarify what exactly you are seeking before I invite a reply by the Prosecution.

12:00:10 MR MUNYARD: Very well, thank you, Madam President. What we are seeking by our motion seeking ancillary relief in the form of a stay is first and foremost an order from this Court that until such time as either you refuse leave or, if you grant leave, the Appeals Chamber decides - reaches its decision and

12:00:43 indeed if it reaches a decision in our favour, any timetable it then sets down, that we are asking the Court not to proceed to close the case because, as your Honours will be aware, rule 87(A) provides, "After presentation of closing arguments, the Presiding Judge shall declare the hearing closed."

I will also direct, in the light of that decision, that the Defence expeditiously as possible file their leave to appeal, if they so decide - excuse me, their appeal, I correct myself, I'm grateful for that, their appeal as expeditiously as possible, and
12:25:17 that if they so decide to pursue it.

In the light of the submissions, the Trial Chamber will stand over the proceedings until the Appeal Chamber have delivered their verdict.

Accordingly, this hearing is adjourned sine die.

12:25:44 MR MUNYARD: Madam President, before the Court leaves, can I assure you that we will do everything in our power to be as expeditious as possible. We to do not want the trial lasting a day longer than it needs to. And hollow though those words may sound in the light of events over the past three years, they are
12:26:07 nevertheless genuine. And I'm grateful for your decision.

PRESIDING JUDGE: Thank you.

[Whereupon the proceedings adjourned sine die at 12.25 p.m.]

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

FRIDAY, 25 FEBRUARY 2011
9.30 A.M.
HEARING

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice El Hadji Malick Sow, Alternate
For Chambers:	Ms Erica Bussey Ms Doreen Kiggundu
For the Registry:	Ms Fidelma Donlon Ms Rachel Irura Mr Alhassan Fornah
For the Prosecution:	No Appearances
For the Accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Mr Terry Munyard Mr Morris Anyah Ms Logan Hambrick
For Courtenay Griffiths:	Mr Peter Robinson

Friday, 25 February 2011

[Open session]

[In the presence of the Accused]

[Upon commencing at 9.47 a.m.]

09:48:36 PRESIDING JUDGE: Good morning. I will open the Court by noting that Justice Sebutinde is not here with us. I have her authorisation to read a notification, which I received this morning from Justice Sebutinde, and I will read it out verbatim:

"This is to notify you that in view of the recent 09:49:09 developments in the Trial Chamber, and consistent with my earlier views and opinion on this matter, both in Chamber and on the Bench wherein I dissented from the directive to lead counsel, I will on principle, not attend Friday's hearing."

I will therefore, first, invite appearances, and secondly - 09:49:38 I haven't added the words end of quote.

In the light of this, I will first invite appearances and, secondly, I will ask counsel if there is any matters which he wishes to make before proceeding.

09:50:03 MR MUNYARD: Good morning, Madam President, your Honours, and Ms Donlon, who is the Deputy Registrar, who's here in court, that's the first appearance that I note.

Madam President, on the Defence bench is Courtenay Griffiths QC, Morris Anyah, Logan Hambrick, myself, Terry Munyard, and beside me is counsel Mr Peter Robinson, who is 09:50:31 here to represent Mr Griffiths this morning, following your order granting Mr Griffiths right of representation of two weeks ago.

Unless there is anything further you wish to hear from me, I propose now to hand over, first of all, to Mr Robinson.

PRESIDING JUDGE: Thank you, Mr Munyard.

MR ROBINSON: Thank you, Madam President. It's a privilege to appear before your Court and a real honour to represent Courtenay Griffiths. I'd like to speak to you for a few minutes, if you don't mind, about the issue of sanctions under rule 46 that were mentioned.

09:51:07

PRESIDING JUDGE: Prior to you proceeding, Mr Robinson, on that, I did invite comments, first, on the question of the constitution of the Court, in the light of the matter I have just read, and in the light of Justice Sebutinde's absence. I must dispose of that first, prior to hearing any submissions on the issue before us.

09:51:30

MR ROBINSON: Very well, Madam President, since we hadn't had any notice of that, would you mind giving us a few minutes to consult among ourselves before we address that issue?

09:51:45

PRESIDING JUDGE: Please do so.

MR ROBINSON: Thank you.

[Defence counsel confer]

MR ROBINSON: Yes, thank you, Madam President, we would like to invite the Chamber to invite Justice Sow to participate, so the Bench is constituted of three regularly constituted judges.

09:52:25

JUDGE SOW: Let me make this very clear: This Bench is regularly composed with three judges sitting, as it shows. Two judges cannot sign decisions. When the Bench is sitting, it's sitting with three judges, not two judges, and I don't know what. I'm not here for decoration. I am a judge. This Bench is regularly composed, as everybody can see. I don't know how people can think that two judges - I don't know where in this world you will see two judges sitting. It's not possible. This

09:52:41

Bench is regularly composed with three judges. This is my comment. No matter how parties will look at it, it shows and it's apparent that this Bench is composed with three judges. We are three judges sitting.

09:53:34 PRESIDING JUDGE: The Articles governing the composition of this Court and the Trial Chamber mandate that it is to be composed of three judges. This is not a situation where rule 16 applies. Accordingly, in our view, this Trial Chamber is not properly constituted and we consider we have no alternative but 09:53:59 to adjourn this hearing today. The matter is adjourned for a date to be fixed.

Please adjourn the Court.

[Proceedings adjourned at 9.54 a.m.]



Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

WEDNESDAY, 9 MARCH 2011
9.00 A.M.
HEARING

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice El Hadji Malick Sow, Alternate
For Chambers:	Mr Simon Meisenberg Ms Erica Bussey Ms Doreen Kiggundu
For the Registry:	Ms Fidelma Donlon Ms Rachel Irura Mr Alhassan Fornah Mr Dereque Davies
For the Prosecution:	Ms Brenda J Hollis Mr Nicholas Koumjian Mr Mohamed A Bangura Ms Maja Dimitrova
For the Accused Charles Ghankay Taylor:	Mr Courtenay Griffiths QC Mr Terry Munyard Mr Morris Anyah Mr Silas Chekera Ms Salla Moilanen

is why we are addressing these concerns. But in any event, Madam President, as highlighted by Mr Koumjian this morning, we have dealt with these issues in the opening paragraphs of our closing brief, and so consequently do not see the need to repeat all of those arguments here, because we submit that they've been comprehensively set out in our closing brief.

12:00:19

But returning to our theme, Madam President, which is that this Prosecution is political, we also submit, so far as this Prosecution is concerned, that they have acted dishonestly in paying witnesses, some of them extravagantly, out of a fund obtained by the first Chief Prosecutor, David Crane, from the Government of the United States. No similar fund was ever provided or requested by the Defence, and despite repeated requests by a number of bodies, the Prosecution have never come clean as to how these monies were acquired and, indeed, how they were spent. Again, we will deal with that issue and have dealt with it in our final brief, and I anticipate that Mr Munyard tomorrow will be turning to it in a little bit more detail, so I'm merely highlighting that fact now.

12:00:48

12:01:13

Now, having introduced my topic, Madam President, can I now turn to the evidence in this case?

12:01:36

We have never denied that serious crimes were committed in Sierra Leone. We've never denied that. And neither were those crimes committed solely by the RUF, the AFRC or indeed the CDF. I would like us to remind ourselves, please, of a clip from a film shown in closed session, so it's confidential, taken from exhibit D-5A.

12:02:15

PRESIDING JUDGE: Are we going do view it, Mr Griffiths? And do we have to do it in closed session in the light of what

Not so, it would appear.

I do now come to conclude, Madam President. The fact is a criminal trial is not a beauty contest. We are not asking this Court to like Charles Taylor, no. However, when a fact-finder comes to decide upon evidence it is a useful guide to such a person to consider how you would want another fact-finder to approach the evidence if the situation were different and it was a member of your family, a friend, or a colleague, who was on trial. What standards would you expect such a fact-finder to apply? We submit that this man, however he has been painted in the public, deserves nothing less than that, and we submit that when this indictment is approached in that independent, reasonable, unemotional way, there can only be one verdict on all these counts, and that is a verdict - and those are verdicts of not guilty. Thank you for listening so intently.

PRESIDING JUDGE: I recall you mentioned Mr Anyah would be addressing tomorrow; is that correct?

MR GRIFFITHS: No, Mr Munyard.

PRESIDING JUDGE: Mr Munyard. It's the other way around. Actually, I didn't note that when we resumed that Mr Anyah was not with you.

MR GRIFFITHS: Oh, I failed to mention that. I apologise.

PRESIDING JUDGE: If there is no other matters, just pause a moment, please. We will adjourn the Court until tomorrow morning at 9. Thank you. Please adjourn the Court.

Whereupon the hearing adjourned at 4.26 p.m., to be reconvened on Thursday, the 10th day of March, 2011, at 9.00 a.m.

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

THURSDAY, 10 MARCH 2011
9.00 A.M.
DEFENCE FINAL SUBMISSIONS

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice El Hadji Malick Sow, Alternate
For Chambers:	Mr Simon Meisenberg Ms Erica Bussey Ms Doreen Kiggundu Mr Arthur Appazov
For the Registry:	Ms Fidelma Donlon Ms Rachel Irura Mr Alhassan Fornah
For the Prosecution:	Ms Brenda J Hollis Mr Nicholas Koumjian Mr Mohamed A Bangura Ms Maja Dimitrova
For the Accused Charles Ghankay Taylor:	Mr Terry Munyard Ms Salla Moilanen

involving grave charges against Mr Taylor, the accused, we say that in this case, there are so many examples of egregious implausibility, and in a number of cases, downright lies by particular Prosecution witnesses. We submit that it is
09:06:06 appropriate, in the circumstances of this case, to completely put aside several Prosecution witnesses altogether. And we say, quite boldly, forget the exercise of looking to see if there is support for something that that witness says from other witnesses. If there is, then rely on those other witnesses
09:06:31 alone. In our submission, some of these Prosecution witnesses have been so damaged that no reliance should be put upon them.

Their evidence, in short, is such that their credibility is so seriously undermined as to render them wholly - wholly - lacking in credibility.

09:06:56 Now, another element of credibility is the whole question of payments to witnesses. And, indeed, to potential witnesses. Now, let me try to put that into some kind of context.

All the ad hoc criminal tribunals that we are aware of operate a witness and victims section, which provides services to
09:07:37 witnesses once they are formally declared as a witness, including reasonable expenses to meet the expenses that they have incurred by cooperating with whichever branch of the Court it may be. Those expenses may include the cost of security and protection to vulnerable witnesses and their dependents, including, in some
09:08:10 cases, relocation expenses. And we have no difficulty with that. Inevitably, witnesses in cases of this sort are going to have to be, from time to time, relocated, moved, given certain kinds of protection, all of which cost money. Inevitably, witnesses are going to have to travel, in some cases, in order to be

interviewed by the Prosecution, or for that matter, the Defence. That is going to cause them costs, it may involve them in loss of earnings. All of those are legitimate expenses.

However, we say that some of the evidence in this case
09:09:01 demonstrates, very clearly, that some Prosecution witnesses have been rewarded, have, to put it bluntly, profited from their connection with the Prosecution. The Prosecution, as you are aware, has its own fund, in complete contrast to the Defence, has its own fund from which witnesses are paid money or out of which
09:09:39 witnesses' expenses of one sort or another are defrayed, not necessarily given directly to the witness but some expenditure on the witness's behalf has been made.

This is a fund whose provenance has never been disclosed, the Prosecution have never said where they get the money from,
09:10:04 they've never said how much it is, and, indeed, although they claim to have established clear criteria as to the categories of money that can be spent, the criteria are, we submit, very vague and often disputed by the witnesses in question. To take but one example a witness on a number of occasions in this trial has said
09:10:32 they were paid money, which we see in the documentation is said to be for loss of earnings, when the witness has said, well, I wasn't earning anything at the time. That's just one example. The Court has many such examples in the evidence. We say that in some cases it is clear beyond doubt, that this fund, this money,
09:11:00 has been used to encourage witnesses to give evidence rather than simply to put them in a position where they are not economically disadvantaged or their security at risk by their cooperation with the Prosecution.

Put bluntly, in our submission, this fund has been used in

such a way, on occasions, as to taint the testimony of some of the Prosecution witnesses.

By lavishing funds on witnesses which go well beyond compensating them for their actual expenses or losses consequent on their giving time to the Prosecution, this money, we say, has been used to pollute the pure waters of justice and the court cannot turn a blind eye to the effect that such financial rewards are likely to have on the evidence, and we invite the Court, when considering each and every witness about whom you have heard evidence of receipt of monies, to look very carefully at that witness's evidence. If there are obvious inconsistencies between what they have said previously to the Prosecution and what they've said, either in court or in the run-up to their testimony in court, look, we submit, look at the way in which they have been financially rewarded for their cooperation with the Prosecution.

Now, it is, of course, completely and utterly naive to expect any witness to say, "Well, this money that the Prosecution spent on me, or spent on me and my family, made me more willing to tell them what they wanted to know." Life, frankly is not like that. You, as judges, bring your experience of the world and your common sense to bear on the evidence that you are assessing. You, as the finders of fact, of course, apply good sense to the whole picture.

The very practice of giving handouts which go way beyond the actual cost of the witness's expense, itself strikes at the heart of justice, and it does so in a particularly insidious way, precisely because no witness is ever going to admit as much and in some cases may not even recognise that they have been affected

by the largesse that has been lavished on them. We invite the Court to say that where there are examples of this practice, and I'm going to turn to some in due course, where there are examples, the Court should disregard the evidence of witnesses involved, unless there is strong and real corroboration from other sources.

09:14:20

And may I then move to the way in which this fund has been operated in practice and take the Court to a particular account.

I'm going to do so by reference to a witness who wasn't actually called but was a potential witness in this case, a potential Prosecution witness, and indeed, as is the case with a number of witnesses in this trial, also a potential Defence witness. There are other examples that I'm going to come to in due course, but we submit that when you look at the way in which money has been doled out, it clearly indicates that the Prosecution have been willing to encourage people to cooperate with them by financial handouts.

09:14:50

09:15:22

JUDGE SEBUTINDE: I'm sorry, Mr Munyard, the computers seem to have frozen, the LiveNote.

MR MUNYARD: Yes.

09:15:55

MS IRURA: Your Honour, I will get a technician to assist.

MR MUNYARD: Madam President, normally when this has happened the Court officer has been able to stream her LiveNote on a screen. Like Mr Koumjian, I've now forgotten which button to press to get that, but no doubt we'll receive some assistance.

09:16:18

JUDGE LUSSICK: If you press "transcript".

MS IRURA: Your Honour, my transcript is being broadcast but we will not be able to view any exhibits while that is happening because we are using one screen.

PRESIDING JUDGE: We'll deal with that problem when we come to it, but if you can broadcast yours to the counsel and the bench, please, so we can proceed.

Mr Munyard, I understand Madam Court Officer's is now being broadcast, so if you can please proceed.

MR MUNYARD: I'm happy to proceed. I can't see anything on any of the array of screens in front of me that shows the transcript.

MS IRURA: Counsel would need to switch to the courtroom button on his computer away from his present screen, which is probably his LiveNote.

MR MUNYARD: Can I say - ah, there it is.

PRESIDING JUDGE: Please keep going and if there is a need for exhibits, as I said we will deal with them when it arises.

MR MUNYARD: Yes. May I, before I start taking the Court through examples, make this point? Where a culture has arisen where witnesses expect to be paid sums of money, not merely their expenses, but a very generous amount of money in relation to their expenses, what is the effect of that on the administration of justice, of such a system? And let me illustrate that with an anecdote. If people expect to be paid to give evidence, then it can lead to a bidding war. I think everybody's seems to be now - yes.

And I want to tell the Court an anecdote, I'm not giving evidence as such; it's simply an illustration, in our submission, of the effect of this system of doling out money to people to cooperate with the Prosecution.

At an Outreach meeting in Freetown that I went to and spoke on behalf of the Defence at, this question of witness expenses

and money paid to witnesses was raised, and I made the point that I'm making now, the Prosecution have a fund out of which they pay witnesses, to which came the immediate rejoinder from a member of the audience, "Well, what's the problem with that? Why don't the 09:20:04 Defence offer more money to the witnesses?" And that - that vignette captures perfectly the effect on the administration of justice of making sums of money available that go way beyond the actual expense to the witnesses themselves.

And let us consider the realities of life in Sierra Leone 09:20:29 and Liberia. Desperately poor people in a country still devastated by civil war, by the effects of civil war, ten years later. People managing their best, but, as we all know, struggling to survive, struggling to make ends meet, large numbers of people without regular employment. Some who do have 09:20:58 regular employment not regularly paid, teachers is a well-known example of that situation in Sierra Leone. And finally, what is an insignificant sum to someone from Western Europe or from North America, what would amount to loose change in their pocket, in fact, can make a huge difference in the hands of a poor person in 09:21:29 Sierra Leone, someone who has a family to support. 10,000 leones, three United States dollars a year or two back, is a significant sum of money that can help to buy food and to put someone in a better position than they would otherwise have been to a Sierra Leone citizen. Whereas to somebody such as many of 09:22:01 those in this courtroom now, it's a sum of such trifling order that they wouldn't even notice if it was lost.

Now, may I turn then to illustrate first of all the way in which the system has been operated and then I will go to some specific examples of witnesses. And I'm going to deal with the

situation relating to a potential witness who ended up with the - the anonymous title of DCT-032.

PRESIDING JUDGE: Please clarify, Mr Munyard, are you saying this witness was not called and did not give evidence before the Court?

09:23:00

MR MUNYARD: Yes, but he -

PRESIDING JUDGE: How can you adduce evidence in relation to what he said or did?

MR MUNYARD: Because you have it, Madam President, I'm going to come to that. You have it actually in the form of certain documents admitted under rule 92 bis. And there is a history here that is illustrated by the documents admitted through the Appeal Chamber under rule 92 bis. This was a witness who eventually came to the attention of the Prosecution in the middle of 2008. Now, the timing and the way in which the Prosecution dealt with this potential witness is very interesting. On the 12th of March 2008, a man called Zigzag Marzah gave evidence in this Court in public session, and he mentioned the witness - I'll call him the witness, because although he didn't give evidence he was a potential witness - he mentioned 032 in the course of his evidence, and it was in a significant context. Then, on the 15th of May 2008, Moses Blah, a former President of Liberia, gave evidence, and I've no doubt the Court has his evidence very much in mind still. He also gave evidence about the incident that Zigzag Marzah had given evidence about in which Marzah named this particular person. On that same date, the 15th of May, the Prosecution interviewed a person, Witness TF1-375 who actually did give evidence. They interviewed that witness for the 17th time on the 15th of May 2008. That

09:23:12

09:23:43

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09:24:47

witness had never, prior to that date, talked at all about the incident in which 032 was said by Marzah to have been involved, but on that day, the 15th of May, 375 suddenly came out with an account of the same incident, naming 032.

09:25:53 Now, the Prosecution then approached 032, and we have, in the exhibits, confidential exhibits, and so I'm not going to go into them in any great detail, but we have confidential exhibits D-479 and D-480, that both relate to witness 032. And I don't believe that - I don't want them put up in any event because they

09:26:40 are confidential, but D-479 shows a long list of disbursements, that means quite simply money paid either to or on behalf of 032, starting on the 8th of June of 2008, going through on nine different occasions during June, when he was paid several hundred United States dollars, and when I say dollars - I'm not going to

09:27:29 say United States dollars, all the time, if I use the expression dollars throughout my submissions then I refer to the United States dollar and no other country's dollar. He was seen nine times - sorry, he was seen 11 times or paid 11 times in June. He was paid eight times - nine times in July of 2008. In August

09:28:07 2008, he was paid two amounts of money. And in October 2008, he was paid more money on three different occasions. And that came to in excess of $3,000.

Now, that money was -

JUDGE SEBUTINDE: These being payments from which unit?

09:28:34 MR MUNYARD: Oh, from the Prosecution's fund.

That money was paid to him whilst he was said to be providing information, and it covers transport, lost wages, but essentially it is for information and support, financial support, to him.

I should say that on the 5th occasion when he was paid that money, he was also given a letter of immunity from Prosecution should he give evidence in this trial.

Now, what was interesting about that was that he was
09:29:34 clearly a confidant of witness TF1-375. Witness 375 started to give evidence in June of 2008, and he gave evidence in June 2008 about the very incident that he had only suddenly remembered the previous month when being interviewed by the Prosecution. In the meantime, he had to be - his evidence had to be interrupted. He
09:30:20 was sent back to West Africa and returned here to resume his evidence in August of 2008. Throughout all that time, the Prosecution are lavishing this large amount of money, over $3,000 over a matter of a few months, on this friend, contact, of 375,
09:30:57 who they were clearly, in our submission, clearly hoping to persuade to give evidence. And there can be no better illustration of that fact than the letter of immunity from Prosecution that he was given as early as June of 2008.

So here is somebody who is put into the hands of the Prosecution as a result of other evidence that was given in this
09:31:27 case, who is provided with a very considerable sum, and the sweetener of the offer of immunity from prosecution. He, in our submission, is a clear example of the process that has been followed in financial support for witnesses who the Prosecution are hoping to persuade to come to court and give evidence. As
09:32:13 you know, he himself didn't but his friend, 375, did come to court to give evidence and I'm now going to turn, if I may, to that particular witness. I should say that we have touched on this witness in paragraphs 1410 to 1423 of the final trial brief and I'm going to just highlight some of the relevant evidence of

that witness.

Now, this was a witness who was seen in total, I think I'm right in saying, 24 times by the Prosecution, certainly it was a figure in that order, interviewed many, many times by the Prosecution. He was seen between September 2005 and May 2008, and in that time he was provided by the Prosecution with over $4,000 and 825,000 leones, and he did not come into the protection - sorry, he came into the protection of the Court, that's to say he was also under the care of the witness and victims service from the 20th of August 2006. So the Court will appreciate that from the 20th of August 2006 up to May of 2008, he was being paid monies, expense was being incurred on his behalf by both the Prosecution and by the witness and victims section, and as we saw in the course of his evidence, the witness and victims section, from the 20th of August 2006 to the 15th of August 2008 spent a total of 38,359,200 leones, that's roughly speaking at that time I think about $10,000, bearing in mind the exchange rate at the time. That included 13 million, nearly a third of that, was subsistence allowance and a category called miscellaneous of 3 and a half million leones, over that period of time. Miscellaneous being explained by him as payment for an expensive computer course that he was sent on. But while he's in receipt of $10,000 worth of court money, he's also in receipt, for most of that same period of time, of over $4,000 worth of Prosecution money, as well as 825,000 leones.

Now, what was the money spent on? Why was he given this money? He is somebody who told the Court in the course of his evidence that on one occasion at least he was paid $50, $50, for taking another witness to see the Prosecution on his motorbike, a

distance of five minutes.

When asked, "Have you been paid $50 for spending that small amount of gasoline in your motorbike before?" He said, "Yes, they have been giving me gas more than that before."

09:37:35 He was also - he also told the Court that he wasn't satisfied with being given only $50 for a five-minute motorbike ride and was then given a hundred dollars for a second visit to the Prosecution and on that second visit, in fact, on both of those visits he admitted that he hadn't even told the Prosecution

09:38:01 the truth when he'd seen them on those two visits.

And yet, he didn't even know what the money was for. He told this Court, in August of 2008, that he received in June 2006, $100 on one occasion. Bear in mind that, of course, by that time he's also in the care of the witness service. He

09:38:37 received a hundred dollars from the Prosecution. "They gave me money, the money, I accepted it, I didn't know what it was for. I knew it was for the same transport purpose but for the meantime I took this amount of money, I can't remember what it was for."

And he went on to say when his actual expenditure was

09:39:01 analysed in the course of cross-examination, he went on to accept that he'd made a $90 profit on that particular occasion. Now, just pause there for a moment. What is $90, US dollars, worth to a Liberian or a Sierra Leonean, your average Liberian or Sierra Leonean, when in Sierra Leone your average decent hotel

09:39:32 receptionist earns roughly about $88 a month? What is $90 pure profit, not subject to tax, worth in the hand of someone in one of those countries?

Regularly, this man was being paid these round sums, and we see these round sums all the time, the evidence is littered with

examples of round sums. Only occasionally will you actually see 97,000 leones or $28.50 or some obviously specific expenditure. Most of the time they are round sums. And inevitably, we submit, inevitably, those round sums represent not just the cost to the
09:40:30 witness, but a reward for attending. Even, in our submission, even the most innocent and impartial witness is bound to feel a sense of obligation to the party paying him or her money of that sort, particularly when the money is being paid regularly and in some cases over a period of years.

09:41:03 And indeed sticking with 375, he also said that, on one occasion, when returning from a trip from one country to the neighbouring country, for which he was paid $200, he was given an additional $100, which he said was an appreciation from the Prosecution for him to use for his family.

09:41:38 Well, what, I ask rhetorically, is an appreciation, if it's not a gift?

He is also a witness who described - or agreed that the $50 that he was paid for, in effect, crossing the road, he agreed that - sorry, he took the view that that wasn't enough.

09:42:17 Now, how does the Court assess the impact of that sort of payment, or those sorts of payments, on witnesses? It is, in our submission, inevitable that it is going to have an effect on the witness, and where you find, as you will have seen in his evidence, where you find that there are a number of
09:42:53 inconsistencies in the evidence of the witness, a number of brand-new pieces of evidence coming out, a number of wholly implausible pieces of evidence from the witness, in our submission you will be driven to the conclusion that by coming out with all of this additional evidence, all of which of course

hostile to Mr Taylor, the accused, you will be driven to the conclusion, we say, that the financial benefits have had an impact, whether desired or not, on the testimony of the witness. And in his case, I need give you no better example than something
09:43:56 that he said about a witness who was involved in the killing of Sam Bockarie. Now, I'm being very careful in the way in which I phrase this: That witness told you -

MR KOUMJIAN: Excuse me. All of this evidence was brought out, I believe the subject counsel is getting to, was in closed
09:44:27 session so I suggest we do this in private session.

MR MUNYARD: I -

MR KOUMJIAN: One of the reasons we have to pay money to witnesses is to protect their lives, and it would exacerbate things if we put people at risk by saying information in open
09:44:45 session.

MR MUNYARD: Can I simply reiterate that I'm being -

PRESIDING JUDGE: Mr Munyard, you know what you're going to say, we don't, but are you going to quote something that was in closed session?

09:44:57 MR MUNYARD: I'm going to quote something that a witness said. It was said in closed session and if you wish me to go into closed session for this, then I'm happy to do so. It won't take long.

PRESIDING JUDGE: The question is one of identification.

09:45:13 MR MUNYARD: Yes.

PRESIDING JUDGE: You consider it could identify?

MR MUNYARD: Well, the way I was hoping to phrase it, I don't think it would, but I think it's going to be clearer if we go briefly into closed session and I deal with it in that way.

PRESIDING JUDGE: In that case, we will have a private session. And for purposes of record and the public, this short private session will enable people in the gallery to see but not to hear, and it is for the protection and security of a protected witness. Madam Court Officer, please put the Court into private session briefly.

[Open session]

MS IRURA: Your Honour, we are in open session.

MR MUNYARD: And my last point on that witness is just as he starts to talk about 032, so the Prosecution then start to lavish money and attention on 032. The link is obvious. The method is the same.

Now, I'm going to mover to a completely different witness now by way of further example, of the way in which money can impact on a witness's testimony, and this is a witness called Suwandi Camara, TF1-548. This is the witness who you may remember was engaged in heavy weapons training in Dr Manneh's bedroom. In the Mataba, which I think was in Tajura, a suburb of Tripoli about which we have been hearing a great deal in recent days. Suwandi Camara, of course, was called to bolster the Prosecution's argument that appeared to be live for quite a long time in the case that the whole joint criminal enterprise had started off in Libya. I think you'll search long and hard before you find that repeated or referred to at all in the Prosecution final trial brief, but they called evidence about Libya, as a result of which we had to call evidence in due course, and Suwandi Camara was called to say that he'd seen Foday Sankoh and Charles Taylor together at the Mataba.

No doubt in the intervals what he'd emerged from Dr Manneh's bedroom and left the heavy weapons behind. He is the man, uniquely, of the witnesses in this case, who purported to claim a connection between those two, Mr Taylor and Mr Sankoh, whilst in Libya. He was in regular receipt from the Prosecution of nice round sums of $100 a time, for his travel expenses. He told you, and we'll look at it in a moment, he told you how he

used to hire a car to go and see the Prosecution, to be interviewed. And he'd get travel expenses. And the car turned out to be, in local currency, dalasis, turned out to vary, the car hire turned out to vary from anything between about 30 cents to just under a dollar.

09:55:21

Now, let's give him the benefit of the doubt. Let's assume when he told you about that that he was talking about one way only. Let's assume - let's take the higher sum because he said at a later stage the hire car cost went up. So let's assume he had to pay two whole dollars out of his hundred dollars. What's his profit? Well, he said that he was given a hundred dollars once for a list of items, including loss of wages, that he was adamant that he hadn't lost wages. He said, They regularly - they usually give me $100. And when we looked at the amounts that he was being given, sometimes the heading would be, "loss of wages and transportation" and so on, and sometimes it would be for "meals, transportation and communication". Now, when he was asked about $100 that he received for "meals, transportation and communication", he said he didn't know how much the phone calls, that's communication, he didn't know how much the phone calls that he had to make cost, he said he thought they were expensive. But why is it, again, I ask rhetorically, because you know the answer, I would suggest, you would hardly need me to tell you, why is it he's being given these handouts of $100 at a time? Because clearly in each and every case he's not just receiving his legitimate expenses, he's also being rewarded. This was the witness you may recall who constantly demanded that I should not use the expression "you were paid $100". In his culture, being paid had a different connotation from simply receiving or being

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given assistance, if that helps you to identify him in your minds.

In any event, he was given a similar amount of money under the heading, "Security." Well, he couldn't really work out what
09:57:59 the security was that he was given the money for. He started off by saying to you, "I think it was because when people from the Prosecution came to see me, I took them on a cultural tour," and he seemed to be implying that that was what the $100 for security was all about. And then he said, "Well, actually, I did ask them
09:58:24 for money to put a fence around my orchard."

When he was asked if he'd actually done it, if he'd put the fence around his orchard, he said, "Well, I'd started it by the time I left for The Hague." I mention that in case it's in your minds that the security that he needed putting a fence around his
09:58:54 orchard, was somehow to protect his premises from potential people who would do him no good because of his cooperation with the Prosecution. But it's perfectly plain that it was nothing to do with that. He wanted a fence around his orchard, he hadn't even completed it by the time he left for The Hague, having had
09:59:16 the money some good time before.

Now, that is an example of someone else who was paid handsomely for the evidence that he was going to come to court and give, evidence which, as I said, was unique in this case in that it put Mr Taylor and Mr Sankoh together, meeting together,
09:59:45 in the Mataba in Libya. As it happens, that aspect of the case, that aspect of the Prosecution's case, appears to have fallen away over time, and you do not see it reflected in their final trial brief. But that isn't the point. My point is, another witness, who, we submit, very clearly and very obviously, has

received financial incentives to tell stories that are favourable to the Prosecution.

And my final note on Suwandi Camara was this: When he was asked about receiving regular payments of nice round sums of a 10:00:35 hundred dollars a time, he said it meant very little to him because, as he put it, "I'm used to being given far more than $200 by people, brothers" who he met presumably at home in the Gambia. That was actually his evidence to you. Oh, a hundred from the Prosecution to me is nothing. People give me far more 10:01:06 than that all the time.

Clearly, someone you may think who is prepared to make it up as he goes along and presumably, because he's had the advantage of these rewards.

Now, I want to turn, then, to Isaac Mongor, 10:01:45 Witness TF1-532. Now, this is a classic example, in our submission, of a witness who we say the Court should exercise such a degree of caution about as to completely disregard his testimony. From start to finish, Isaac Mongor is somebody who contradicted himself, who told obvious lies, who couldn't 10:02:20 remember from one day to the next what he'd told you in the course of his testimony, and who, of course, was another one who was a beneficiary of the generous largesse of the Prosecution fund. He was somebody who we established at the outset had a good command of English. In 24 interviews, he only had an 10:02:50 interpreter present on five occasions. He had had schooling in English, up to a late age. He attempted to answer my questions before I had finished asking them, and therefore before they had been fully translated. And answer my questions in English. And if you want an example of that, and it's a particularly

questions.

PRESIDING JUDGE: Thank you, Mr Munyard. That is all we have from the bench and I will therefore restate that we will adjourn now and resume court tomorrow at 9 o'clock.

11:39:54 Please adjourn court.

[Whereupon the hearing adjourned at 11.40 a.m., to be reconvened on Friday, the 11th day of March 2011, at 9.00 a.m.]



Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

FRIDAY, 11 MARCH 2011
9.00 A.M.
HEARING

TRIAL CHAMBER II

Before the Judges:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice El Hadji Malick Sow, Alternate
For Chambers:	Mr Simon Meisenberg Ms Erica Bussey
For the Registry:	Ms Fidelma Donlon Ms Rachel Irura Mr Alhassan Fornah
For the Prosecution:	Ms Brenda J Hollis Mr Nicholas Koumjian Mr Mohamed A Bangura Ms Ruth Mary Hackler Ms Ula Nathai-Lutchman Mr Nathan Quick Ms Maja Dimitrova
For the Accused Charles Ghankay Taylor:	Mr Courtenay Griffiths, QC Mr Terry Munyard Mr Morris Anyah Mr Silas Chekera Ms Logan Hambrick Ms Salla Moilanen

left Kailahun to join SAJ Musa, and so far as the latter is concerned, ample evidence to demonstrate his antipathy towards the RUF.

Justice Sebutinde asked a question regarding witnesses paid by the Prosecution at the time when WVS should have paid all expenses. We draw attention to rule 39(2) which states, "In the conduct of an investigation," and we stress that, "the Prosecutor may take all measures deemed necessary for the purpose of the investigation including the taking of any special measures to provide for the safety, support and assistance of potential witnesses and sources."

The Defence position is that only WVS may provide for witnesses after the investigation stage. Rule 34(A) provides for WVS to provide such assistance. And we submit it is an abuse of the Prosecution's discretion under rule 39(2) for the WVS and the Prosecution to pay a person at the same time, because the person is either a potential witness or a witness. The person can't be both at the same time. An individual - and individuals who fall into this category of overlapping payments include: TF1-274, TF1-362, TF1-334, and that list is not exhaustive. But if your Honours require further assistance in that regard, we may be in a position to provide that in writing.

Next point: The reason why we have dwelt on JCE in detail is that it lays the basis for all the alleged interactions between Charles Taylor and the RUF, or the RUF/AFRC, and it therefore establishes the factual basis for all other modes of liability. That's why it's so central to this case.

Finally this, your Honours: When in July of 2007 I took over as lead counsel for Charles Taylor, it was on the basis that

thank those opposite for their endeavours ensuring that this trial has proceeded smoothly, and it has been a personal honour for me to have been involved in this trial. Thank you very much.

PRESIDING JUDGE: Mr Griffiths, I would like, on behalf of
13:32:18 myself and my learned colleagues, to first deal with the matter that you raised personally concerning the apology and your willingness to give that and to draw a line. And we will proceed in that way and we will hear you out.

MR GRIFFITHS: Well, I do apologise to the Court.

13:32:37 PRESIDING JUDGE: Thank you. That will draw a line under that matter and bring it to an end.

As there are no other matters from the parties, I therefore, in accordance with the provisions of rule 87(A) of the rules of procedure and evidence declare the hearing closed
13:33:01 and that the Trial Chamber shall now deliberate in private.

The parties will accordingly be notified when a judgment is to be delivered.

I, too, take the opportunity, on behalf of my learned colleagues and myself, to thank counsel, the court management
13:33:20 service, our own Trial Chamber staff, the interpreters, transcribers and the many others who have worked throughout this trial, for their dedication and their contribution.

The Court will be adjourned to a date to be fixed.

Please adjourn the court.

13:34:10 [Whereupon the hearing adjourned at 1.34 p.m.]

C. (1)

vi. Trial Transcripts 2012



Case No. SCSL-2003-01-T

**THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR**

Thursday, 26 April 2012
11.00 a.m
JUDGEMENT

TRIAL CHAMBER II

Before the Judges:	Justice Richard Lussick, Presiding Justice Teresa Doherty Justice Julia Sebutinde Justice El Hadji Malick Sow, Alternate
For Chambers:	Ms Jessica Neuwirth Ms Doreen Kiggundu Ms Diana Goff Mr Johann Soufi Ms Helen Worsnop Ms Alice Lam Ms Elizabeth Budnitz Ms Lauren Turner Mr Lachezar Yanev
For the Registry:	Ms Fidelma Donlon Ms Elaine Bola-Clarkson Ms Rachel Irura Mr Alhassan Fornah Ms Zainab Fofanah
For the Prosecution:	Ms Brenda J Hollis Mr Nicholas Koumjian Mr Mohamed A Bangura Ms Nina Tavakoli Ms Ruth Mary Hackler Ms Ula Nathai-Lutchman Mr James Pace Mr Cóman Kenny
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths, QC Mr Terry Munyard Mr Morris Anyah Mr Silas Chekera Ms Logan Hambrick
Office of the Principal Defender:	Ms Claire Carlton-Hanciles

Additional Protocol II pursuant to Article 3(a) of the Statute.

Count 4: Rape, a crime against humanity, punishable under Article 2(g) of the Statute.

Count 5: Sexual slavery, a crime against humanity, punishable under Article 2(g) of the Statute.

13:11:53

Count 6: Outrages upon personal dignity, a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II pursuant to Article 3(e) of the Statute.

Count 7: Violence to life, health and physical or mental well-being of persons, in particular cruel treatment, a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II pursuant to Article 3(a) of the Statute.

13:12:16

Count 8: Other inhumane acts, a crime against humanity, pursuant to Article 2(i) of the Statute.

Count 9: Conscripting or enlisting children under the age of 15 years into the armed forces or groups, and using them to participate actively in hostilities, another serious violation of international humanitarian law pursuant to Article 4(c) of the Statute.

13:12:40

Count 10: Enslavement, a crime against humanity pursuant to Article 2(c) of the Statute.

13:13:03

Count 11: Pillage, a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II pursuant to Article 3(f) of the Statute.

Thank you, Mr Taylor, you can sit down now.

13:13:34

Now, we come to the sentencing process.

Firstly, I remind the parties of their obligation under Rule 100, which provides for the submission of information relevant to sentencing by the Prosecution no more than seven days

after conviction and by the Defence no more than seven days after the Prosecution's filing. This seven-day period runs from the date of conviction, which is today. By the Trial Chamber's calculation, in order to comply with Rule 100, the Prosecution's
13:14:14 filing under Rule 100 must be made by close of business Thursday, 3rd of May. The Defence filing under Rule 100 on the Prosecution -- on the Trial Chamber's calculation must be no more than seven days after that, which would be by close of business Thursday, 10th of May.

13:14:40 Under Rule 100, the parties can provide information relating to factors that affect sentencing, which would include written submissions and testimonials, if any. The extensive judgement summary that is being delivered today will suffice for this purpose, since it is a reasoned opinion of the Trial Chamber
13:15:03 which sets out comprehensively the grounds for convicting Mr Taylor.

Now, secondly, the Trial Chamber considers that this is an appropriate case to fix a sentencing hearing, and fixes such hearing, which will be for additional oral arguments only, for
13:15:27 Wednesday, 16th of May, at 9.30 a.m. At the sentencing hearing, the Prosecution shall limit the length of its sentencing submissions to a time not exceeding one hour. The Defence shall limit the length of its sentencing submissions to a time not exceeding one hour.

13:15:56 If Mr Taylor wishes to address the Court prior to being sentenced, then this will be his opportunity to do so, and he shall limit the length of his address, if any, to a time not exceeding 30 minutes.

Thirdly, a sentencing judgement will be pronounced on

Wednesday, 30th of May, at 11.00 a.m.

Lastly, the accused is remanded until Wednesday, 16th of May, at 9.30 a.m., for a sentencing hearing.

The Court is hereby adjourned to that date.

13:17:33 [Whereupon the Judgement adjourned at 1.17 p.m.]

Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

Wednesday, 16 May 2012
09.30 a.m
SENTENCING HEARING

TRIAL CHAMBER II

Before the Judges:	Justice Richard Lussick, Presiding Justice Teresa Doherty Justice Julia Sebutinde
For Chambers:	Ms Doreen Kiggundu Ms Diana Goff Ms Helen Worsnop Ms Yael Rothschild Ms Elizabeth Budnitz Ms Rebecca Browning
For the Registry:	Ms Fidelma Donlon Ms Rachel Irura Ms Zainab Fofanah
For the Prosecution:	Ms Brenda J Hollis Mr James C Johnson Mr Nicholas Koumjian Mr Mohamed A Bangura Ms Nina Tavakoli Ms Ruth Mary Hackler Ms Leigh Lawrie Mr Christopher Santora Ms Kathryn Howarth Ms Ula Nathai-Lutchman Mr James Pace Mr Cóman Kenny Ms Danielle Fritz
For the accused Charles Ghankay Taylor:	Mr Courtenay Griffiths, QC Mr Terry Munyard Mr Morris Anyah Ms Logan Hambrick Ms Alexandra Popov Mr Michael Herz Ms Szilvia Csevar Ms Habibatou Gani Ms Carly Lenhoff Mr James Kamara
Office of the Principal Defender:	Ms Claire Carlton-Hanciles

first matter is the delivery of the full judgement, which is a huge judgement. The Trial Chamber had aimed at having it published last Monday. However, the technicians who were formatting the judgement for publication have had challenges due to the voluminous size of the judgement, and they was not able to meet the Monday dead-line.

However, they have guaranteed that the judgement will be ready for publication before close of business this Friday.

Now, the second matter is as follows: Before proceeding today, it gives us no pleasure to have to place on record some explanation for the extraordinary situation which occurred at the end of the previous sitting of the Trial Chamber on 26th of April, 2012, on which date the Trial Chamber delivered its summary judgement.

On that date, at the conclusion of the proceedings, the Alternate Judge, without any notice to the Trial Chamber, proceeded to deliver his own opinions from the bench on the judgement that had just been delivered on these proceedings and on the Special Court itself. What the Alternate Judge did was in contravention of the agreement, the Statute, and the Rules which govern this Court and amounted to misconduct.

The purpose of attaching an Alternate Judge to a Trial Chamber is that he can be designated to replace a sitting Judge if that Judge is unable to continue sitting. See Article 12 of the Statute. No such designation has been made in the present case. Further, during the proceedings, the Alternate Judge may pose questions through the Presiding Judge, but there is no other entitlement for an Alternate Judge to speak during court proceedings. See Rule 16 bis (B). Moreover, an Alternate Judge

does not have any say in decisions of the Trial Chamber. He is obliged to be present during deliberations off the Trial Chamber, but he is not entitled a vote thereat. See Rule 16 bis (C). It follows that it was wrong for the Alternate Judge, who has not been designated to replace a sitting Judge, to offer an opinion, whether dissenting or concurring, on a judgement of Trial Chamber.

09:37:15

The behaviour of Judge Sow was referred by the Council of Judges to a plenary meeting of the Judges of the Special Court. We three Trial Chamber Judges abstained from voting at that plenary.

09:37:34

I will now read onto the record the resolution of the plenary.

Resolution on complaint by Trial Chamber II against Justice Malick Sow. The Judges of the Special Court for Sierra Leone sitting on the 7th and 10th of May, 2012, in the 17th plenary of Judges, pursuant to Rule 15 bis (B) of the Rules of Procedure of Evidence of the Special Court which mandates the Council of Judges who refer an allegation of unfitness of a Judge to sit to the plenary if it determines that, one, the allegation is of a serious nature, and two, that there appears to be a substantial basis for same.

09:37:57

09:38:27

Pursuant also to Rule 24(iii) of the Rules, which provides that the Judges shall meet in plenary to decide upon matters relating to the internal functioning of the Chambers and the Special Court, seized of the complaint by the Judges of Trial Chamber II, dated 26th of April, 2012, against Justice Malick Sow, Alternate Judge, considering the response of Justice Malick Sow, dated the 1st of May, 2012, to the complaint, having also

09:38:53

considered the views and recommendations of the Judges on the matter and the response of Justice Malick Sow to those views pursuant to Rule 15 bis (C) have reached the following conclusions:

09:39:39 1. The plenary declares that Justice Malick Sow's behaviour in court on the 26th of April, 2012, amounts to misconduct rendering him unfit to sit as an Alternate Judge of the Special Court.

2. The plenary recommends to the appointing authority 09:40:03 pursuant to Rule 15 bis (B) to decide upon the further status of Justice Malick Sow.

3. Pursuant to Rule 24(iii), the plenary directs Justice Malick Sow to refrain from further sitting in the proceedings pending a decision from the appointing authority.

09:40:28 Done in Freetown, Sierra Leone, this 10th day of May, 2012, for and on behalf of the plenary, signed by the President Justice Jon Kamanda.

Now, Ms Hollis, you have one hour to address the Court and that will start from now which will bring you up to 20 to 11.00 09:41:05 you must complete your address.

MS HOLLIS: Thank you, Mr President. May it please the Court. In arriving at a sentence --

PRESIDING JUDGE: I'm sorry. I didn't see you standing there.

09:41:13 MR GRIFFITHS: I apologise to my learned friend. Your Honour, can I ask -- raise two matters, preliminary matters, regarding the timing of the proceedings today. I don't know whether Your Honours were considering have a mid-morning break at some stage, but it would perhaps assist us if that were to be

African leaders took the initiative to convince him to resign, as stated by then president of Ghana, John Kufuor. And that is found at Exhibit D408, page 13.

Mr Taylor's alleged lengthy public service to his country is also not worthy of mitigation. Their argument relies on the case Renzaho and that case is distinguishable. Here, Mr Taylor's convictions are for crimes committed against civilians in Sierra Leone, not in Liberia where he lived and served and worked as president. Thus, his alleged acts of good character and lengthy leadership in Liberia, even if true, bear no relevance and have no positive impact on the lives of his victims in Sierra Leone. On this basis alone, this alleged mitigation should be rejected.

But these arguments also ignore that Mr Taylor used Liberian security forces as conduits in his links with the RUF and AFRC forces, using them to take arms back and forth and to bring diamonds to him. It also ignores that Mr Taylor provided the RUF with a guesthouse, providing communications equipment, security, and domestic staff in Monrovia, a guesthouse from which he sent arms and ammunition to Sierra Leone and that he used to obtain diamonds from Sierra Leone.

These assertions also ignore evidence of Mr Taylor's exploitive and despotic rule in Liberia, including Prosecution Exhibits 449 and 450, showing that the Carter Centre closed its office in Monrovia, publicly criticising Mr Taylor's government for no longer sharing the goals of a democratic society, citing to reports of serious human rights abuses, the use of funds for extra budgetary purposes, the intimidation of journalists and others in Liberia, and criticising Liberia's role in the

Mr President.

PRESIDING JUDGE: Now, we'll adjourn and we'll come back at 15 minutes from now. Say at 25 minutes to 11.00.

[Break taken at 10.25 a.m.]

10:42:59 [Upon resuming at 10.43 a.m.]

PRESIDING JUDGE: Please go ahead, Mr Griffiths.

MR GRIFFITHS: May it please Your Honours.

Again can I express my gratitude for the time allowed to consult with Mr Taylor. Equally, we are grateful for

10:43:14 Your Honours's indication this morning as to when the final written judgement will become available. Although it's still a matter of concern to us that we are here at this sentencing hearing without the benefit of Your Honours' written reasons.

For this reason -- for example, during the course of my

10:43:38 learned friend's Ms Hollis's address this morning, in effect a factual issue was raised as to the evidence supporting the finding of planning in relation to the Freetown invasion, and without the assistance of the final written brief, of course, that creates difficulties for all the parties in our submission.

10:43:59 But in any event, we submit that what emerges from Your Honours' summary judgement is a more modest vision of Mr Taylor's involvement in the Sierra Leonean conflict than that originally suggested by this Prosecution. We need to remind ourselves that as recently as April of last year, David Crane, once Chief

10:44:39 Prosecutor of this Court, was still maintaining, and I quote:

"The civil war in Sierra Leone ripped apart an entire region of West Africa, spawned by the president of Libya, Colonel Muammar Gaddafi, and supported by President Blaise Compaoré of Burkina Faso, and Charles Taylor of Liberia. This take-over of

an entire country for their own personal criminal gain was a rare event in conflict not seen since the Middle Ages."

The West African joint criminal enterprise was designed to support the geopolitical take-over of West Africa by Gaddafi, where surrogates such as Compaoré and Taylor, amongst others, would control the region on his behalf.

10:45:25

Now we need to remind ourselves that that was the paranoid mindset which created the indictment in this case. This overblown claim has been rightly rejected by this court. What this Court has found - and for which Charles Taylor is to be sentenced - is that he was assisting combatants, combatant factions, in the foreknowledge that they was perpetrating atrocities in another country.

10:45:52

Now, a distinguished professor of law, and one of the commissioners on the Sierra Leonean Truth and Reconciliation Commission, has remarked as follows in respect of this Court's finding - that's Professor William Shabas:

10:46:14

"The conclusion of the Trial Chamber in Charles Taylor seems based on uncontroversial principles. He or she who provides significant assistance to a participant in a conflict, knowing that the participant is perpetrating atrocities against civilians, is guilty of aiding and abetting such crimes. This is straightforward, and it leads in an interesting direction."

10:46:38

Atrocities were perpetrated on all sides in the Sierra Leone conflict. This emerges from the case law of the Special Court as well as from the report of the Truth and Reconciliation Commission. It was notorious at the time in 1998 and 1999. So what are we to make of those who supported the other side in the conflict? For example, the Blair in the

10:47:06

United Kingdom provided assistance and support to the pro-government forces. The pro-government forces had their own sinister militia involved in rapes, recruitment of child soldiers, amputations, cannibalism, and other atrocities. Two of
10:47:51 those involved were convicted by the Court, and a third, who was a minister in the government supported by the United Kingdom, died before the trial completed. What is the difference between Blair and Taylor in this respect?

Moving beyond Sierra Leone, can we not blame the French
10:48:09 government for aiding and abetting genocide given its support for the racist Rwandan regime in 1993 and 1994? The crimes of the regime were well publicised, not only by an NGO commission of inquiry but also by Special Rapporteurs of the United Nations, and yet the French continued to provide assistance in personnel,
10:48:35 arms, and ammunition to the Habyarimana regime.

What about those who supported the various sides of the war in Bosnia, or in Sri Lanka? Are American officials who backed Saddam Hussein when he perpetrated atrocities in Iran during the 1980s also guilty of aiding and abetting in war crimes and crimes
10:48:57 against humanity?

What of those Western states that continued to bolster the apartheid regime in South Africa during the 1970s and 1980s when they were fully aware of the racist system that has been characterised as a crime against humanity? But it doesn't end
10:49:19 there, because as recently as the 10th of May of this year, Human Rights Watch, no great friend of Charles Taylor, published an article by Reed Brody in which he said:

"In Taylor's case, the Court found that he knew of the atrocities being committed against civilians by Sierra Leonean

allies and of their propensity to commit crimes. Nevertheless, the Court said Taylor continued to ship arms to the rebels and provide them with political and moral support and encouragement."

The principle is akin to giving more ammunition to an armed 10:49:59 man on a killing spree. It's striking that the very same legal reasoning could apply to those in Washington, Moscow, or elsewhere, who provide military assistance to abusive forces half a world away.

Take, for example, the case of former US Secretary of State 10:50:24 Henry Kissinger and East Timor. Declassified documents revealed that after the Timorese declaration of independence from Portugal in 1975, Kissinger and President Gerald Ford, fearing that the new country would become a communist outpost, gave Indonesian President Suharto the green light to invade the island in a 10:50:46 Jakarta meeting the day before the invasion. The United States were then supplying Indonesia's military with 90 per cent its arms, and Kissinger himself described their relationship as that of donor/client.

Now, I refer to these articles, Your Honours, for this 10:51:10 reason, because they remind us of the danger of telling a single story. In our submission there must be a balance of stories. However, the reality is that though the decision of this Court in convicting Mr Taylor of aiding and abetting the conflict in Sierra Leone has been trumpeted, and again this morning, are 10:51:42 sending a non-equivocal message to world leaders that great office confers no immunity, the fact is that really two messages are being sent.

The first message is, if you run a small, weak nation, you may be subject to the full force of international law; whereas if

you run a powerful nation, you have nothing whatsoever to fear. Thus, Staff Sergeant Robert Bales, a US soldier, premeditatedly killed and burnt the bodies of 17 unarmed civilians in Afghanistan, yet we have not seen one article in the newspapers or one report in the Western media that brands this crime with the condemnation it demands by labeling it either a war crime or a crime against humanity.

This is because the fact is that acts are defined as criminal because it is in the interests, or at least not against the interests, of a ruling class to define them as such. We, therefore, submit unequivocally that there is nothing universal about Western states' claims to support universal human rights. Rather, the claim is based on the assumption that some states are more civilised than others. Thus, when the former British Foreign Secretary, the late Robin Cook was asked on the BBC shortly after the United Kingdom became a signatory to the Rome Treaty whether the newly constituted ICC thereby created might one day indict Western leaders for their decision to go to war in Iraq for a second time, he retorted, outraged and indignant, and I quote:

"If I may say so, this is not a court set up to bring to book prime ministers of the United Kingdom or presidents of the United States."

So we ask, who was it set up for, then? Who was it set up for? We submit that the answer is plain to see because it is notable that the guardians of international justice have yet to find a single crime committed by a great, white, northern power against people of colour. That is because in reality, international criminal justice is governed by the law of gravity.

It always travels from top to bottom, from north to south.

And in this regard, we return to a point we have consistently made. That is the centrality of selectivity in this process, Selectivity of denunciation, selectivity of investigation, selectivity of prosecution, and we also submit selectivity of immunity. That is why we were driven to introduce our closing written submissions in this case with these words from which we do not for one moment seek to resign. The Prosecution of Charles Taylor before the Special Court for Sierra Leone has been irregular, selective, and vindictive from its inception. Examined from any vantage point imaginable, the case against Taylor has as its core political roots and motives and the inexorable determination of the United States and Great Britain to have Taylor removed and kept out of Liberia at any cost.

Indeed, this case directly raises the question of whether the judicial process can be fashioned into a political tool for use by powerful nations to remove democratically elected leaders of other nations that refuse to serve as their handmaidens and footstools.

From the outset of these proceedings we have denounced this trial as being political. We have labeled this Prosecution as riddled with hypocrisy and untruth, and we are not about to stop now. At each stage of these proceedings we have been consistent and we are not about to reject any aspect of our case at this point, not for one instance.

But it is against that background that we should view the Prosecution's demand for a sentence of 80 years' imprisonment for a 64-year-old man.

But again, there is nothing surprising here. I remind myself of the contents of Defence Exhibit D481, a leaked code cable attributed to the US ambassador in Liberia. However, the best we can do for Liberia is to see to it that Taylor is put away for a long time. And we cannot delay for the results of the present trial to consider next steps.

So it seems that interests other than that of the people of Sierra Leone are being served by this demand for 80 years. Throw away the key.

Now, there are three matters that I would like to deal with at that stage in respect of the submissions made by my learned friend this morning.

First of all in relation to the question asked by Justice Doherty, we have found an ICTY authority called Blaskic, dated 1996, and it provides the legal basis for our submissions other than the English legislation to which we have referred in our written submissions. Where relevant at paragraph 17 and 18, the authority provides as follows:

"Close scrutiny of the various national legislations shows that states tend to uphold the same basic concept of house arrest and, in addition, lay down similar preconditions for the imposition of such measures."

By contrast, the requirements to be fulfilled by the person detained under house arrest vary greatly, all the more so because they are normally set out by individual judges for specific cases and in the light of the specific circumstances of each case.

As for the basic concept of house arrest, there is broad agreement that it covers detention in one's home or within the confines of the house or place outside a prison. It is widely

specified in national legislation and held by courts that house arrest is a form or class of detention. For all purposes, including the right to impugn the legality of detention, and the right to have this period spent under house arrest taken into
10:59:47 account for determining the penalty, credit should be given to the convicted person for the period, if any, during which the convicted person was detained in custody pending his surrender to the Tribunal or pending trial or appeal should also apply to such form of pre-trial detention.

11:00:10 And the final point we make in this regard is this. In a customary careful way, my learned friend went through in detail the submissions made by the Defence in regard to that issue of house arrest in Calabar. One important omission, however, was the statement by David Crane, a Prosecutor -- the Chief
11:00:45 Prosecutor, who himself characterised Taylor's period in Calabar as house arrest.

The second matter that I would like to address which arises from my learned friend's submission is this. The Prosecution's concerns about Annexes G, J, and U as containing information
11:01:12 going to the acts and conducts of the accused is misplaced. The rules for admission of information by the Defence at the sentencing phase does not have a restriction similar to that of Rule 92 bis, which deals with the admission of written evidence at trial.

11:01:39 In any event, the information contained in the annexes does not, in our submission, go to proof of the acts and conduct of the accused in relation to the commission of the crimes charged, and so, in our submission, should not be excluded.

The third and final matter which arises from my learned

friend's submission which I would like to address is this. Now, the point was made that at this stage there is no absolute certainty as to the geographical location where Mr Taylor will serve any sentence imposed by this Court. This consequently
11:02:30 leaves open this possibility: Your Honours could, we submit, take on board our submissions as to the aggravating nature for an African to be serving a sentence thousands of miles away on a different continent. And Your Honours could take that into account in, for example, providing in your sentence for
11:02:58 alternative sentences, so that if the sentence is to be served in the United Kingdom, these considerations apply; if elsewhere, then different considerations may apply. That, of course, is a basic, we would submit, sentencing exercise.

Now, My Lord, turning now to the mitigating factors which
11:03:24 we have set out in detail in our written submissions, and I assure Your Honours that I will not be going through all of those in detail, but I do appreciate that the art of mitigation is to establish here, in this court, on a balance of probabilities, certain mitigating circumstances.

11:03:50 As I say, we have set these out clearly in our written sentencing brief, and we did so whilst appreciating that international sentencing law and practice is not yet defined by exact norms and principles and, as yet, there is no body of international principles concerning the determination of
11:04:17 sentence, notwithstanding the huge volume of sentencing research and the extensive modern debate of sentencing principles. Moreover, international judges receive very little guidance in sentencing matters. This situation can lead to inconsistencies and may increase the risk that similar cases will be sentenced in

different ways.

This is particularly the situation in this unique situation, what is described as being an important historical moment with very little precedent. There is very little guidance for Your Honours in this unique situation.

But turning onto other matters beyond those principles, we have, from the outset, conceded that crimes were, indeed, committed in Sierra Leone. That Your Honours have found this to be the case is therefore hardly surprising because the issue was not, of course, whether the atrocities were committed but, rather, the role played in them by Charles Taylor.

Nonetheless, for almost five years we in this trial shared a collective experience. We have relived lost lives. We felt the pain of lost limbs, the agony of not only rape in its commonly understood sense, but also the rape of childhood, the rape of innocence, possibly the rape of hope. We have recorded the destruction of homes and communities. All the consequences of war, whenever waged, whatever the countries involved, for war causes men and women to lose their infancy as they become infantrymen and women, an English word. So child soldiers is not a recent phenomena, and it's not -- it's certainly not restricted to Africa. It has a very long pedigree indeed.

So in that regard, we ask you to contrast two situations: Firstly, a child soldier, forcibly recruited, enduring bitter experiences in the denial of his or her childhood, left militarised, uneducated, with few life chances, abandoned to a life of rejection, pain, and possibly crime, exacerbated, no doubt, by the effects of post-traumatic stress disorder. Now, contrast that with a drone controlled from a bunker in Nevada

which fires a missile into a compound in Northern Pakistan, killing entire families indiscriminately, including babies. They have no time to feel pain in such clinical PlayStation-type destruction.

11:08:09 Is there a choice between the two in terms of their criminality? Are they not both crimes equally worthy of human condemnation? Consequently in this sentencing exercise, we should beware of applying double standards.

Now, for the purposes of these submissions I propose to
11:08:37 address four matters and four matters only. Firstly, in terms of mitigation, the period of offending as set out diagrammatically at Annex 4 of our sentencing brief. Secondly, Charles Taylor's role in bringing peace to Sierra Leone. Thirdly, his voluntary departure from office. And finally, his age. I also intend to
11:09:10 point to a potential pitfall in the sentencing exercise.

So, first of all, the period of offending. Now, My Lord, I'd inquired of the Court Manager whether our Annex F, which is this chart, could be put up on our screens. Yes.

Now these -- this diagram --

11:10:17 PRESIDING JUDGE: We don't have it on our screen yet, Mr Griffiths.

THE REGISTRAR: Your Honours, if the parties and the Chamber could please press the "Evidence" button, they would be able to view the chart.

11:11:27 MR GRIFFITHS: Your Honours, to save time, could I hand out three copies, because I should be able to manage without it.

PRESIDING JUDGE: Thank you, Mr Griffiths. I've just been handed a copy, so that should do.

MR GRIFFITHS: Your Honours, sometimes looking at a diagram

helps to focus the mind more clearly as to what the true issues are, and we can see here that the bulk of the offending occurs within this period in the middle of the diagram, and it basically covers a roughly 12-month period, that is about from March 1998 to February 1999.

11:12:12

That period of madness, triggered by the ECOMOG intervention, culminating in the Freetown invasion. The only two crimes for which he stands to be sentenced which endured for an extended period of time during the indictment period were the recruitment and use of child soldiers and enslavement, which are these two long lines here. But you will see that the other crimes are, for the most part, concentrated within that time-scale.

11:12:35

Now we submit that that fact must have certain consequences in terms of sentence.

11:13:01

Moving onto Mr Taylor's role in the peace process. We boldly submit that peace would not have come to Sierra Leone but for the efforts of Charles Taylor. In this regard, we point in summary to four critical interventions by the president of Liberia: His facilitation of the Lomé Peace Accord; secondly, his efforts in securing the release of the captured UNAMSIL personnel; thirdly, his brokering of the cessation of hostilities by the West Side Boys; and finally, his role in the appointment of Issa Sesay as acting leader of the RUF, thereby ensuring the continuation of the Lomé Peace Accord.

11:13:36

11:14:31

These are all well documented, as highlighted in our sentencing brief at paragraph 122, and were all central and essential for the bringing of peace to Liberia's neighbour, which Mr Taylor has oft repeated was essential for stability in his own

country.

Now, I appreciate that this Court has found that in making these efforts, Mr Taylor was acting like a two-headed Janus. We, of course, note the contents of paragraph 119 of the summary judgement. However, in our view, for sentencing purposes, the following factual propositions are true:

One, we submit that the Trial Chamber should concentrate on what was objectively achieved by Mr Taylor's involvement, and we do maintain that but for Mr Taylor's involvement, peace would not have come to Sierra Leone.

The second proposition which we would ask Your Honours to adopt is this: It should be further noted that after the retreat from Freetown in early 1999, there was no further major outbreak of violence in Sierra Leone so that any assistance provided were not used to break the peace in that country.

Further, Mr Taylor has not been convicted of having planned any actions in Sierra Leone after 1999. Thereafter, the most that can be pointed to is the use of the RUF to fight against LURD after their incursions into Liberia, which we would describe as an act of self-defence.

Thirdly, voluntary resignation from office. His voluntary resignation from office is a further matter we would seek to emphasise. Contemporary events in Syria informs us that power is not easily relinquished. By stepping down, Charles Taylor saved Liberia and prevented the contagion of further warfare spilling over into neighbouring countries and thereby further destabilising the sub-region. There is, we say, an important lesson here for which he should be given credit.

Finally, the age of the offender. We only have to do the

math. We all recognise that to sentence a 64-year-old man to 80 years in prison is, in effect, a guarantee that he will die in prison. In fact, if not in name, what is proposed is a life sentence, a sentence which cannot be imposed by this Court. Even
11:18:29 a sentence of 40 years would, in this case, in all likelihood have the same consequence.

Now, we would submit that it's a basic sentencing principle that the possibility that an accused person will not live to be released is a matter which should have a major impact on a
11:18:56 sentencing decision; thus, the Court may think it would be proper to adjust the sentence to do what it reasonably can -- can do to avoid the possibility of Mr Taylor dying in prison.

Now I mentioned earlier a possible pitfall in this sentencing process. Now, we say that the Court should be mindful
11:19:28 of its rejection of the joint enterprises pleaded by the Prosecution and also the rejection of the notion of command responsibility. Conscious of those important findings, the concept of planning should not be expanded into a surrogate for those rejected modes of liability; that is, the limits of the
11:19:56 concept of planning should not be extended to encompass all the underlying crimes.

I come, then, to conclude, Your Honours. In conclusion we remind ourselves that the Statute which established this court provided that this court shall have the power to prosecute
11:20:24 persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since the 30th of November, 1996, including those leaders who in committing such crimes have threatened the establishment of and implementation of

the peace process in Sierra Leone.

We say that by seeking a sentence so offensive to logic and reason, this Prosecution endangers that peace. People in Liberia quite justifiably, in our submission, are asking the question: How can our former president be sentenced to 80 years in prison, while next door, in Sierra Leone, former President Kabbah goes free? Many Liberians regard this as being vindictive.

Did he, too, not share the greatest responsibility? We submit this has the potential to increase tensions between those two states. In short, such a sentence as demanded is, we say, erroneous in principle and endangers the very peace this Court was established to maintain.

And finally we say this. Retribution should never be the sole criterion in sentencing, neither deterrent. Every accused, in our submission, must be left with some hope, must be able to see the light at the end of the tunnel, however long that tunnel must be. And we submit that should be a guiding consideration in this sentencing exercise.

Thank you.

PRESIDING JUDGE: Thank you, Mr Griffiths.

JUDGE DOHERTY: Mr Griffiths, I've heard your submissions and also, obviously, read your submissions. Two questions.

In your submissions, both oral and written, you again speak of the selective prosecution of Mr Taylor, notwithstanding that the Trial Chamber stated in their decision with regard to the issue of selective Prosecution, the Trial Chamber finds that the accused was not singled out for selective prosecution. I therefore ask if your submission is by way of relitigating, and if not relitigating, how I must consider that submission as a

mitigating factor.

MR GRIFFITHS: Of course, Your Honour, we are aware of the Trial Chamber's finding in that respect. We are aware of it. And we are not seeking at all to relitigate that issue. But I made it plain in introducing that particular topic that we remain consistent in our approach.

11:23:41

Now, even though this is a sentencing exercise, it doesn't mean that the Defence necessarily must, in order to mitigate, relinquish all aspects of their case. In our submission, that is not required. And so we may disagree with the finding of the Court, but in our submission that has no moment so far as sentencing is concerned.

11:24:01

JUDGE DOHERTY: My other question was to seek clarification of a submission you make in your written submissions.

If I could direct you to paragraph 102, in which you draw comparison to illustrate a point concerning the genocide in Rwanda and the killing over ten years, I quote:

11:24:26

"... the 10-year onslaught in Afghanistan ..."

Again, I am not quite sure how I adopt this comparison when considering mitigating factors that you are submitting to us.

11:25:05

MR GRIFFITHS: Well, what we are submitting there, Your Honour, is the question of scale and duration, both factors which I sought to address, for example, by means of the diagram which we submitted before the Court. And it seems to us that it's perfectly legitimate for a Court in this sentencing exercise to look at other situations in weighing that central issue of gravity.

11:25:31

JUDGE DOHERTY: Thank you. Those were my questions.

JUDGE SEBUTINDE: Mr Griffiths, when Ms Hollis was

submitting a while ago, she alluded to the sentences that were imposed on Mr Sesay, the leader of the RUF, and on Mr Brima, the leader of the AFRC, and she cited just these two people. Of course, there are more convicts that we are all aware of.

11:26:22 My question is: Do you think that these the sentences meted out to the leaders of the AFRC and leaders of the RUF should have any bearing on our considering of the sentence to be imposed on Mr Taylor?

MR GRIFFITHS: The short answer, Your Honour, is no. And I

11:26:40 say no for this reason: That Mr Taylor stands in a completely different position vis-a-vis his liability for those crimes than the two examples provided to the Court. They was direct participants in the commission of those crimes, unlike Mr Taylor who has been convicted on the basis of aiding and abetting.

11:27:07 We submit that there is a basis for saying that there needs to be a distinction between a principal actor in the commission of a crime and a secondary party such as an aider and abettor. So to that extent, we would submit that the answer to -- with respect to Your Honour's question is no.

11:27:30 JUDGE SEBUTINDE: But if you say there should be a distinction, then by definition we should take them into account, wouldn't you agree?

MR GRIFFITHS: Well --

JUDGE SEBUTINDE: If only to distinguish Mr Taylor's

11:27:43 sentence from that of the people that have gone before him.

MR GRIFFITHS: Well, that of course is perfectly legitimate, but to use that tariff, if our submission, as, for example, a starting point, we submit would be illegitimate because it would not take into account the mode of liability in

respect of which Mr Taylor is being convicted.

PRESIDING JUDGE: Thank you, Mr Griffiths.

Now I understand Mr Taylor would like to address the Court before we proceed to pass sentence, and he understands, does he not, that he will be limited to 30 minutes.

11:28:34

MR GRIFFITHS: He does. He does, Your Honour.

PRESIDING JUDGE: Mr Taylor, you wanted to use the witness-stand, so if you would please come forward.

MR GRIFFITHS: Your Honour, Mr Taylor will be reading from a written document. I wonder if he might have the assistance of the lectern.

11:28:52

PRESIDING JUDGE: If there is one handy there.

MR GRIFFITHS: Well, he can take mine.

PRESIDING JUDGE: Mr Taylor can come down to the witness-stand.

11:30:04

THE ACCUSED: Thank you, Your Honours.

Mr President, Justice Lussick, Justice Sebutinde, Justice Doherty, members of the Registry here, the Prosecutors past and present, members of the Defence past and present, the visiting gallery, and may I say the world's audience, the last six years have been challenging years for all of us. Judges, Prosecutors, Defence lawyers, victims, and their families, me and my family, and the peoples of Sierra Leone and Liberia. And now this process is at its end and I am grateful that this Court has extended me the opportunity to be heard at this time.

11:30:58

11:31:39

The observations which I make today are deeply felt and are not limited exclusively to the legal issues of this case. I am aware of my rights, and without prejudice to any of those rights, I hereby make the following observations.

It seems to me, as an economist and a layperson not a lawyer, that Your Honours were dealt a difficult hand, sitting at the helm of a Court whose rules allow a low threshold requirement for the presentation of evidence. The presumption is that 11:32:34 everything is admitted into evidence regardless in about 98 per cent of the time.

Your Honours were also handicapped by not having the benefit of the full contextual picture of why and how I ended up before this court. That contextual matrix is uniquely political 11:33:03 and not legal in nature, and having ensnared Charles Taylor at this time, only time will tell how many other African heads of state stand to be destroyed in its continued wake.

These handicaps were not the fault of Your Honours, to be sure, in the sense that you could not be asked to know of so much 11:33:31 that was never meant to ever see the light of day. Despite obstacles to ascertaining the truth, what was clear beyond a shadow of a doubt, as I understood the summary of the judgement, was that Your Honours critically determined, in fact, that I could not be held responsible for the substantial charges of 11:33:57 joint criminal enterprise as a pure responsibility, as had been pleaded by the Prosecution.

Now, following the civil war in Liberia, I stood before the Liberian people and apologised and expressed the deep regrets and contrition for the loss of lives and limbs and the overall 11:34:24 effects of the civil war. I stated that no words, no matter how polished and sincere, could heal the scars and pains all suffered.

I was not alone as a leader of a faction that fought during the civil war when I took it upon myself to express those

sentiments while aspiring for the presidency, but I did. There are many like me who owed an expression of sympathy and regret for what happened to the Liberian people, indeed, none other than the current president of Liberia, Ellen Johnson Sirleaf, was
11:35:09 identified in the Liberian Truth and Reconciliation Commission report as somebody from whom such expression of regret and sympathy for what happened in Liberia should have been forthcoming, since she was one of the three principal leaders of the NPFL along with me.

11:35:31 Additionally, I said that wars were terrible. That there was no good war. That there are no just wars, whether carried out by underdeveloped countries whose peoples are still deeply entrenched in tribal, ethnic, and cultural conflicts, or by the worlds only military superpower.

11:36:04 President Bush in 2000 tried to play the just card war -- excuse me, the just war card. A card that goes pack to the 1st Century BCE when Rome's Marcus Tullius Cicero theorised on the justified use of armed forces, jus ad bellum, and he lost that argument. Scholars still debate the concept today with no
11:36:38 clear agreement.

But as wars are no good, I condemn all atrocities across the world, whether by bombs that are dropped by powerful nations from aeroplanes or cruise missiles fired from ships, submarines, and aircraft and/or drones that kill women and children by
11:37:00 blowing off legs, arms, and leaving mangled bodies scattered all over the place, only to be justified as collateral damage. That, too, is wrong. These are crimes also.

Now, following the verdict of 26 April, the Prosecutor in the press release said the following:

"Today's historic judgement reinforces the new reality that heads of state will be held to account for war crimes and other international crimes. This judgement affirms that with leadership comes not just power and authority, but also responsibility and accountability. No person, no matter how powerful, is above the law."

Now, I could not agree more. President George W. Bush not too long ago ordered torture and admitted to doing so. Torture is a crime against humanity. The United States has refused to prosecute him. Is he above the law? Where is the fairness?

Terrible things happened in Sierra Leone, and there can be no justification for the terrible crimes. During the war in Liberia, I punished people responsible for crimes against others. Factual evidence presented before this court proved that several NPFL soldiers were put on trial for violent crimes. Some were executed for rape, murder, and other serious crimes. Witnesses from both sides testified to that fact.

Let me be very, very clear about one thing: I do not condone impunity in any shape or form. Let me say in the strongest term, that I, DahKpannah Dr. Charles Ghankay Taylor, did not, could not have ever, and would never have knowingly and with responsibility and/or authority to prevent, stop, or punish someone from carrying out acts of atrocities fail to do so.

Now, I say all of this not just in the context of Sierra Leone and the charges against me, but also in the wider context of the impunity, whether in Africa or the rest of our global community. There has to be a mechanism which is developed, embraced, and perfected by the global community to deal with impunity in a way that is consistent with the history, custom,

practice, and cultures of the people inconsonant with their spirit as an independent people.

The Rome Statute is a Western document that does not take into account citing customs, cultures, and other sensitivities unique to certain regions of the world. The practice of one size fits all within the legal context is unfair and unjust.

I say with respect that though I disagree with your findings of guilt, it is easy for me to see how the absence of the contextual framework in which this case was put together by the Prosecution seemingly contributed to your findings. Sadly, I am saddled with those findings today as you consider what sentence to impose.

A starting point for the contextual framework to which I'm referring is the issue of money, the purchasing of witnesses' evidence with money. Money played a corrupting, influential, significant, and dominant role in this trial. Money, in this case, cumulatively prejudiced my rights and interests in an irreparable way.

The Prosecution received millions of dollars from the United States government outside of the official funding process of the court administration. The Prosecution has never fully accounted for how those monies were spent, who received how much, or for what purpose or purposes. Witnesses were paid, coerced, and in many cases threatened with prosecution if they did not co-operate only to extract statements and not confessions. Families were rewarded with thousands of dollars to cover costs of children's school fees, transportation, food, clothing, medical bills, and given cash allowances for protected and non-protected witnesses in a country where income is less than a

dollar a day.

The question then comes to focus: What was the Prosecution buying?

Abu Keita testified openly and never felt it necessary to
11:43:19 demand any type of protective measures from this Court, and yet, within a few weeks of having testified, it became public knowledge that he successfully coerced the Prosecution and the Witness and Victim Section, WVS, to relocate him overseas. The details are sketchy because the Prosecution and WVS have refused
11:43:48 to provide any details regarding the extortion by Abu Keita. Evidence of his own threats are shown in Exhibit D468.

A more important point for the contextual framework to which I am referring is the role politics played. With regime change -- excuse me, Your Honours. When regime change in Liberia
11:44:19 became a policy of the United States government, President George W. Bush, in May of 2001, signed a second of two executive orders, number 13213, Defence Exhibit D310, in which it was stated, and I quote:

"The government of Liberia's complicity in the RUF's
11:44:54 illicit trade in diamonds and its other forms of support for the RUF are direct challenges to the United States foreign policy objectives in the region as well as the rule-based international order that is critical to the peace and prosperity of the United States. Therefore, I find these actions by the government
11:45:21 of Liberia contribute to the unusual and extraordinary threat to the foreign policy of the United States described in executive order 13194," with respect to which the president declared a national emergency.

This executive order did not say "the alleged complicity."

It concluded "the complicity." The conspiracy was born. All systems put into motion. And here I stand today. I never stood a chance.

This is the broader contextual matrix that regrettably did not and still has not seen the light of day in these proceedings despite the gallant efforts by the Defence to unearth and reveal the contextual framework behind the charges against me.

Now, with the two executive orders, the dogs were let out, so to speak. What followed was a dispatch of the attack pack led by Lieutenant-Colonel David Crane, defence intelligence 30 years, prosecutor. He, Crane, unlawfully unsealed the Court's sealed indictment to his handlers, senior US government officials at the US embassy in Freetown, and was never held to account.

The rest of the operational team are Colonel Brenda Hollis, Defence intelligence, CIA, US Air Force, senior trial counsel, and now Prosecutor. James C. Johnson, US Army, expert 20 years on conventional and special operations, chief of prosecutions for the SCSL. Allen White, 30 years Defence intelligence, recalled from retirement to head up investigations at the Special Court for Sierra Leone.

Stephen J. Rapp came on board as Chief Prosecutor for a short time with experience from Capitol Hill where he served with a US Senate Judiciary Subcommittee sometime before. It came as a surprise to me that as a reward of sorts for Stephen Rapp's diligence in execution of US foreign policy objectives through these ad hoc tribunals, he was appointed US ambassador-at-large for war crimes issues.

In support of the contextual framework of politics, on February 8, 2006, Lieutenant-Colonel David Crane, Prosecutor,

appeared before a US Congress subcommittee on Africa, Defence Exhibit D04, and spelled out in clear terms the decision taken in support of regime change in Liberia and what needed to happen to solidify that process. There was no mention, if any, in his testimony about Sierra Leone. And here is what he said:

11:48:58

"I posit that five years from now, when the international community is challenged by other crises, Taylor, in Calabar, under the protection of Nigeria, will make his move. We will wake up one morning and watch on CNN as Taylor rides triumphantly down the main street in Monrovia to the executive mansion, daring all of us to come and get him. Unless he is handed over to the Special Court for Sierra Leone, this scenario is not out of the realm of possibility ..."

11:49:31

He then asked:

"How to do we assure Liberia's future?"

11:49:54

And he answers that. Ultimately he says:

"What we do about Taylor in the next several weeks will determine the fate of Liberia and the new administration of its president, Ellen Johnson Sirleaf."

11:50:18

Crane then sets out several plans, two of which I will state here. He said:

"First, hand Charles Taylor over to the Special Court for Sierra Leone for a fair trial."

His kind of trial.

11:50:32

"This takes him out of the local and regional dynamics that is West Africa ..."

"Second, tie any financial and political support to good governance in Liberia."

Time does not permit, but the exhibits are present.

Not even the Nigerian nation was spared from threats and intimidation as explained by Femi Fani-Kayode, press secretary to President Obasanjo, the Nigerian head of state, who was with him in Washington when President George W. Bush promised, and I
11:51:13 quote, "to bring Nigeria to its knees" if Taylor was not turned over to the Special Court.

And what happened? Obasanjo buckled and capitulated. Now, this demonstrates the significant pressure that was brought to bear on President Obasanjo irrespective of his personal and
11:51:45 leadership obligations to the West African sub-region. And therein lies the dilemma for current African heads of state and government, how to enter into binding commitments and obligations with their African peers and remain steadfast, resolute, and unyielding in their fidelity to those agreements in the face of
11:52:03 such unrelenting and punishing pressure from powerful Western leaders.

Evidence, as we know, can be deceiving. The world watched General Colin Powell, a man of honour and respect, mislead the United Nations Security Council and the world about weapons of
11:52:24 mass destruction in Iraq, and I believe it was unintentional. There were drawings of mobile laboratories for the production of gases and other nerve agents for use in weapons of mass destruction. None of this was true.

Intelligence experts, we were told later, had relied on
11:52:47 informers who deliberately lied or misinformed experts and analysts. Not even the world's only superpower knew what was actually obtaining on the ground in Iraq.

What happened afterward over a period of ten years under the iron fists of the United States and Great Britain caused the

murder, the rape, maiming, torture, and mutilation of around 1.5 million Iraqis, not to mention the 1 million Iraqi babies that lost their lives as a result of crippling sanctions.

Now, this tragedy, I believe, are consequences not
11:53:35 anticipated of a policy that set out - and may I say rightly so - to prevent the development and use of weapons of mass destruction against civilians. But what happened? It ended up a total disaster costing around a trillion dollars and a massive loss of lives and limbs on all sides, unfortunately.

11:54:02 What I did to help bring peace to Sierra Leone was done with honour. Foremost on my mind at all times was to help solve the problem because I was convinced that unless peace came to Sierra Leone, Liberia would not be able to move forward. I pushed the peace process hard and used known mediating methods in
11:54:33 trying to draw the parties close and gain their confidence and trust. This is a strategy used universally in mediation efforts. Indeed, my approach to peace in Sierra Leone was neither unique nor new.

All major activities leading to peace in Sierra Leone,
11:54:56 except for the final signing of the Lome Peace Agreement, were done in Monrovia. Following that historic signing we brought Foday Sankoh and Johnny Paul Koroma to Monrovia. When Bockarie threatened the disarmament process, we extracted Sam Bockarie to give the disarmament process a chance to take hold. We invited
11:55:15 Issa Sesay to meet my colleagues and me in Liberia to get new leadership to the RUF to advance the peace when Foday Sankoh was arrested in Freetown, putting the whole process under strain.

Contrary to how I have been portrayed before this Court, and what is now reflected in the summary of the judgement,

respectfully, I was not and could not have been a two-headed Janus, ever. In the context of my effort for peace in neighbouring Sierra Leone, I, Your Honour, too believe in honour and integrity. These are seriously complex situations and are
11:55:59 not just cut and dried as one may want to make them appear.

I was president of Liberia. I was not some petty trader on the streets of Monrovia or in the general market. Liberia was still recovering from war, where at least five warring parties had come together for peace but still with divided loyalties. My
11:56:25 personal security was still threatened as things were still fluid in the country. For anyone to believe that I had to be everywhere, know or be told everything, and monitor whatever little corrupt ex-combatant, crook or petty hustler did at some check-point or border post is unfortunate and disturbing.

11:56:52 National security briefings to leaders the world over are brief and intended to inform the leaders on strategic matters and not a journal to occupy the leaders' schedule. Sadly, right here in this court building, according to classified documents leaked, an individual or individuals spied for and reported to the
11:57:19 US embassy here in The Hague, and I suggest Your Honours may still not know who did the spying.

How, then, could any reasonable person suggest that any of what was happening within the frontal view of the president, he had to know? It simply defies logic, with respect.

11:57:47 I say without stupor that my actions were genuine and done with one thing in mind: Helping to bring peace to Sierra Leone, thus providing an enabling environment for progress in both countries, Liberia being my constitutional responsibility as president.

Unfortunately, and as a result of the efforts on the part of my government for peace in Sierra Leone, there now appears to have been collateral activities undertaken by some unsavory individuals that led to consequences that I was entirely unaware of and could not have ameliorated or prevented.

11:58:27

As I have done before many times, I do again here and now. I express my sadness and deepest sympathy for the atrocities and crimes that were suffered by individuals and families in Sierra Leone. I too have experienced pain and sadness and know what it is. I lost my father, my oldest brother, my youngest brother, and a host of other relatives, friends, and acquaintances during the war in Liberia, as well as peace-loving Liberian citizens.

11:58:57

I am 64 years old, not young anymore. I am the father of many children, grand-children and great-grand. I am of no threat to society. In Liberia I commenced the process of healing by putting into place a peace and reconciliation commission modelled after that of South Africa. I say with respect, reconciliation and healing, not retribution, should be the guiding principles in Your Honours' task.

11:59:19

Thank you very much.

11:59:49

I would just like to say before I sit that I did not have the opportunity to congratulate Justice Sebutinde for her election to a position in the International Court of Justice. Now, some may say, well, you should not accept it, Your Honour, from a convicted war criminal. I'm sorry, I probably should have done this in February but I didn't have the opportunity.

12:00:16

But I would like to do so now. I think that all women in Africa are very proud of you. And for the other Judges that will, I'm sure, sure move on to other greater and better things,

please accept my congratulations in advance.

Thank you.

PRESIDING JUDGE: Thank you, Mr Taylor.

THE ACCUSED: May I leave now?

12:00:52 PRESIDING JUDGE: Before we adjourn, we would like to thank both the Prosecution and the Defence for their very comprehensive written briefs and also for the additional oral arguments presented today. We have much to consider.

The delivery of judgement -- a Sentencing judgement date

12:01:22 has already been fixed for the 30th of May, Wednesday, the 30th of May, at 11.00 a.m. So Mr Taylor is remanded until that date for a sentence, and I will now adjourn the court.

[Whereupon the Hearing adjourned at 12.03 p.m.]

C.

2. Admitted Exhibits



SCSL-2003-01-T

THE PROSECUTOR
V
CHARLES GHANKAY TAYLOR

EXHIBIT NUMBER – **D-36**
SCSL/ERN/166

NAME OF WITNESS: **TF1-561**

RECEIVED
21/05/2008

BY

RACHEL IRURA

UNITED NATIONS SECURITY COUNCIL, LETTER DATED 10 JULY 1998 FROM THE PERMANENT REPRESENTATIVE OF NIGERIA TO THE UNITED NATIONS ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL, S/1998/629, 10 JULY 1998

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UNITED
NATIONS

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Security Council

Distr.
GENERAL

S/1998/629
10 July 1998

ORIGINAL: ENGLISH

LETTER DATED 10 JULY 1998 FROM THE PERMANENT REPRESENTATIVE OF NIGERIA TO THE UNITED NATIONS ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

I have the honour to forward to you, on behalf of the Chairman of the Economic Community of West African States and Head of State of the Federal Republic of Nigeria, General Abdulsalam Abubakar, the text of the joint communiqué issued at the end of the meeting co-hosted by him and the Secretary-General of the United Nations and attended by the President of Sierra Leone and the President of Liberia, which took place at Abuja on 2 July 1998 (see annex).

I would be grateful if the text of the present letter and its annex could be circulated as a document of the Security Council.

(Signed) Ibrahim A. GAMBARI
Ambassador
Permanent Representative

(g) Both leaders welcomed the initiative taken by the Secretary-General and the Chairman of the Economic Community of West African States in facilitating their discussion and expressed their appreciation for this.

4. The three regional leaders called upon the United Nations to increase its presence in Sierra Leone, in support of the efforts being undertaken by the Economic Community of West African States and the Government of Sierra Leone to promote peace and security in the country. The Secretary-General expressed support for the need to increase the United Nations presence in Sierra Leone and noted that the Security Council was presently considering the matter.

5. The participants expressed grave concern over the situation in Guinea-Bissau and noted the ongoing consultations among member States of the Economic Community of West African States on this matter.

6. The participants expressed their special appreciation to the Head of State of the Federal Republic of Nigeria, General Abdulsalam Abubakar, for having hosted the meeting and for the facilities which he had made available.

(Signed)	(Signed)	(Signed)	(Signed)
Charles G. TAYLOR President of Liberia	Abdulsalam ABUBAKAR Chairman of ECOWAS Head of State of the Federal Republic of Nigeria	Ahmed Tejan KABBAH President of Sierra Leone	Kofi A. ANNAN Secretary-General of the United Nations

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Annex

Joint communiqué of the meeting co-hosted by the Chairman of the Economic Community of West African States and Head of State of the Federal Republic of Nigeria, General Abdulsalam Abubakar, and the Secretary-General of the United Nations and attended by the President of Sierra Leone and the President of Liberia, issued on 2 July 1998 at Abuja

1. On 1 July 1998, at the initiative of the Secretary-General of the United Nations, Mr. Kofi A. Annan, the Chairman of the Economic Community of West African States and Head of State of the Federal Republic of Nigeria, General Abdulsalam Abubakar, hosted a meeting between President Ahmed Tejan Kabbah of Sierra Leone and President Charles Ghankay Taylor of Liberia.

2. The meeting, which was co-chaired by the Chairman of the Economic Community of West African States and the Secretary-General of the United Nations, addressed a number of regional and subregional issues, including ways in which security and cooperation between the neighbouring States of Liberia and Sierra Leone could be further improved, which confidence-building measures could be introduced by the two Governments and what role the Economic Community of West African States and the United Nations could play in support of these efforts.

3. The Heads of State of Sierra Leone and Liberia, in the presence of the Chairman of the Economic Community of West African States and the Secretary-General, reached agreement on the following points:

(a) They strongly condemned the continued rebel activities in Sierra Leone, as well as the horrendous atrocities that had been committed there;

(b) They were determined to cooperate to promote an end to the fighting in Sierra Leone and to foster peace and security in the subregion;

(c) They reaffirmed the non-aggression protocol of 1986 of the Mano River Union agreement and agreed to seek ways to enhance its effectiveness. Special attention was drawn to the need to control the activities and movements of demobilized former combatants and the leaders expressly reaffirmed their commitment not to permit their territories to be used for actions aimed at destabilizing the other;

(d) That, as a further confidence-building measure, the two leaders would exchange official visits;

(e) That both leaders would welcome and support the deployment of observers from the United Nations and the Military Observer Group of the Economic Community of West African States along their borders;

(f) Both leaders called upon their citizens not to be involved in destabilizing activities against the other State and stated that all those caught committing such offences should be arrested and prosecuted under the laws of the arresting State;

SCSL-2003-01-T
THE PROSECUTOR
V
CHARLES GHANKAY TAYLOR

EXHIBIT NUMBER – **D-135**
SCSL/ERN/533

RECEIVED:
18/03/2010

BY:
RACHEL IRURA

ECOWAS, REPORT OF THE COMMITTEE OF FOUR ON THE SITUATION IN SIERRA LEONE, ABUJA, NIGERIA, 26 AUGUST 1997 - DCT 32
(9 PAGES)

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9165

ECONOMIC COMMUNITY OF WEST AFRICAN STATES

REPORT OF THE COMMITTEE OF FOUR ON THE SITUATION IN SIERRA LEONE

ABUJA, AUGUST 26, 1997

1887

THE SITUATION IN SIERRA LEONE

On 25 May, 1997, a section of the military in Sierra Leone violently overthrew the legitimate government of President Tejan Kabbah. This was an unfortunate event for Sierra Leone. The coup d'etat was tragic in nature and consequence for, upon seizing power, the elements broke into prisons and threw open the gates thus releasing all sorts of criminals and convicts. The rebellious RUF members were invited by the coupists from their bases in the jungle into Freetown. In the general mayhem which ensued, massive looting of property, murder and rape became the order of the day. Vital national assets were not spared as they too were vandalised and looted.

This situation also threatened the stability and security of the neighbouring countries and indeed the entire sub-region. Hundreds of refugees fleeing from the situation in Sierra Leone constituted additional burden on the economies and societies of neighbouring countries, especially Guinea. This situation also posed a special threat to peace in Liberia for which our sub-region had laboured for several years.

REACTION OF THE INTERNATIONAL COMMUNITY

The *coup d'etat* in Sierra Leone took place on Africa Day when the leaders of the continent were gathered in Harare, Zimbabwe on the eve of the 33rd Ordinary Summit of the OAU. The leaders roundly condemned the seizure of power and called for the immediate restoration of constitutional order to the country. They urged the international community not to recognise the illegal regime in Sierra Leone and called on the leaders of ECOWAS to take the lead in restoring constitutional order to the country. The Secretary-General of the UN who was in Harare endorsed the OAU position, including the restoration of the legitimate government. This was reinforced by a statement by the President of the UN Security Council, two

days after the coup, which unequivocally condemned the *coup d'etat.*

Meanwhile, in our sub-region, the Chairman of ECOWAS had commenced measures aimed at resolving the Sierra Leone crisis. His consultations with the leaders of the sub-region resulted in the convening of a meeting of ECOWAS Foreign Ministers in Conakry on 26 June, 1997. The meeting reviewed the situation in Sierra Leone and recommended ways and means of achieving a speedy restoration of constitutional order to the country. It identified three objectives to be pursued by ECOWAS in Sierra Leone. These were:

(i) the early reinstatement of the legitimate government of President Tejan Kabbah;

(ii) the return of peace and security; and

(iii) the resolution of the issue of refugees and displaced persons.

The Foreign Ministers recommended a combination of three measures to be applied in the pursuit of these objectives. These were dialogue, imposition of sanctions/embargo; and the use of force. Furthermore, the Foreign Ministers established a Ministerial Committee of Four, comprising the Foreign Ministers of Nigeria, Guinea, Cote d'Ivoire and Ghana, to be joined by representatives of the OAU and ECOWAS Secretariats. This Committee was charged with implementing the recommendations and decisions on Sierra Leone.

BRIEFING OF THE CHAIRMAN OF ECOWAS

After the Conakry meeting, the newly established Committee of Four on Sierra Leone submitted a report to the Chairman of ECOWAS in Abuja on 6 July, 1997. The Chairman endorsed the recommendations of the Foreign

Ministers and considered it appropriate that ECOWAS position should be conveyed to the Secretary-General of the UN and the UN Security Council, by the Committee of Four.

VISIT TO NEW YORK

On 11 July, 1997, members of the Committee visited New York and briefed the Secretary-General of the UN and the UN Security Council on ECOWAS perspectives on the gravity of the situation in Sierra Leone as well as the need for prompt and concerted action by the international community. The Foreign Ministers restated, in clear and unequivocal terms, the need for the illegal regime to comply fully with the demands of ECOWAS, the OAU and the international community and return power to the legitimate government of President Tejan Kabbah. Following the briefing of the Security Council, a meeting of the Council was convened, at the instance of the ECOWAS Ministers, on the situation in Sierra Leone. At the end of the Council's deliberations, a Presidential Statement was issued which expressed deep concern about the continuing crisis in Sierra Leone and reiterated its view that the attempt to overthrow the democratically elected government of President Kabbah was unacceptable. The Council also welcomed the mediation efforts of ECOWAS and expressed full support for the objectives of these efforts, as set out in the Final Communique of our meeting in Conakry on 26 June, 1997.

DIALOGUE AND NEGOTIATIONS WITH THE ILLEGAL REGIME IN SIERRA LEONE

In accordance with the mandate given to the Committee of Four, we established contact with the elements in Sierra Leone and invited the leader, Major Johnny Paul Koromah, for a meeting in Guinea. However, in their

response, the regime in Freetown indicated a preference for Cote d'Ivoire rather than Guinea as venue for the proposed meeting. The Committee of Four had no difficulty with this proposal. They recognised that Cote d'Ivoire was not only a member of the sub-region but also of the Committee of Four on Sierra Leone. Indeed, Cote d'Ivoire had been actively engaged in the search for peace in Sierra Leone which culminated in signing of the Abidjan Peace Agreement of 30 November, 1996 between the Government of Sierra Leone and the Revolutionary United Front (RUF).

The first meeting with the illegal regime in Sierra Leone took place in Abidjan from 17-18 July, 1997. Major J.P. Koromah was not present but he was represented by a 12-member delegation led by Mr. Alimamy Pallo Bangura. The delegation included politicians such as Dr. Karefa Smart, Dr. Abbass Bundu, some RUF members and a section of the Sierra Leonean military. The Committee of Four presented to the Sierra Leonean delegation, the contents of its mandate, endorsed by the Chairman of ECOWAS, the OAU and the UN Security Council, including the early reinstatement of the legitimate government of President Kabbah. For their part, the Sierra Leonean delegation presented their views on the situation in their country. They expressed their readiness to work towards the early restoration of constitutional order.

Discussions were held in an atmosphere of cordiality and frankness. The representatives of the illegal regime agreed with the views expressed by the Ministers for the resolution of the Sierra Leone crisis. They were however concerned that any solution proffered, should be such that would preserve the dignity of all sides. Consequently, the meeting decided:

(i) to resolve all issues related to the Sierra Leone crisis peacefully, in the best interest of the people of Sierra Leone, the sub-region, Africa and the international community as a whole;

(ii) that all hostilities should cease and therefore a ceasefire be immediately established throughout Sierra Leone while all efforts are deployed towards the peaceful resolution of the crisis;

(iii) to work towards the early restoration of constitutional order including the reinstatement of the legitimate government of President Kabbah; and

(iv) to allow the Sierra Leone delegation sufficient time to return home and hold further consultations with the regime in Freetown in order to facilitate a consideration of the detailed modalities for the return of constitutional order to their country.

From 29-30 July, 1997, the second meeting between the Committee of Four and the representatives of Major J.P. Koromah was held again in Abidjan. This time, the composition of the delegation of the illegal regime, had changed substantially from what it was at the first meeting. Some of the politicians were dropped and the ranks included more RUF members. The Ministers requested the delegation to present their proposals on the modalities for the restoration of constitutional order in their country. Regrettably, the representatives of the regime reneged on the agreement reached at the first meeting on the question of the reinstatement of President Tejan Kabbah. Moreover, while the meeting was in progress, the Foreign Ministers were alerted to an announcement by the illegal regime in Freetown to suspend the constitution of Sierra Leone and remain in office illegally until the year 2001. The implication of this announcement was not lost on the Ministers. They therefore considered that further dialogue with

the representatives of the illegal regime, at that point, would serve no useful purpose. Accordingly, the Ministers decided to recommend to the Chairman of ECOWAS the formal introduction of the regime of sanctions and embargo, which are a part of the measures earlier agreed, to ensure the early and full implementation of the mandate of the Committee of Four.

The Chairman of ECOWAS has since asked for a full-scale application of sanctions and embargo against Sierra Leone, while not foreclosing the option of returning to negotiations, as a way of resolving the crisis peacefully. The Chairman has also renewed his call for the support of the international community for the ECOWAS initiative in Sierra Leone.

ACCRA MEETING

The Foreign Ministers of the Committee of Four convened in Accra, Ghana from 14-15 August, 1997 to review the developments in Sierra Leone in the aftermath of the abortive meeting of 29-30 July, 1997 in Abidjan. At that meeting, they were informed of the new initiatives on Sierra Leone being undertaken by the President of Guinea, H.E. General Lansana Conte and which had the potential of facilitating the peaceful resolution of the crisis in line with the ECOWAS objectives. The initiatives involved a proposed meeting between President Lansana Conte and the leader of the illegal regime in ~~a Guinea~~ Sierra Leone. The facilitator of this process was the former Head of State of Sierra Leone, Major-General Joseph Momoh. Under the circumstances, the Ministers decided to adjourn for a few days and to reconvene in Abuja on 25 August, 1997, in order to allow time for the ~~final~~ initiative to take place.

Meanwhile, it was agreed that details of sanctions and embargo to be applied against the regime in Sierra Leone should be prepared in readiness for submission to the Chairman of ECOWAS, before the commencement of the Summit of the Heads of State and Government of ECOWAS scheduled for Abuja, from 28-29, August, 1997.

CONCLUSION

The situation in Sierra Leone remains a matter of serious concern to our sub-region and our organisation. However, in order to keep our efforts and interests focussed and productive, there is need to take appropriate measures to counter the various machinations of the regime in Sierra Leone who seem more interested in hanging on to power at all cost rather than seek a peaceful negotiated solution to the crisis.

In pursuit of our overall objectives in Sierra Leone, the support of the international community, including the OAU, the Commonwealth and the United Nations, remains important. It is necessary therefore that we keep in close contact with these organisations and institutions, in particular, the UN Security Council. It is noteworthy that the final communique of the meeting of the ECOWAS Foreign Ministers in Conakry and the declaration issued by the Committee of Four at the end of their first meeting in Abidjan with representatives of the illegal regime from 17-18 July, 1997, have been adopted as documents of the Security Council. The Security Council is actively seized with the matter. We express our profound appreciation to members of the international community which have all refrained from according recognition to the regime in Sierra Leone.

Furthermore, whilst the use of force remains an available option to ECOWAS in resolving the crisis in Sierra Leone, sanctions and embargo will first, have to be vigorously applied. The details of sanctions and embargo which were prepared in Accra from 14 to 15 August, 1997, have been prepared, taking into consideration the experiences in other countries where sanctions have been similarly applied. There can be no doubt that in the application of sanctions and embargo, some measures of force may be required. In consideration of this, together with the need to assure peace and security in Sierra Leone and the sub-region, consideration should be given immediately to the extension of the present mandate of ECOMOG, to cover the situation in Sierra Leone.

Nevertheless, in line with our original intention and position, we must keep the door open for the regime in Sierra Leone to carry out realistic negotiations if and when they decide to do so. The application of sanctions should be seen as part of the pacific measures to be taken by ECOWAS against the illegal regime. The main interest of ECOWAS in this case is mainly to ensure the return of peace and stability to Sierra Leone.

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THE PROSECUTOR
V
CHARLES GHANKAY TAYLOR

EXHIBIT NUMBER – **D-136**
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ECONOMIC COMMUNITY OF WEST AFRICAN STATES

SIXTEENTH MEETING OF ECOWAS CHIEFS OF STAFF

ABUJA, 26-27 AUGUST, 1997

FINAL REPORT

1897

The sixteenth meeting of Chiefs of Staff of ECOWAS Member States was held at the Executive Secretariat Headquarters on 26 and 27 August, 1997.

2. The Chief of Defence Staff of the Federal Republic of Nigeria, Major-General A.A. Abubakar chaired the meeting.

3. The following Member States were present:

- Republic of Benin
- Burkina Faso
- Republic of Côte d'Ivoire
- Republic of The Gambia
- Republic of Ghana
- Republic of Guinea
- Republic of Liberia
- Republic of Mali
- Republic of Niger
- Federal Republic of Nigeria
- Republic of Sierra Leone

4. Also present, following an invitation extended to him was Major-General Shami, the Chief Military Observer of the United Nations Observer Mission in Liberia (UNOMIL).

5. The meeting adopted the following agenda proposed by the Executive Secretariat :

OPENING SESSION

1. Welcome statement by General A.A. Abubakar, Chief of Defence Staff of the Federal Republic of Nigeria
2. Other statements

3. Security situation in the sub-region
   - Memorandum of the Executive Secretariat
   - Report of the ECOMOG Force Commander
   - Report of Chief Military Observer, UNOMIL
   - Report of the Committee of Four on Sierra Leone

4. Discussions
   - Review of Performance in Liberia
   - Restructuring and training of the Liberian Armed Forces
   - Extension of tenure of ECOMOG in Liberia
   - Extension of ECOMOG's mandate to Sierra Leone
   - Embargo / Sanctions on Sierra Leone
   - Status of Forces Agreement between ECOWAS and Liberia
5. Any other matters
6. Adoption of report

The sixteenth meeting of the ECOWAS Chiefs of Staff commenced with a welcome address by Major-General A.A. Abubakar, Chief of Defence Staff of the Armed Forces of the Federal Republic of Nigeria.

In his address, he conveyed to the meeting the sincere greetings and best wishes of the Head of State, Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria, current Chairman of ECOWAS, General Sani Abacha for successful deliberations.

Major-General A.A. Abubakar recalled that at the occasion of the 19th Summit of the Authority of Heads of State and Government held in Abuja last year, where the state of collective security and stability in the sub-region was

reviewed, the meeting's primary concern was with the slow progress in the realisation of durable peace in Liberia, particularly in the aftermath of the renewed violence of April 1996.

He however observed that despite of all obstacles placed on its way and by dint of total commitment, dedication and perseverance, ECOWAS has succeeded in putting in place a democratically elected civilian government under the presidency of Mr. Charles Ghankay TAYLOR, and has established peace, security and order throughout Liberia.

Major-General A.A. Abubakar, on behalf of ECOWAS Chiefs of Staff, congratulated President Charles Taylor on his election as the 21st President of Liberia wishing him divine guidance in the formidable task of building a virile and prosperous nation.

He stated that the ECOMOG experience has been hailed as a new initiative in sub-regional conflict resolution the world over.

He paid a well deserved tribute to the ECOMOG High Command and to all the brave men and women under the able leadership of the Force Commander, Major-General SVL Malu and his predecessors for their courage, sacrifice and professionalism in the face of difficulties.

At this juncture, a moment's silence was observed in honour and memory of all those who made the supreme sacrifice by laying down their lives in order that their Liberian brothers and sisters may live a fulfilling life.

The Chairman recalled the recommendation made at their 13th and 14th meetings for the restructuring and training of the Armed Forces of Liberia, Police and security agencies, as part of the revised schedule of the Abuja Agreement.

For this reason he stated,, an ad hoc committee had been set up to provide the necessary framework. He expressed the hope that the report of that committee which would be rendered in the course of the meeting would be considered frankly, to enable Chiefs of Staff to come up with resolute ideas on how to conduct the tasks set out.

The Chief of Defence Staff noted with regret the events in neighbouring Sierra Leone involving the violent overthrow of the legitimate government of President Tejan Kabbah on 25 May 1997 which poses a serious security threat to sub-regional peace and is capable of reversing the gains that have been made in Liberia.

He observed that with the intransigence of the illegal regime of Major J.P. Koromah who has not only reneged on an initial agreement to work towards early reinstatement of President Kabbah but has also announced the regime's intention to remain in office till the year 2001, it becomes necessary for the meeting to review the situation in Sierra Leone.

He stated that from all indications, peaceful resolution through dialogue had failed and the next option without recourse to the use of offensive action, was the enforcement of santions/embargo on the regime through an economic blockade.

He implored the meeting to proffer solutions on how best to conduct whatever mission might be assigned to ECOMOG to ensure the restoration of democracy in Sierra Leone and subsequent relative peace in the sub-region.

In conclusion, Major-General A.A. Abubakar stressed the need for closer ties, cooperation and consultations between the Armed Forces of the Member States, as the future and destiny of all within our sub-region are indeed interwoven.

The Chief of General Staff of the Armed Forces of Niger, Colonel Moussa Djermakoye, expressed his gratitude to His Excellency General Sani Abacha, current Chairman of ECOWAS and Commander-in-Chief of the Armed Forces, and to the military authorities. He paid tribute to the Federal Republic of Nigeria for its commitment and leadership role, a testimony to the importance that country attaches to the ideals and solidarity of the sub-region. He thanked all the Chiefs of Staff of Member States for their peace initiatives in Liberia. The Chief of General Staff of the Armed Forces of Niger expressed his appreciation to the ECOMOG Force Commander, General Victor Malu, for the able manner in which the assignment was executed.

Colonel Djermakoye presented a brief background to the Liberian crisis and outlined the various actions undertaken by ECOWAS in that country. He recalled, in particular, the decision taken on 17 August 1996 by the Heads of State and Government to strengthen ECOMOG. In this connection, he informed the meeting that his country had dispatched a contingent of 320 (three hundred and twenty) men to Liberia.

The Chief of General Staff of the Armed Forces of Niger expressed the wish that the meeting would draw lessons from the joint deployment of the sub-region's armed forces in Liberia. He, specifically underscored the need to capitalise on the experience of ECOMOG in order to evolve a common strategy for effective action against the banes of society such as religious fundamentalism, ethnic strife and power struggles which were likely to cause conflicts.

Colonel Djemarkoye listed the factors which had paralysed the actions of ECOMOG and retarded the accomplishment of its mission. He was of the opinion that ECOMOG should consolidate peace before disengaging totally from Liberia where the newly-restored peace still appeared to be fragile.

Finally, he touched on the distressing situation in Sierra Leone following the military coup d'état of 25 May 1997 and appealed to the junta for a return to democratic rule.

Delivering a statement, His Excellency, Mr. Joe Blell, the Sierra Leone High Commissioner to Nigeria, representing the legitimate Government of Sierra Leone headed by Ahmad Tejan Kabbah, expressed his country's appreciation and gratitude to ECOMOG. He praised the efforts made by the ECOWAS Ministers of Foreign Affairs of the Committee of Four on Sierra Leone to return his country to democracy and the rule of law. He reiterated his country's support for ECOWAS objectives in Sierra Leone and reminded the meeting that without peace in Sierra Leone, the recently-won peace in Liberia would continue to be threatened. He therefore called on ECOWAS to act decisively in Sierra Leone and put an end to the crisis.

LT-Gen. Prince C. Johnson II, the Chief of Staff of the Armed Forces of Liberia, in his statement expressed deep appreciation for the reception and hospitality accorded to his delegation since their arrival in Abuja.

He reflected on the genesis and the extent of the work done by the Chiefs of Staff; the financial, human and material resources invested in the Liberian crisis over the past seven years in the search for peace in Liberia and in the sub-region as a whole.

He also pledged the whole-hearted support of the Government and people of Liberia for all decisions taken, by the body.

On the issue of security in Liberia, Lt.-Gen. Prince C. Johnson II stated that Liberia depends largely upon ECOWAS through ECOMOG for its security until the Armed Forces of Liberia is restructured and re-armed to assume its constitutional role of protecting life and property.

He informed the meeting that the President and Commander-in-Chief of the Armed Forces of Liberia had expressed concern about security in Liberia, largely because of intelligence reports received in Liberia which indicate that:

a) The Kamajors fighting the military junta in Sierra Leone have retreated along the Liberian border areas to launch their attack, with the threat of a possible spillover effect into Liberia;

b) Ex-combatants of the just-ended Liberian crisis are being armed to fight for the Kamajors. Furthermore, security is being undermined by the rising incidence of armed robbery in the city of Monrovia and its environs.

For all these reasons, he stated, it had become imperative that the Armed Forces of Liberia be restructured as soon as possible to enable the army join ECOMOG in its task of providing security in Liberia.

In conclusion, the Liberian Chief of Staff, pledged the support of the Armed Forces of Liberia to all decisions taken by ECOWAS, OAU and the UN to restore the elected Government of Sierra Leone to power.

CLOSED SESSION

Prior to the commencement of its deliberations behind closed doors, the meeting was briefed on the situation in Sierra Leone by Hon. Chief Tom IKIMI, Minister of Foreign Affairs of the Federal Republic of Nigeria and Chairman of the Ministers of Foreign Affairs of the Committee of Four on Sierra Leone. Present at the briefing were other members of the Committee of Four, namely the Foreign Ministers of the Republics of Côte d'Ivoire, Ghana and Guinea and the representatives of the ECOWAS Secretariat. Also present was H.E. Ambassador Kalomoh, the Special Representative of the Secretary-General of the United Nations in Liberia.

Chief Tom Ikimi began by thanking the Chiefs of Staff for permitting the Foreign Ministers of the Committee of Four to brief them on the situation in Sierra Leone. This, he said, was necessary in order to properly acquaint Chiefs of Staff to enable them make appropriate recommendations to the Heads of State.

Chief Ikimi observed that the coup d'état of 25 May 1997 had very peculiar characteristics. It was not only very bloody but was followed by massive looting and widespread vandalisation of public and private properties. The putschists opened up prisons and let out all categories of hardened criminals. They also invited the elements of the RUF into the city of Freetown, thereby disrupting the peace and tranquility of that city. These RUF elements had since assumed and taken over the role of the national army.

It was worth noting that the coup took place on OAU Day and on the eve of the OAU Summit. The OAU therefore wasted no time in condemning the coup. It called for the immediate reinstatement of the legitimate government of Ahmad Tejan Kabbah; urged on the world to support ECOWAS and declared that none of its Members should recognise the junta in Sierra Leone.

Thereafter, following consultations by the ECOWAS Chairman and his colleagues, a meeting of Foreign Ministers was held in Conakry on 26 June 1997. At the end of its deliberations, the meeting agreed to pursue the following objectives:

1) early reinstatement of the legitimate government of President Ahmad Tejan Kabbah;

2) the return of peace and security; and

3) the resolution of the issues of refugees and displaced persons.

These objectives were to be achieved by a combination of three measures, namely dialogue, imposition of sanctions and enforcement of an embargo, including the use of force. In order to increase the effectiveness of the above meansures, the Ministers recommended prior consultations at the highest level.

The Ministers also established an implementation committee comprising the Foreign Ministers of Côte d'Ivoire, Ghana, Guinea and Nigeria.

These proposals, Mr. Ikimi said, were endorsed by the ECOWAS Chairman and the UN Security Council. To date, no government had recognised the junta in Sierra Leone. The OAU, UN, Chief Ikimi said were in constant consultations with ECOWAS.

The Committee of Four immediately decided to implement the first option of dialogue. The first meeting with representatives of the junta was held in Abidjan where some modalities to achieve the objectives were agreed upon. A second meeting with the junta on 29 and 30 July 1996, also in Abidjan, however ended in failure following the announcement by the junta of its intention to stay in office until the year 2001.

Subsequent attempts at dialogue taken by some ECOWAS States also failed, leaving ECOWAS with no other option but to implement sanctions and total embargo.

Chief Ikimi ended by calling on Chiefs of Staff to make appropriate recommendations on modalities for the imposition of the embargo / blockade within international standards.

Upon the departure of the delegation of the Committee of Four on Sierra Leone, the meeting continued its deliberations behind closed doors.

Giving a situation update on ECOMOG operations, Major-General Victor Malu, the ECOMOG Force Commander provided the meeting with a progress report on the Liberian peace process, which had culminated in the holding of transparent, free and fair elections and the subsequent inauguration of His Excellency, Charles Ghankay Taylor as the 21st President of Liberia.

His report dwelt extensively on ECOMOG's contribution towards the successful conduct of the electoral process and its new role of creating an enabling security atmosphere to consolidate the peace process.

Since the completion of the disarmament exercice, ECOMOG had continued its efforts at creating the necessary environment for the return to normal political activities, social order and lasting peace and tranquility. Its cordon and search operations had led to retrieval of over 6000 weapons, most from obscure places such as graves and swamps. All in all, ECOMOG had recovered from the beginning of the disarmament exercise, about 35,000 weapons including: machine guns, assault rifles, bombs, artillery guns, anti-aircraft guns, anti-tank guns and rocket propelled guns. It had also recovered over 4 million assorted small ammunition.

Upon creation of a conducive environment, ECOMOG next switched its energies to assist in the electoral process. It provided the necessary security to IECOM, presidential aspirants, other party functionaries, ballot boxes during and after the elections, registration, voting and counting centres, as well as to others and electoral officials.

In the area of transportation, ECOMOG assisted in the movement by road and air of election materials, lifting of IECOM officials, international observers, ballot boxes etc...

ECOMOG also provided assistance in the area of communications. In the area of man-power and logistics support for ECOMOG, Major-General Malu reported that ECOMOG had received, after the disarmament exercise additional troops from Benin, Burkina Faso, Ghana, Mali and Niger, thereby increasing its total strength to about 11,000 all ranks. Côte d'Ivoire also provided a medical team, and certain members of the international community provided logistics support.

The Force Commander continued by defining the post election role of ECOMOG as:

i) aiding and supporting the Government to maintain and consolidate the peace by providing necessary security;
ii) conducting military operations to rid Liberia of arms;
iii) protecting VIPs and key installations
iv) restructuring and training of the armed forces, police and other security agencies.

To achieve these objectives ECOMOG personnel were redeployed in adequate numbers, all over the country and along the Liberia/Sierra Leone border to prevent any spill over effect. In addition, a National Security Council, with the President of Liberia, as Chairman was constituted. The Council, the meeting was informed, meets regularly and constantly monitors the security situation in the country. The ECOMOG Force Commander is a member of the Council.

The 20 miles embargo zone along the Liberian coast was lifted to allow ships to come in without hindrance and without the hitherto required war risk insurance.

On the important issue of the restructuring of the AFL, the Force Commander reminded delegates that the Liberian crisis had factionalised the Liberian army,

necessitating its complete restructuring together with the police and other security agencies. He emphasised the need to have a disciplined, well equiped armed forces that would be capable of carrying out its functions. Major-General Malu called on the meeting to make appropriate recommendations that would successfully guide the conduct of this vital and important exercise.

The restructuring of the armed forces was behind schedule and so a decision should be taken on the matter without further delay. When formulating appropriate proposals, Major-General Malu said, the meeting should bear in mind that the presumption that ECOMOG troops would remain in Liberia for 6 months after the inauguration of the elected government was not correct; as contributing countries had different timetables for their troops. Whatever the case, Major-General Malu cautioned, it was unlikely that a trained National Army would be in place before the six-month period expired. He therefore called on the meeting to make appropriate recommendations so that an acceptable level of ECOMOG troops is kept in Monrovia for the training and restructuring exercise, and even beyond.

Major-General Malu proposed the training of an army of brigade strength. He also proposed that 4 ECOMOG battalions with a strength of about 600 men each would be ideal for a stay beyond the 6 months approved, in addition to 2 training battalions.

The Force Commander called for a gradual and programmed withdrawal of ECOMOG troops that would not threaten the security of the country and new government.

Although the Executive Secretariat's memorandum dwelt on Liberia and Sierra Leone, the Acting Executive Secretary, Mr. Mahamadou Ouhoumoudou

presented issues relating only to Liberia as the situation in Sierra Leone had already been reported upon by H.E. Chief Tom Ikimi.

Mr. Ouhoumoudou reported on the successful end of the disarmament exercise which paved the way for the conduct of elections. Members of the Independent Elections Commission (IECOM) were appointed and conducted into office on 2nd April 1997. The Supreme Court was restructured.

IECOM prepared an electoral package consisting of the special elections law, an electoral package, and elections budget and a code of conduct for contending political parties.

The elections law provided for a single constituency for the whole of Liberia while a budget of $4.7m was approved for the elections.

Following extensive and detailed preparations, elections were held on 19 July, 1997 at which Liberians showed their eagerness and determination to put an end to their ugly past by turning out in large numbers to vote. The exercise was conducted under a peaceful atmosphere and at the end, it was declared by both local and international observers to have been free, fair and credible.

The elections results, as released, declared the NPP of Mr. Charles Taylor the overall winner.

Mr. Ouhoumoudou called for the articulation of appropriate modalities to ensure the conduct of free, fair and transparent elections in all Member States of the ECOWAS sub-region. The Liberian example, he said, should be a model and a lesson for all.

He concluded by stating that ECOWAS would continue to collaborate with the Government of Liberia to consolidate the peace as well as help in the reconstruction and rehabilitation of the Liberian society.

On his part, Major-General Sikandar Shami, the UNOMIL Chief Military Observer briefed the meeting on the post disarmament deployment of ECOMOG and UNOMIL personnel throughout Liberia. Additional troops for ECOMOG enabled it to deploy to 48 locations all over the country; thus necessitating an increase of UNOMIL's presence from 10 to 16 sites.

The strategic deployment of both ECOMOG and UNOMIL personnel provided the requisite atmosphere for elections.

Major-General Shami went on to inform the meeting of the relatively peaceful and voluntary disarmament exercise except for an incident in Kanweakehn where a group of ex-fighters had surrounded and threatened the UN compound there. However, as this first challenge to ECOMOG's authority since the end of official disarmament exercise was quickly controlled through prompt and effective action by the local ECOMOG commander, it sent the correct message throughout Liberia.

With the successful completion of the disarmament exercise, both ECOMOG and UNOMIL shifted focus to the conduct of the elections. While ECOMOG provided security and logistics support, the UN Military Observers (MILOB's) assisted in preparing grounds for the observation and verification of the electoral process. They provided necessary and vital information on the terrain infrastructure, population shifting patterns, customs and other local conditions in the hinterland of Liberia. This information, which was shared with IECOM officials and ECOMOG became the basis for the planning of the 1997 elections.

He gave further concrete examples of the high degree of cooperation and collaboration between ECOMOG and the MILOBs during the preparations for the elections.

Major-General Shami paid tribute to officers and men of ECOMOG under the able command of General Malu.

The Chief Military Observer also reported on the very important issue of humanitarian assistance and the manner in which the various UN agencies, USAID and the EU coordinated their efforts to provide basic necessities of life to over 15,000 ex-combatants and civilian war victims. Food was provided, schools reopened and the agricultural sector assisted.

Major-General Shami concluded by expressing satisfaction of the success of the Liberian peace process. He emphasised that this has been the first ever joint operation by the United Nations and sub-regional organisation in which the sub-region had the primary responsibility for ensuring peace keeping. In spite of the fact that there were no guidelines to fall back on, with experience, a close-knit partnership had evolved that definititely enhanced the Liberian peace process. The elections were universally adjudged as having been free, fair and credible.

The leader of the delegation from Ghana representing the Chief of Staff of the Ghana Armed Forces who was said to be unavoidably absent, extended warm felicitations from the Chief of Defence Staff and from all the officers, men and women of the Ghana Armed Forces.

He stated that the Ghana Armed Forces were happy that after seven years of destruction of life and property, the Liberian crisis had come to an end adding that Ghana was indeed proud to be part and parcel of the Force that made possible the restoration of peace and security to Liberia, proving the skeptics wrong.

In this regard, he commended the Force Commander Major-Gen. Malu and all the officers and men of ECOMOG for the excellent job done and thanked the Chiefs of Staff of the ECOWAS Member States for their support for ECOMOG.

He thereafter stated that in furtherance of the Abuja II Accord, Ghana was committed to assist in the consolidation of peace and the restructuring and training of the Armed Forces in Liberia and other security services of Liberia and that Ghanbatt 13 which was launched in February this year in fulfillment of their pledge made at the last meeting will be retained, whilst Ghanbatt 12 will be rotated with Ghanbatt 14 between 22nd September and 10th October 1997.

Finally, he added that ECOMOG Ghanbatt is ever-prepared to undertake any tasks that would facilitate the consolidation of peace and the nurturing of the nascent democracy in Liberia.

OUTCOME OF DELIBERATIONS

In their consideration of the various reports before them, the Chiefs of Staff devoted particular attention to the following:

- evaluation of ECOMOG performance in Liberia
- restructuring and training of the Liberian Armed Forces
- extension of the ECOMOG mandate in Liberia
- sanctions and the Agreement between ECOWAS and Liberia on the status of ECOMOG Forces Agreement

The Chiefs of Staff held constructive discussions on each of these items. Below is a summary of their deliberations.

EVALUATION OF ECOMOG PERFORMANCE IN LIBERIA

The Chiefs of Staff expressed satisfaction at the achievements of ECOMOG Forces in Liberia. They declared that they had followed with pride the activities of the West African force and congratulated the Force Commander, General Victor Malu.

The meeting reiterated its gratitude to the Heads of State and Government of ECOWAS, to Member States and to international organisations whose support made it possible to implement the ECOWAS Peace Plan.

RESTRUCTURING AND TRAINING OF THE LIBERIAN ARMED FORCES

The Chiefs of Staff recalled the different agreements which had provided for the restructuring and training of the Liberian Armed Forces and defined the role ECOWAS was expected to play in that regard.

They noted, however, that it had not been possible to restructure and train the forces before the installation of the elected government, due to the large number of assignments given to ECOMOG as part of the preparation and organisaiton of the elections.

The Chiefs of Staff agreed that the aim of the restructuring exercise would be to establish a truly national army comprising Liberians from all ethnic groups in the country.

They were also of the opinion that the elements of the Liberian armed forces to be trained would include not only recruits but also future instructors. They felt that while the officers might need to go to neighbouring countries which have qualified instructors and adequate training facilities, the recruits could be trained locally. This is all the more feasible since, given its current situation, Liberia needs only a modest force about the size of a brigade. In that connection, the service

chiefs observed that the team of instructors must come from anglophone countries, to facilitate communication with Liberians whose official language is English. However, any francophone country which so desired could provide support for the training programme.

The Chiefs of Staff were of the view that the restructuring and training of the Liberian armed forces would serve to ensure security and consolidate peace in Liberia, and would thus constitute the second part of ECOMOG's mission in that country.

EXTENSION OF THE ECOMOG MANDATE IN LIBERIA

The Chiefs of Staff recalled that the understanding up till now had been that ECOMOG would withdraw from Liberia six months after the swearing in of the elected President.

They acknowledged the delicate nature of a withdrawal which could not be assessed in all its ramification on account of the numerous problems which still need to be addressed within the framework of beefing up security and consolidating the peace in Liberia. The Chiefs of Staff agreed that following ECOMOG intervention during its first mission, extension of its mandate had become an imperative on account of recent political developments in Liberia. They were of the opinion that the length of ECOMOG continued stay should be determined bearing in mind its new duties of strengthening security and keeping the peace; the tasks devolving from these objectives and the resources available.

AGREEMENT ON ECOMOG STATUS OF FORCES

The Chiefs of Staff expressed the view that rather than signing the Status of Forces Agreement with the Government of Liberia, it is the Memorandum of Understanding that should be looked into.

EXTENSION OF ECOMOG'S MANDATE TO SIERRA LEONE

The Chiefs of Staff agreed that a final settlement of the Liberian conflict of necessity demanded a definitive solution to the Sierra Leonean crisis. Having being informed by the Chairman of the Committee of Four, the Honourable Minister of Foreign Affairs of the Federal Republic of Nigeria, Chief Ikimi, that the phase of dialogue with the junta in Sierra Leone had failed, the Chiefs of Staff concluded that implementation of the other measures envisaged for achieving ECOWAS objectives had become inevitable. In this regard, they noted that ECOMOG's mission in Sierra Leone would be possible and effetive only if its scope of operation and mandate were duly extended to cover that country.

SANCTIONS

The Chiefs of Staff took note of the two types of sanctions proposed by ECOWAS to force the junta to restore the legitimate government of President Ahmad Tejan Kabbah. They pointed out that no distinction could be made between an embargo and the use of force because both of these would give rise to closely inter-related problems. According to them, extreme poverty and other socio-economic factors would inevitably lead to the appearance of numerous factions, putting Sierra Leone at risk of disintegration. Under such conditions, the Chiefs of Staff stated, they were convinced that application of the embargo would inevitably lead to the use of force. Their conviction was corroborated by available reports which indicated that the illegal regime in Freetown would be unable to

withstand an embargo, if effectively applied. For this reason, the Chiefs of Staff requested a full briefing on the status of forces in Sierra Leone. Having obtained this information, the Chiefs of Staff decided to recommended imposition of an enforced embargo for four weeks after which an evaluation would be carried out and appropriate recommendations made to the Heads of State and Government. The service chiefs recognised that Member States must show firmness, real cohesion and sincerity. These conditions must be fully met if the sanctions agreed jointly were to succeed.

RECOMMENDATIONS

At the end of their meeting, the Chiefs of Staff made the following recommendations to the Ministers of Foreign Affairs:

i) a) ECOMOG should be authorised to restructure and train the Liberian armed forces.

b) Funds and logistics for this exercise should be sought from ECOWAS Member States and friendly countries.

ii) a) ECOMOG's mandate in Liberia should be extended by at least one year.

b) The ECOMOG Force Commander should be instructed to prepare a detailed time table for the orderly withdrawal of ECOMOG forces from Liberia.

iii) ECOMOG's field of operation should be extended to Sierra Leone and its mandate expanded to include the strict enforcement of the sanctions recommended.

iv) a) ECOMOG should be mandated to enforce the embargo for a a period of four weeks initially.

b) At the end of that period, the Committee of Four should assess the level of application of the sanctions and, if necessary, make appropriate recommendations to the Heads of State and Government on further actions to be taken.

c) In order to ensure the effective and successful application of the embargo Member States should contribute troops and equipment as necessary.

ANY OTHER MATTERS

The Executive Secretariat submitted to the meeting a memorandum which it has received from the Liberian Government calling for the lifting of sanctions imposed on the parties to the Liberian conflict by ECOWAS and the United Nations Security Council.

Having considered this request, the Chiefs of Staff expressed the view that since Liberia's security was being ensured by ECOMOG, there was no immediate need for the country to import military hardware. They pointed out that since the embargo decided upon by ECOWAS and the United Nations concerned the supply of arms, amunition and military hardware, it was neither necessary nor expedient to recommend that this measure should be lifted.

The Executive Secretariat also submitted to the meeting a memorandum concerning an ECOWAS special documentation project on the peace process in Liberia. The project which involved the production of an authoritative report on the peace process in Liberia, was considered favourably by the Chiefs of Staff who expressed the desire to see it through and therefore recommended to the Community decision-making bodies to adopt the measures contained in it.

Finally, the representative of the legitimate Government of Sierra Leone, Ambassador Joe Blell, proposed the establishment by ECOWAS of a conflict prevention and resolution unit. The meeting called on the Executive Secretariat to examine the issue.

ADOPTION OF REPORT

This report was adopted after amendments.

CLOSING SESSION

In his closing remarks, General Abdulsalami Alhaji Abubakar expressed gratitude to the Chiefs of Staff and their representatives for the quality of their contributions to the discussions and for the frank manner in which they had addressed the issues. On behalf of His Excellency General Sani Abacha, Head of State, Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria, he commended all those who had contributed to the restoration of peace to Liberia, despite the limited resources at the disposal of their countries. He requested the Chiefs of Staff to convey the gratitude of the Chairman of the Authority to their troops and Heads of State for the invaluable contribution each had made to the peace process in Liberia.

The Chairman of the 16th meeting of the Chiefs of Staff prayed that peace would reign in Liberia and in the whole of the sub-region.

General Abubakar expressed the hope that the friendship which had existed between the Chiefs of Staff all through the Liberian crisis would continue to grow. He called on the Chiefs of Staff to reflect on ways of strengthening the solidarity and fraternal relations between the armed forces of Member States not only in the

military field but also in the areas of sporting activities and the training of officers and men.

He thanked UNOMIL for the assistance which it had given to ECOMOG towards the effective implementation of the peace process in Liberia.

Finally, General Abubakar wished all participants a safe journey back to their respective homes.

DONE AT ABUJA THIS 27TH DAY OF AUGUST, 1997

MAJOR-GENERAL ABDULSALAMI A. ABUBAKAR
CHAIRMAN

FOR THE MEETING

9199

1920

ECONOMIC COMMUNITY OF WEST AFRICAN STATES

COMMUNAUTE ECONOMIQUE DES ETATS DE L'AFRIQUE DE L'OUEST

SIXTEENTH MEETING OF ECOWAS CHIEFS OF STAFF

SEIZIEME REUNION DES CHEFS D'ETAT MAJOR DE LA CEDEAO

ABUJA, 26-27 AUGUST 1997 / 26-27 AOUT 1997

LIST OF PARTICIPANTS / LISTE DES PARTICIPANTS

PAYS/COUNTRY	NOM / NAME	ADRESSE / ADDRESS
BENIN	GANDONOU KODJA DAGUE K. MICHEL	CHEF D'ETAT-MAJOR DES ARMEES ADC/CS
BURKINA FASO	OUEDRAOGO NIKIMA YACOUBA	CHEF D'ETAT-MAJOR GENERAL DES ARMEES DEFENSE NATIONALE
COTE D'IVOIRE	GENERAL TANNY E. JOSEPH AMARA ESSY COLONEL DIABAKATE SOUMAHILA TRAORE AMADOU BAH ROBERT MINGUI KEFFA EMILE AIDARA ABDOULAYE	SECRETAIRE GENERAL DU CONSEIL NATIONAL DE SECURITE MINISTRE DES AFFAIRES ETRANGERES SOUS-CHEF DES OPERATIONS AMBASSADEUR, DIRECTEUR AFRIQUE, ASIE ET MOYEN ORIENT ADMINISTRATEUR CIVIL/C.N.S. AMBASSADEUR CHEF DE DIVISION
THE GAMBIA	LT-COL. MOMODOU BADJIE	IN CHARGE OF ADMINISTRATION AND QUARTER MASTER GENERAL
GHANA	COL. CHARLES OKAE LT-COL. JO-SYLVESTER NKRUMAH HON. J.V. GBEHO BRIG. FRANCIS A. AGYEMFRA KWAME E.A. AMOA-AWUA KOBINA WUDU	DIRECTOR GENERAL, OPERATIONS GENERAL STAFF OFFICER TO CHIEF OF STAFF DEPUTY MINISTER OF FOREIGN AFFAIRS ACTING HIGH COMMISSIONER DIRECTOR
GUINEE	COL. DIALLO IBRAHIMA SORY COL. KERFALA CAMARA CAPT. DIAWARA LOUIS PIERRE	CHEF D'ETAT-MAJOR GENERAL DES ARMEES INSPECTEUR GENERAL DES FORCES ARMEES P.R.O. DEFENCE HQ.
LIBERIA	LT-GEN. PRINCE C. JOHNSON II COL. JOHN S. TARNUE	CHIEF OF STAFF ASST. CHIEF OF STAFF G-3, AFL

MALI	COLONEL SIRIMAN KEITA	CHEF D'ETAT MAJOR GENERAL DES ARMEES
NIGER	COL. MOUSSA M. DJERMAKOYE CMDT. MOSSI HASSAN CMDT. YAYE GARBA LT. MOUSSA SALEY	CHEF D'ETAT-MAJOR GENERAL D.A. AMBASSADE DU NIGER ARMY G1 A.D.C.
NIGERIA	MAJ-GEN. A.A. ABUBAKAR MAJ-GEN I.R. BAMAIYI BRIG.-GEN. A.I. OKUNGBURE COL. ENE EYO COL. F.O. OKONKWO HENRIETTA UDIDIGU AMB. K.O. OLISEMEKA	CHIEF OF DEFENCE STAFF CHIEF OF ARMY STAFF DEFENCE HQ. DEFENCE HQ NIGERIAN ARMY HQ CHIEF LEGAL OFFICER, MINISTRY OF JUSTICE MINISTRY OF FOREIGN AFFAIRS ADG
SIERRA LEONE	JOE C. BLELL SAHR SUNDU	HIGH COMMISSIONER TO NIGERIA AG. DIRECTOR GENERAL
UNITED NATIONS	MAJOR-GENERAL SIKANDAR SHAMI	CHIEF MILITARY OBSERVER, UNOMIL
ECOMOG	MAJOR-GENERAL SVL MALU	FORCE COMMANDER, ECOMOG
ECOWAS	MAHAMADOU OUHOUMOUDOU LALOUPO ROGER FRANK OFEI LT-COL. SAAD ABUBAKAR ADRIENNE DIOP HALIMA AHMED	SECRETAIRE EXECUTIF p.i. DIRECTEUR DU DEPARTEMENT DES AFFAIRES JURIDIQUES DIRECTEUR DU DEPARTEMENT DES RECHERCHES MILITARY LIAISON OFFICER DIRECTEUR DU DEPARTEMENT DE L'INFORMATION CHEF DE DIVISION, DEPARTEMENT JURIDIQUE

SCSL-2003-01-T
THE PROSECUTOR
V
CHARLES GHANKAY TAYLOR

EXHIBIT NUMBER – **D-187**
SCSL/ERN/585

RECEIVED:
18/03/2010

BY:
RACHEL IRURA

LETTER FROM THE PRESIDENT OF LIBERIA, CHARLES GHANKAY TAYLOR TO THE PRESIDENT OF GUINEA, LANSANA CONTE, FEBRUARY 22 1999 - DCT 67 (1 PAGE)

FILED BY

DEFENCE

Draft 1

My dear Friend and Brother:

February 22, 1999

I present my compliments and, in consideration of our mutual desire to find a common and permanent solution to the problems besetting the peace and security in our sub-region, hasten to seize this opportunity to bring to your urgent attention the 1986 Non-Aggression and Security Cooperation Treaty between Member States of the Mano River Union which, inter alia, obliges them in principle and substance to be their brother's keeper and to cooperate in mutual security interest of each other. The relevant Articles of the treaty which are operative in the current sub-regional circumstances are Articles V., VI., VIII. and IX.

In this connection, I wish to refer to Article VIII, which provides that any member of the military or paramilitary forces found within the Territory of a High Contracting Party without proper leave of absence, prior clearance, entry permit and travel document shall be (arrested and) kept in custody. Further, the Government concerned shall be immediately notified.

According to Article IX., the establishment of a Joint Security Liaison Committee consisting of three (3) representatives from each High Contracting Party, shall have the responsibility to liaise on the subject of fugitive criminals, dissidents as well as subversive activities of citizens of their respective countries in the territory of each other, exchange information, investigate reports affecting the security of the High Contracting Parties with a view to maintaining the desired peaceful co-existence.

In view of the above and, in order to bring about an amicable solution to the problems which beset our sub-region, I propose that the Ministers of Foreign Affairs, Defense and National Security of the Mano River Union, meet in Monrovia on March 3, 1999, to work out implementation of the Non-Aggression and Security Cooperation Treaty and the appropriate security measures.

His Excellency Gen. Lansana Conte
President of the Republic of Guinea
CONAKRY, Guinea

[redacted]

1924



SCSL-2003-01-T

THE PROSECUTOR
V
CHARLES GHANKAY TAYLOR

EXHIBIT NUMBER – **D-36**
SCSL/ERN/166

NAME OF WITNESS: **TF1-561**

RECEIVED
21/05/2008

BY

RACHEL IRURA

UNITED NATIONS SECURITY COUNCIL, LETTER DATED 10 JULY 1998 FROM THE PERMANENT REPRESENTATIVE OF NIGERIA TO THE UNITED NATIONS ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL, S/1998/629, 10 JULY 1998

FILED BY

DEFENCE

Annex

Joint communiqué of the meeting co-hosted by the Chairman of the Economic Community of West African States and Head of State of the Federal Republic of Nigeria, General Abdulsalam Abubakar, and the Secretary-General of the United Nations and attended by the President of Sierra Leone and the President of Liberia, issued on 2 July 1998 at Abuja

1. On 1 July 1998, at the initiative of the Secretary-General of the United Nations, Mr. Kofi A. Annan, the Chairman of the Economic Community of West African States and Head of State of the Federal Republic of Nigeria, General Abdulsalam Abubakar, hosted a meeting between President Ahmed Tejan Kabbah of Sierra Leone and President Charles Ghankay Taylor of Liberia.

2. The meeting, which was co-chaired by the Chairman of the Economic Community of West African States and the Secretary-General of the United Nations, addressed a number of regional and subregional issues, including ways in which security and cooperation between the neighbouring States of Liberia and Sierra Leone could be further improved, which confidence-building measures could be introduced by the two Governments and what role the Economic Community of West African States and the United Nations could play in support of these efforts.

3. The Heads of State of Sierra Leone and Liberia, in the presence of the Chairman of the Economic Community of West African States and the Secretary-General, reached agreement on the following points:

(a) They strongly condemned the continued rebel activities in Sierra Leone, as well as the horrendous atrocities that had been committed there;

(b) They were determined to cooperate to promote an end to the fighting in Sierra Leone and to foster peace and security in the subregion;

(c) They reaffirmed the non-aggression protocol of 1986 of the Mano River Union agreement and agreed to seek ways to enhance its effectiveness. Special attention was drawn to the need to control the activities and movements of demobilized former combatants and the leaders expressly reaffirmed their commitment not to permit their territories to be used for actions aimed at destabilizing the other;

(d) That, as a further confidence-building measure, the two leaders would exchange official visits;

(e) That both leaders would welcome and support the deployment of observers from the United Nations and the Military Observer Group of the Economic Community of West African States along their borders;

(f) Both leaders called upon their citizens not to be involved in destabilizing activities against the other State and stated that all those caught committing such offences should be arrested and prosecuted under the laws of the arresting State;



SCSL-2003-01-T

THE PROSECUTOR
V
CHARLES GHANKAY TAYLOR

EXHIBIT NUMBER – **P-48**
SCSL/ERN/49

RECEIVED
24/01/2008

BY
RACHEL IRURA

SPECIAL COURT ALL DISBURSEMENTS FOR WITNESS FORM SCSL P0023 (REDACTED)

FILED BY
PROSECUTION

Special Court for Sierra Leone
All Disbursements for Witness

TF1-276

SCSLP0023

1 **Date:** Friday, June 20, 2003 **Receipt No:** 722639130

Made By: JBERRY

Reason: Payment made to SCSLP0023 to cover cost associated to Transportation 445USD

Category: TRANSPORT **Receipt** ☑

Amount: 445.00 ☑ **$US Dollars** ☐ **Local Currency**

Approved By: JBERRY

---

2 **Date:** Monday, June 23, 2003 **Receipt No:** 1776463956

Made By: CDUFKA

Reason: Payment made to SCSLP0023 to cover cost associated to TRAVEL [redacted] $ 885.00 US dallors.

Category: [redacted] **Receipt** ☑

Amount: 885.00 ☑ **$US Dollars** ☐ **Local Currency**

Approved By: GMORISSETTE

---

3 **Date:** Monday, June 23, 2003 **Receipt No:** -498958209

Made By: JBERRY

Reason: Payment made to SCSLP0023 to cover cost associated to TRAVEL [redacted] $ 793.00 US Dollars

Category: AIR TICKET **Receipt** ☑

Amount: 793.00 ☑ **$US Dollars** ☐ **Local Currency**

Approved By: GMORISSETTE

---

4 **Date:** Monday, June 23, 2003 **Receipt No:** -1203472699

Made By: JBERRY

Reason: Payment made to SCSLP0023 to cover cost associated to Hotel fee [redacted] $ 57.00 US Dollars.

Category: HOTEL FEES IN [redacted] **Receipt** ☑

Amount: 57.00 ☑ **$US Dollars** ☐ **Local Currency**

Approved By: GMORISSETTE

Special Court for Sierra Leone
All Disbursements for Witness

5 **Date:** Monday, June 23, 2003 **Receipt No:** -1940765293

Made By: JBERRY

Reason: Payment made to SCSLP0023 to cover cost associated to Transportation $322 USD

Category: TRANSPORT **Receipt** ☑

Amount: 322.00 ☑ **$US Dollars** ☐ **Local Currency**

Approved By: JBERRY

TF1-276

---

6 **Date:** **Receipt No:**

Made By:

Reason:

Category: **Receipt** ☐

Amount: 0.00 ☐ **$US Dollars** ☐ **Local Currency**

Approved By:

---

7 **Date:** **Receipt No:**

Made By:

Reason:

Category: **Receipt** ☐

Amount: 0.00 ☐ **$US Dollars** ☐ **Local Currency**

Approved By:

---

8 **Date:** Monday, July 16, 2007 **Receipt No:** 128255175

Made By: BHUTCHISON

Reason: Meals provided during OTP interviews

Category: MEALS **Receipt** ☐

Amount: 6,000.00 ☐ **$US Dollars** ☑ **Local Currency**

Approved By: SSWART

Special Court for Sierra Leone
All Disbursements for Witness

Total Disbursements

$US Dollars	*Local Currency*	*Totals*	*No. of Payments*
☑	☐	2,502.00	5
☐	☑	6,000.00	1
☐	☐	0.00	2

SCSL-2003-01-T

THE PROSECUTOR
V
CHARLES GHANKAY TAYLOR

EXHIBIT NUMBER – **P-63**
SCSL/ERN/66

NAME OF WITNESS: **TFI-371**

RECEIVED
14/02/2008

BY
RACHEL IRURA

RUF DEFENCE HEADQUARTERS, FORUM WITH THE EXTERNAL DELEGATES LED BY THE RUF DEFENCE STAFF, 2ND DECEMBER 1998 - 00015487 – 00015491

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PROSECUTION

BATTLE FIELD COMMANDER - RUFSL

9211

00015487

(1)

REVOLUTIONARY UNITED FRONT OF SIERRA LEONE

DEFENCE HAEDQUARTERS.

2nd December, 1998.

FORUM WITH THE EXTERNAL DELEGATES LED BY THE OF DEFENCE STAFF.

This meeting was summoned by the High Command Brigadier Sam Bockarie (CDS-RUFSL) inorder to acquaint members present with report on the external mission they went on. Venue-water works and time was 1323 HRS GMT.

In attendance were:

1. Brigadier Sam Bockarie
2. Mr. S.Y.B Rogers
3. Col. Edward Kanneh
4. Maj. Lawrence Womandia
5. Major Junior Vandi
6. Maj. Mohamed S. Banya
7. Lt. Col. Rashid Sandi - External delegates

. Col. I.H. Sesay RFC and members of various units were also in attendance. The meeting was opened with a short Muslim and Christian prayers.

The Chairman CDS- Brigadier Sam Bockarie welcomed every one who attended the forum. He told us all that the forum was intended to brief us on the mission they had gone through. The CDS appointed Mr. SYB Rogers to give a salute report about the mission.

Mr. SYB Rogers extended his heart felt thanks to all persons in attendance. Pa Rogers wasted no time to tell us the mission was a very big success through our blessings and co-operation. A ccording to Mr. SYB Rogers, this plan of sending out people to seek our welfare at the international front at hand. Many of these people failed us but God Almight blessed this very outstanding effort made by the CDS and indeed the success was very great interms of what they were able to receive. Mr. SYB Rogers stated further that since the 1997, May 25 coup, RUFSL was invited to join our brothers(AFRC)but he lamented that the MERGER was unsuccessful because there was no common understanding or ideology. He reiterated that indeed "God is behind our movement so that we shall not be disgraced". He admonished that we must reckon with the efforts played by the high command when it deserves praise. It is the sole right of the senior command structure and all combatants to defend the civilians. This is the reason why he, as Chairman of the

Peoples War Council and an elder among us he esnfirmed it as his primary duty to advise and educate the higher authorities as to what they must do. Let no one feel or say that Brigadier Mosquito is doing things on his own, we must come together and consult even with ourselves and the high command on problems we don't understand". Pa SYB Rogers pledged his sincere thanks and credit to the CDS for his leading role in the external mission they went on: Indeed the CDS' effort was very excellent. Pa SYB Rogers noted with profound gratitude the effort applied by our host govt. on the other side for granting us the in-let and exit facilities even with escort. It was very suprising to note that according to Pa SYB Rogers, most heads of States have been thinking that the RUF/SL had been in disaray since the kidnapping of our Dear Leader. It was therfore good and a blessing in disguise to us all that the young Brigadier himself, who has held the garrison strongly aganist the enemies went to see some of the Heads of State in person. According to Pa Rogers, both the CDS and himself paid a courtesy call on his Excellency C.T.T. To every body's delight, there are friendly countries who have been wishing to receive serious minded people that will seek RUF/SL interest abroad.. Pa Rogers lamented that we were disappointed by most of the past external delegates who squandered RUFSL funds and made no head way so as to open our way to success . 'They have met their fate' says Pa. Rogers. "The people's Sin has fallen on them". The mission extended to Burkinafasso where they (delegates) were warmly received and attended to. All discussions with the Burkinabey authorities were highly fruitful. There was however a diplomatic test on the CDS to prove his ability and seriousness as commander on the ground. The CDS behaved excellently and maturedly to the admiration of his excellency Campore . The Brigadier has done a very historic job for the RUFSL movement. He has signed a rich contract for us and with our support, given to him and the movement, we shall do every thing possible to promote this struggle. The WAR COUNCIL Chairman made it public that people have been meeting him on the note that the CDS is intending to take the leader's power. According to Pa Rogers, he advised every one not to think of the CDS in that way. He Pa SYB Rogers told us that he has examined the Brigadier in and out and has not suspected the least of such intention in the Brigadier. We must give the Brigadier all fervent support, so as to encourage him (Brigadier) for his great sacrifice. Pa Rogers concluded by thanking Col. Issa Sesay the RFC/Ag. CDS and all autherities who held the ground and frontlines strongly while the CDS and delegates were out.



SCSL-2003-01-T

THE PROSECUTOR
V
CHARLES GHANKAY TAYLOR

EXHIBIT NUMBER – **P-66**
SCSL/ERN/69

NAME OF WITNESS: **TFI-371**

RECEIVED
14/02/2008

BY
RACHEL IRURA

CONFIDENTIAL - RUF BRIGADE HEADQUARTER - BUEDU, "INFORMATION AND REQUEST", REPORT FROM SAM BOCKARIE TO CHARLES TAYLOR, 24 JUNE 1998 - 00007833

FILED BY
PROSECUTION

CONFIDENTIAL

9214

00007833

REVOLUTIONARY UNITED FRONT OF SIERRA LEONE

BRIGADE HEADQUARTER - BUEDU

24th June, 1998.

To: His Excellency,
The President of Republic of Liberia
Dr. Charles G. Taylor.

Through: The Chief of Protocall
Republic of Liberia
Alhaji Musa Sesay.

From: Brigadier Sam Bockarie (Mosquito)
Chief of Defence Staff RUFSL.

Subject: INFORMATION AND REQUEST:

Be informed that the Guinean government in collaboration with the Nigerian led Ecomog troops are carrying out a cross-border attack on our position at Koindu and Kailahun. This attack has been going on since June 15, this year and is still continuing on our ground by the river bank.

Furthermore, we are trying our best to resist their intention which is to occupy Koindu and Foya, but because of the heavy bombardment we have not been able to send them back across the border, and we do not have rockets or bombs which are badly needed to handle the situation. We are merely managing the small ammunition we have at hand as at now, but we would not want to wait till we completely run out of ammunition which may cause a big set back for all of us.

In the light of this, sir, I am hereby appealing and requesting that you please meet the President and explain things to him in detail for his immediate attention.

We appreciate the assistance we have been receiving and we want you to believe that we have no where else to cry to for help besides you and His Excellency.

We usually receive materials without bombs and not even up to twenty (20) boxes which makes the operation, to capture and defend any strategic point difficult.

To conclude sir, in the light of all the above, we are appealing that you please discuss the matter with His Excellency for his timely intervention of the situation on the ground.

Also, we hope to receive some cash for the welfare of the men as we have presently run out of cash to purchase medicine, food and morale boosters for the men.

The bearer of this letter, Prince Rennie, will explain to you in detail on situation on the ground.

May God Almighty continue guide protect and bless you always.

Your obedient son,

Signed:

BRIGADIER SAM BOCKARIE - CDS RUFSL.

1925



SCSL-2003-01-T

THE PROSECUTOR
V
CHARLES GHANKAY TAYLOR

EXHIBIT NUMBER – **P-67**
SCSL/ERN/70

NAME OF WITNESS: **TFI-371**

RECEIVED
14/02/2008

BY
RACHEL IRURA

RUF PEOPLE'S ARM - SITUATION REPORT TO FODAY SANKOH FROM THE BLACK GUARD COMMANDER, 00009672 – 00009681

FILED BY
PROSECUTION

REVOLUTIONARY PEOPLE'S ARMY
OF S/LEONE

9216

00009672

TO: THE LEADER.
FROM: THE BLACK REVOLUTIONARY GUARDS
SUBT: SITUATION REPORT

Sir, on behalf of the entire Black Guard uni
se are hereby taking this opportunity to make a
ummary report to let you know or understand the
ituation on the ground.

To start with, we thank the Almighty God as
er your previous concentization programmes to
he entire movement that this is a Holy war which
verybody within the movement have realised, because
n your absent the struggle continues with lot of
developments.

Sir, as you left us in 1996 to go and sign the
bidjan accord, lot of enemy pressure (Kamajors)
as mounted on us, but due to the dedication and
loyalty of the Command you left on the ground, we
ere abled to contain situation untill the A.F.R.C
Cour'de fat, wherein you instructed the High-Commar
or us (R.U.F) to join the brothers in other to for
he people's Army, and defend the soverignity of our
Mother land.

The external delagates who were with you in
bidjan also went over the media that they have
pple the leadership of the R.U.F, and went to
extend of insighting people, but due to the
witness and the security existence of the High

0000967?

Command, we were abled to trick them to come on the ground for us ~~to~~ work out all necessary modalities. They came through the Guinea/Sierra con? boarder (Nongowa Ferry) and were finally arrested by us and brought on the ground in a lock'd up.

Furthermore, when we join the brothers, some of our senior officers and elders were given ministerial positions in the A.F.R.C Government. All the same things were not working well with the R.U.F members ~~while~~ in which the High-Command even decided to leave the city Freetown and decided to base in the provinces. Things were not put in a proper shape as the so called Honourables were left doing things as they like. There was no proper Command and control untill Ecomog decided to make a final strike into Freetown, in which they succeeded in driving the entire A.F.R.C from the city.

When Freetown fell in the hands of Ecomog, High-Command therefore decided at once without any delayance as there was no command and control to move straight to our original base (Kailahun) and position the R.U.F Combatants to the old former 1991 defensive points, which were KENEMA, BONBOHUN and JOJOIMA. These positions were seriously defended untill when the Ecomog advance to Kenema and Daru. From then, the forces had tried there level best to penetrate

the defensive position, but no chance had being given to them. In the North, the enemies captured Makeni and tried to advance to Kono. Our men retreated and defended part of Kono.

Due to the security situation, the High Command therefore instructed the then B.G.E. Brigadie Issah Sesay to try by all means to report with the former A.F.R.C Chairman J.S.K to Kailahun. As a result, J.S.K ~~was~~ and his body guards were brought to Kailahun as per instruction. They were welcome by the High-Command and elders.

It, at this stage, the High-Command, J.S.K, Senior officers, Junior Officers and the entire Combatants held a forum and finally agreed to continue the struggle under one structure and Command.

Immediately Freetown and the provincial Headquaters fell in the hands of ECOMOG. The High-Command was call to report by the president of Liberia Mr Charles Taylor wherein the president seriously briefed the High-Command and gave him the confidence that he should not give up but to keep up the struggle and uphold the Revolution until the Leader returns. The president gave full assurance to the High-Command and promise to give its maximum support to the R.U.F. The president also took an oath that he will never betray his brother (late Foday Sankoh). From that point, the President gave huge quantity of logistics (Ammunition

to the High Command for us to start repelling the ECOMOG advancement or to contain situation.

To this development when the High-Command returned from Liberia, he briefed J.P.K pertaining to the latest development, and met him personally to give a helping hands with diamonds or any foreign currency he had brought from Freetown for him to impress President Taylor. As a result, J.P.K denied bitterly that he had brought no diamond with him whereas the High Command had gathered informations that J.P.K has brought lots of diamond with him, but he wants to keep it on his own without financing the movement as we are now under one umbrella therefore. The High-Command gave instruction to Brigadier Issah Sesay and Brigadier Mike Lamin for them to properly search J.P.K for diamond. After the searching lots or large quantity of diamonds was taken from J.P.K and his body guards. Later the parcels of diamond was given to Mr Ibrahim (General) and sister Memuna for them to travel with the forces directly to President Taylor.

To this development, the High Command was able to recieve the first satellite phone from General Ibrahim which he was use to do some important contacts with.

After General Ibrahim returned back to Burkina-Faso, the High Command also received a good carriage of diamond from Kono. He also [illegible] to

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Send another good parcel to General Ibrahim in Burkina-faso for Ammunition and Arms as he had started making some important Contacts for materials. The High Command therefore decided to hand-over the said parcel of diamond to the B.G.C Brigadier Issah Sesay inother for him to pass through Monrovia and make his way to Burkina-faso and meet General Ibrahim to work out fast modalities to get some needed materials for us.

Brigadier Issah Sesay left the base and travel along with Col Jungle and some Liberia securities to Monrovia. He did not make his way through as he only stop in Monrovia, and Information was later recieved by the High-Command that the parcel of diamond has droped from Brigadier Issah He therefore return on base and gave the same report to the High-Command.

The joint security therefore ~~Foced~~ investigated the B.G.C and took statement from him.

Later a forum was held pertaining this issue, and the senior officers and elders suggested to suspend the issue until the arrival of the Leader.

Moreso, President Taylor Continues to give arising hands with logistics which involves food stuff and materials. The High Command was call in every month to report to Monrovia for briefing.

The High Command later called Brigadier Denis Mingle (Superman) on a forum for a mission to be carried-out to capture the whole

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of Kono. They came up with an agreement to apply some guerilla tactics to overun the strategic positions in Kono district. A plan was drawn, but superman never went with the plan and the ~~ex~~ mission fail without capturing Kono and over thirty (30) M.I.A on our side. and also K.I.A.

After this said mission, superman was able to put some man-power together and proceed to Kabala axis and erected a jungle there.

In Sept 1992 the High Command called a Vanguared forum. He addressed the forum, and made all the Vanguards to understand that they should tighten up their belts and officiate themselves as Vanguards of this Revolution. Also as to how best they should operate to promote the good image of the struggle. In this forum the High Command met to constructively criticize the way superman is behaving. The High Command made superman available over the communication for a dialogue. In their dialogue, He criticize superman for putting a Lebanese woman behind him which is delaying the operation. Infact to this, the High Command therefore instructed superman to report for a better plan-up, but he responded that he will not report to the call from that point superman started operating on his own

7.

without taking any instruction or Orders from the high Desk.

In October, the High-Command was again call by president Taylor. We therefore went along with him to Monrovia. The High Command was instructed by president Taylor to move to Burkina Faso and meet with the Burkina president.

The High-Command, the War Council chairman and one S.L.A representative Col Eddy Sankeh took the trip to Burkina faso. They met president Blaise Campoare, and they were highly welcome. They took two weeks in Burkina faso. They were given words of confidence and assurance by president Blaise that he will not let Col Eddy Sankeh down atall. The president told the High-Command to be very hard in Commun to withhold the movement until the arrival of the Leader. Infact he instructed the High Command to forward the R.U.F Issue to the O.A.U as he is the current O.A.U Chairman.

On their return, they were given huge quantity of materials for serious offensive to support a Campaign for the release of our Leader. The delegation return back to monrovia in November. The delegation return back to base and held an immediate forum for a serious offensive to Commense.

All the Combatants were happy and agree to start the operation in Capturing Kono district for reunion —

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was given to the B.F.C Brigadier Issa Sesay. huge quantity of material was given to the B.F.C and he immediately left for Kono. They also held a brunt in Kono and succeeded in overunning the entire Kono district and capture some artillery weapons and huge quantity of Arms and Ammunition. The whole operation was therefore given to the Late Col Rambo who further extended the operation to Tonkolili and advance to Makeni. After the fall of Makeni, the Late Col as per instruction went and recieve Brigadier Superman to join the operation.

They therefore extended the operation to Port-Loko as far as Waterloo and Kamboia axis.

Furthermore, Col Rambo also tried his level best to link up with the other brothers that entered Freetown, but the Freetown operation was not Co-ordinated as the said Commander Blacks-Tah was not going by the instruction from the High Command. When they retreated from Freetown, the L.F.C met them and told them to present a Comprehensive report pertaining the whole Freetown operation, but they deliberately fail to do so.

According to the Black Guards security information, they brought some diamonds and lot of foreign Currency from Freetown, but they never presented anything to the High Command.

The late Col Rambo even arrested six hundred

thousand (600:000) U.S dollars from some of the men from Freetown, and presented the said sum to the B.F.C Bridgadier Issa, and also some diamon

Again there was instruction from the High Desk for Lt Col Gibril Massaqoi to report for important enquiry and briefing, but he refuse the call for over four (4) good times.

As a result, there was an instruction from the High Command to the B.F.C for Lt Col Gibril Massaqoi to be arrested and turn over.

The B.F.C further went along with the Late Col Rambo and some Black guards as per instruction to arrest Lt Col Gibril and Maj Nya.

During this process, superman and his men put in stiff resistance and even open fire and launc some RPG Bombs, therefore scatter the whole group and killed some men and went to the extend of advancing to makeni and attack the residence of the B.F.C and vandalize the whole compound and took every thing in the compound including the materials for operation and enough foreign currency and diamond. He even extended in raising the compounds of some other senior men officers.

After some days, he came for the second time and attack makeni and killed Col Rambo amste some security personnels, were some people and but they missed to kill the B.F.C and chase him all the way to makali and missed him

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the second time.

According to security findings, most of the senior officers can not give any advice on how to contain that situation. Instead they keep on sighting to spark the situation.

According to SUPerman, he has vowed not to ever take command from the High Command.

In regards to the mining process, it is only recently that the authorities has given the go ahead for mining to be going on. Lt Col Kennedy is the overall mining Commander. They have being getting some small small pieces which is in our big record books.

Another development is that one businessman from Cuba by the name of Carlos offered to movement one F.M radio station, and the station itself has being built up a hill in Dodo Bottom.

Also in ~~Dece~~ January, the High Command organise an operation for ~~the~~ Segbwema to be Captured in other to cut the supply between Daru Barracks and Kenema. The said operation went in smoothly but unfortunately fail to capture. We in fact left another operation at hand to attack Kenema.

In Conclusion Sir, we are hereby suggesting that the issue of Superman should immediately be put under Control before he try to mislead some of our struggle brothers.

Faithfully Submitted

YOUR REVOLUTIONARY GUARDS R.U.F S/L



SCSL-2003-01-T

THE PROSECUTOR
V
CHARLES GHANKAY TAYLOR

EXHIBIT NUMBER – **P-279 B**
SCSL/ERN/367 B

WITNESS: TF1-174

RECEIVED:
28/01/2009

BY:

RACHEL IRURA

TRANSCRIPT - TRACK TWO, BBC FOCUS ON AFRICA, 6 JANUARY 1999 (AUDIO FILE) - D0000517

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PROSECUTION

OTP Unofficial Transcript

D0000517
BBC Focus on Africa
Track 1: 05/01/99 (29:23)
Track 2: 06/01/99 (24:13)

TRACK 2

TIME: 00:00

Bickerton: BBC World service at 15:05 Greenwich Mean Time. This is Chris Bickerton with Focus on Africa.

Music plays.

Bickerton: Rebels enter Freetown, Sierra Leone – have they captured State House? Municipal workers on strike in Nairobi and much more, including what progress has the UN made towards a ceasefire in Angola? Tonight in Focus.

Music plays.

Bickerton: It's been an extraordinary day in Freetown, the capital of Sierra Leone. After days of skirmishing outside the city between ECOMOG forces and RUF rebels, the worst nightmare for many citizens began to come true in the early hours of this morning when rebels entered the city from the Kissy District out to the east. This was the advice given by the Information Minister, Julius Spencer, to the citizens of Freetown:

Spencer: I'm telling them to stay calm, particularly to stay indoors and not to be frightened. That the situation is going to be brought under control, and that the rebels want people to panic, and they thrive on that, so we are advising everybody to stay calm and stay indoors and the situation will be dealt with. Anybody who is found on the streets will be considered to be a rebel. So everybody should stay on the streets and allow the security forces to deal with the situation, because people on the streets only add to the confusion and makes it difficult for the security forces to deal with the situation.

Bickerton: The suggestions of Sierra Leone Information Minister Julius Spencer as rebels entered Freetown.

Well, we called our correspondent, Winston Ojukutu-Macaulay, and asked him what had happened in the city since then.

TIME: 01:41

Macaulay: Well, information has been very hard to come by because everybody has actually been indoors—we've all being staying indoors, but we've been communicating via the telephones. And what I can say to you is that by the telephone calls I've had, there are reports that Pademba Road Prison has been broken into, that the rebels are at State

House—these two cannot be confirmed—and that they are dressed in black overalls and they're being deployed in strategic places inside the city. These are all information via the telephone. What the Minister did say over the radio a few hours ago was that the rebels are in town and that ECOMOG was pursuing them.

White: So how much firing has there been?

Macaulay: There has been some heavy shelling towards the Stadium end from where I am staying. I can actually tell that they...they have been shelling the Stadium, and I had a telephone call from someone who confirmed that ECOMOG was shelling the National Stadium very close to the swimming pool where they had several hundreds of surrendered soldiers kept there for the past week or so.

White: These are soldiers who are suspected of siding with the rebels?

Macaulay: Yes and they were fighting alongside ECOMOG, but after recent attacks at, in Kono, Makeni, Masiaka, Lunsar and Hastings, they were recalled and brought down to Freetown and kept at the swimming pool

White: Have they managed to escape from the stadium?

Macaulay: Yes, that is information I have, that the rebels who entered Freetown last night went to the stadium and break the stadium and let loose those surrendered soldiers.

White: So what's the point of ECOMOG shelling now?

Macaulay: I think there are still some surrendered soldiers at the stadium resisting ECOMOG, and ECOMOG has been shelling the stadium to actually get rid of them.

Bickerton: Our Freetown correspondent, Winston Ojukutu-Macaulay.

TIME: 03:33

Bickerton: Well just over a half an hour ago, we got a call from an RUF rebel commander calling himself Colonel Sesay. He said he was one of the people who entered Freetown this morning and claimed to be calling from State House itself. He talked to Robin White.

Sesay: This is just to inform you that we have again overthrown the SLPP government about four hours ago this morning.

White: When you say *we*, what do you mean?

Sesay: We, the combined forces of the AFRC and the RUF forces.

White: And where are you speaking from?

Sesay: Directly from State House, directly from State House.

White: Presumably they will regroup and drive you out?

Sesay: Not at all. We'll not allow that again, we'll not allow that again, oh!

White: What about Lungi where there are also lots and lots of ECOMOG troops?

Sesay: As I am speaking to you, if you can overhear over the telephone, there is a complete bombardment going on presently at Lungi, but I'm not getting information from that battlefront Commander yet, over.

White: So you haven't captured Lungi?

Sesay: The- the- the motion is on the way to capture Lungi.

White: Now, are you claiming to be the new leader of Sierra Leone, or is that going to be somebody else?

Sesay: I cannot tell you now. I cannot tell you now, because it is a combined forces, a combined forces. We have the RUF, you have the AFRC, the former Revolutionary Council, over.

White: But were you yourself leading the assault on Freetown today?

Sesay: I have my, I have my brigadiers that were leading us, my Brigadiers that were leading us.

White: So who was actually in charge today?

Sesay: The most senior brigadier for this operation is Brigadier TAB Yaya, TAB Yaya, former PLO2.

White: Now assuming that you are not driven out of Freetown, what will be your next step after that?

Sesay: If we are not driven at all from Freetown, our most aim now, what is important for the people of Sierra Leone is to get peace, everlasting peace for this country.

White: Now what about members of the government? Do you know what's happened to them?

Sesay: Precisely speaking, I've not set an eye on any one of them yet.

White: But the Minister of Information has been out and about all day. He's been broadcasting on the radio.

Sesay: That is a mobile, a mobile radio – that is 98.1. You know, what happened the last time, it's a mobile radio that he's speaking from, not the national radio that he's speaking from.

SCSL-2003-01-T
THE PROSECUTOR
V
CHARLES GHANKAY TAYLOR

EXHIBIT NUMBER – **P-430 B**
SCSL/ERN/841 B

RECEIVED:
18/03/2010

BY:
RACHEL IRURA

EXCERPTS FROM: NEWS ARTICLE, SIERRA LEONE WEB - SIERRA LEONE NEWS, NOVEMBER 1998 (PG 1 OF 1) (TITLE OF NEWS SOURCE, DATE, SOURCE, PARA. 1 ("THE REVOLUTIONARY UNITED FRONT WILL DESTROY... DEFEATED MAN CAN DO SO.")

FILED BY

PROSECUTION

19 November: The Revolutionary United Front will destroy "every living thing" if anything happens to their leader, Corporal Foday Sankoh, RUF commander Sam "Maskita" Bockarie told the newspaper For di People in a report published on Wednesday. Sankoh is currently being held at Pademba Road Prison in Freetown where he is preparing an appeal against his conviction and death sentence on treason charges. "I am a ruthless commander," Bockarie said in a telephone interview. "I am ready to damage but I am waiting until something happens to Sankoh. When I take Freetown I shall clear every living thing and building. To my God, I'll fight. I'll kill and kill, and the more they tell me to stop, the more I'll kill. Only Sankoh can tell us to stop." Bockarie rejected a call by United States Special Envoy to Africa Rev. Jesse Jackson for the RUF to lay down its arms. "(The U.S. is) a big hypocrite whose intention is to steal our natural resources rather than bring peace to the country," he said. "America and the world should know that we shall not lay down arms, because only a defeated man can do so."

ECOMOG troops on Monday attacked suspected rebels on Tasso Island, 12 miles from Freetown, and captured 35 of them, an ECOMOG officer said on Thursday. Witnesses who fled the island said at least five rebels had been killed in the raid. "The rebels had suddenly re-emerged on the island, training and planning to carry out attacks on Freetown," one ECOMOG commander said. "We captured 35 of them and inflicted casualties." He gave no further details.

ECOMOG officers said Thursday they were committed to ending the Sierra Leone conflict militarily, and displayed five "hard core" rebel leaders captured recently in Lungi. Among them was a Lieutenant Kargbo, a member of the disbanded Sierra Leone Army, who had opposed disarming the army after the signing of the Conakry Peace Accord.

The United Nations High Commissioner for Refugees (UNHCR) said Tuesday it had suspended the airlift repatriation of Sierra Leonean refugees from Kissidougou, Guinea on November 13 after discovery of several cases of meningitis in refugee camps in the Prefecture of Gueckedou, where candidates had registered for a return to Freetown. The UNHCR had begun a second phase of the operation on November 11, returning 305 persons on several flights. All returnees undergo medical screening before returning to Freetown. The operation, for which 1,800 persons have registered so far, will be restarted if no further cases of meningitis are identifled in the refugee camps.

President Kabbah raised the possibility Thursday of an amnesty for five key rebel leaders if they would lay down their arms and agree to leave Sierra Leone for a period of time. In an ECOMOG security briefing, Chief of Defence Staff Brigadier-General Maxwell Khobe identified the five as Captain SAJ Musa, Sam "Maskita" Bockarie, Eldred Collins, Dennis "Superman" Mingo, and AFRC Chairman Major Johnny Paul Koroma. Kabbah said he would be willing to consider allowing them to depart "to a third country that is not neighboring Sierra Leone for awhile," and to later be resettled in Sierra Leone. "But I cannot do that as long as they go on committing the crimes that they've been committing, and chopping off people's limbs, and all the rest of it, burning homes, and above all always threatening, just a bluff, bluffing that they're going to kill everybody in this country," Kabbah told the BBC. He stressed, however, that rebel leaders who "have committed very, very serious crimes will have to face the law." General Khobe confirmed at the security briefing that the government has been in constant contact with rebel leaders, particularly with Captain SAJ Musa. He said the entire sub-region was interested in peace in Sierra Leone, and if what was needed was to provide safe passage for rebel leaders to depart so that Sierra Leoneans could live peacefully, the entire sub-region would be prepared to provide refuge for them. Minister of Information, Communications, Tourism and Culture Dr. Julius Spencer stressed that no negotiations had taken place. He said the rebel leaders must be prepared to lay down their arms, and that then the possibility exists for them to live elsewhere in the sub-region.

SCSL-2003-01-T
THE PROSECUTOR
V
CHARLES GHANKAY TAYLOR

EXHIBIT NUMBER – **P-431**
SCSL/ERN/842

RECEIVED:
18/03/2010

BY:
RACHEL IRURA

EXCERPTS FROM: NEWS ARTICLE, IPS-INTER PRESS SERVICE/GLOBAL INFORMATION NETWORK, POLITICS-SIERRA LEONE: NO LAWYER WILLIING TO DEFEND REBEL LEADER (LEXIS NEXIS), SEPTEMBER 7 1998 (TITLE, DATE, SOURCE, PAGE 2, PARAS 6 TO 7 ("EVEN AS SANKOH... MONITORED HERE."

FILED BY

PROSECUTION

LexisNexis

1 of 99 DOCUMENTS

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IPS-Inter Press Service

September 7, 1998, Monday

LENGTH: 823 words

HEADLINE: POLITICS-SIERRA LEONE: NO LAWYER WILLING TO DEFEND REBEL LEADER

BYLINE: By Lansana Fofana

DATELINE: FREETOWN, Sep. 7

BODY:

No Sierra Leonean lawyer appears willing to defend Cpl. Foday Sankoh, Sierra Leone's rebel leader who has been charged with treason here.

Most lawyers contacted by IPS today, and who declined to be identified, said they would not stick out their necks to defend the rebel leader, who is widely regarded here as Sierra Leone's "enemy number one".

Sankoh, who is in his mid-sixties, was extradited from Nigeria about six weeks ago on allegations of illegally entering that country with ammunition.

Two weeks ago, 16 people -- including five journalists -- were sentenced to death for collaborating with Sierra Leone's defeated military junta.

Immediately after the judgment, Sierra Leone's exiled opposition described the trial as flawed, claiming that no "independent" lawyer was allowed to defend the accused. But the government has rejected the claim.

Sankoh, who was paraded before a magistrate here in handcuffs last week, questioned Sierra Leone's legal system, and the peace which the government claims is now prevailing in the west African country. "Is this the peace you are persecuting me for?" he asked, after court registrar Mildred Solomon, read out the charges against him on Sept. 4.

Attorney General Solomon Berewa appeared for the state and would be leading the prosecution when the rebel leader makes another appearance on Sept. 11.

Sankoh started his rebellion in March 1991, attacking Sierra Leone's eastern border towns from Liberia, with his Revolutionary United Front (RUF), allegedly backed by the former National Patriotic Front of Liberia (NPFL).

Within four years, the rebels succeeded in advancing 48 kilometers to the Sierra Leonean capital of Freetown, with the rebellion spreading into Sierra Leone's three provinces of the east, south and north. The trail of destruction left behind is colossal as rebel forces burned down towns and villages.

An estimated 15,000 people are believed to have died since the war broke out and about a quarter of the country's 4.5 million population forced into exile in neighboring countries.

However, in November 1996, a peace accord was signed in Abidjan, Cote D'Ivoire, between president Ahmed Tejan Kabbah and the rebel leader under the auspices of the international community.

Although the deal was meant to end hostilities between Sierra Leone's belligerents, RUF rebels intensified their military campaign mostly against civilian populations in the interior of the country, prompting the peace accord to collapse.

The situation deteriorated when renegade soldiers of the now-disbanded Sierra Leonean army overthrew the government of President Kabbah in May 1997, and invited RUF forces from the bush to help form a government.

The rebel/military alliance, known as the Armed Forces Revolutionary Council (AFRC), headed by Maj. Jonny Koroma, ruled for nine months, before it was toppled by a Nigerian-led West African peacekeeping force, "ECOMOG", in February.

Sankoh, who was then in detention in Nigeria was named vice chairman of the AFRC. He never served that junta as he arrived in Sierra Leone after the junta's overthrow, and as a prisoner.

Even as Sankoh was being whisked from the courtroom, to an undisclosed place of detention, on Sept. 4, RUF's second in Command Col. Sam Bockarie, alias "Mosquito", threatened to wage a campaign of genocide, if the rebel leader was not immediately released.

"I will order my troops to kill every living thing including chickens if our leader is not released," he was quoted as saying by a leading European radio station, monitored here.

Refusing to be intimidated, presidential spokesman Septinus Kaikai told journalists last week that: "Cpl. Sankoh is a Sierra Leonean and like all else, he is subject to the laws of this country. He would be tried and if found guilty, would be dealt with accordingly".

Kaikai also ruled out negotiations with the rebels. "ECOMOG and the pro-government forces are currently on top of the war situation and by all indications, rebel elements still holding out in the bush will soon be flashed out," Kaikai said.

His hardline stance has been welcomed by most Sierra Leoneans here. "Foday Sankoh should be tried and killed", said Joseph Tucker," a government official here. "His wrists should first be amputated, his eyes gouged out and then butchered with a machete, as his rebels have been doing to innocent civilians".

Ismail Sillah, a businessman here, wondered, "why the government has to go through this legal waste of time?", instead of having "this monster publicly tortured and executed".

No wonder lawyers are unwilling to defend Sankoh, who today warned that he would not make any statement to the police or in court if international monitors were not present to witness the legal proceedings.

The government has assured that international observers would be allowed to monitor the trial.

LOAD-DATE: September 8, 1998

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3. Pleadings

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SCSL-03-01-A
(044-090)

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THE SPECIAL COURT FOR SIERRA LEONE

THE APPEALS CHAMBER

Before: Justice Shireen Avis Fisher, Presiding Judge
Justice Emmanuel Ayoola
Justice George Gelaga King
Justice Renate Winter
Justice Jon M. Kamanda
Justice Philip Nyamu Waki, Alternate Judge

Registrar: Ms. Binta Mansaray

Date: 19 July 2012

Case No.: SCSL-2003-01-A

SPECIAL COURT FOR SIERRA LEONE
RECEIVED
COURT MANAGEMENT
THE HAGUE
18 JUL 2012
NAME Samuel J. Fravnalt.
SIGN
TIME 15:48

THE PROSECUTOR

–v–

CHARLES GHANKAY TAYLOR

PUBLIC WITH CONFIDENTIAL ANNEX A

NOTICE OF APPEAL OF CHARLES GHANKAY TAYLOR

Office of the Prosecutor:
Ms. Brenda J. Hollis
Mr. Nicholas Koumjian
Mr. Mohamed A. Bangura
Ms. Nina Tavakoli
Ms. Leigh Lawrie
Mr. Christopher Santora
Ms. Kathryn Howarth
Ms. Ruth Mary Hackler
Ms. Ula Nathai-Lutchman
Mr. James Pace
Mr. Cóman Kenny

Counsel for Charles G. Taylor:
Mr. Morris Anyah
Mr. Eugene O'Sullivan
Mr. Christopher Gosnell
Ms. Kate Gibson
Ms.Magda Karagiannakis

12. Given that every material factual finding is based to some degree on these systematic errors, the precise relief sought for each of the Grounds of Appeal below is to quash all convictions, whether on the basis of planning or aiding and abetting. Alternatively, the Appeals Chamber is requested to review the evidence in accordance with the correct evidential standards, and in conjunction with the specific errors identified in Parts II and III of this Notice of Appeal.

i) GROUND OF APPEAL 1: The Trial Chamber erred in law by relying on uncorroborated hearsay evidence as the sole basis for specific incriminating findings of fact.

13. Relying decisively on uncorroborated hearsay evidence to make a finding of fact that is essential to a finding of guilt is an error of law. The Trial Chamber therefore erred to the extent that it did not qualify its broad pronouncement "the testimony of a single witness on a material fact does not require corroboration".[15] The Trial Chamber repeatedly committed this error, indicating a systematic disregard as to the proper legal standards governing the assessment of hearsay, and a consistent failure to assess this evidence with the caution required.[16]

14. All factual findings based on this error of law are invalid.[17]

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[15] Judgement, p. 68, para. 166.

[16] Judgement, pp. 1344-1345, paras. 3827, 3828, 3830; pp. 1369-1370, para. 3908; pp. 1378-1379, paras. 3932-3933; p. 1588, para. 4557; p. 1675, para. 4800; p. 1690, para. 4842; p. 1749, para.5022; pp. 1785-1786, paras. 5121-5129; pp. 1871-1872, para. 5380; pp. 1878-1881, paras. 5390-5394; pp. 1926-1927, para. 5515; p. 1952, para. 5588; p. 1962, para. 5624; p. 1992-1993, para. 5706; p. 2169, para. 6135; p. 2076, para. 5921; p. 2200, para. 6223.

[17] See e.g. Judgement pp. 2086-2087, para. 5944, where the Trial Chamber relied decisively on the Exhibits P-18 and P-19 to make a finding that the Accused "bore some responsibility for the movement of diamonds through Liberia". The mentioned exhibits however contain uncorroborated and unsourced evidence (Para. 63 of Trial Exhibit P-18 states that "full details of the sources will not be revealed, but the evidence is incontrovertible"). Several ICTY Trial Chambers and the Appeals Chamber have repeatedly excluded uncorroborated and unsourced hearsay evidence, including Trial Exhibits being a report prepared by experts. See e.g. in the *Gotovina* case, where the Trial Chamber considered a trial exhibit "to be unsourced hearsay that does not warrant further consideration here", *Prosecutor v. Gotovina et al*, Case No. IT-06-90-T, Judgement, Volume II of II, 15 April 2012, fn. 2861. See also *Prosecutor v. Gotovina et al*, Case No. IT-06-90-T, Judgement, Volume I of II, 15 April 2012, para. 51; *Prosecutor v. Popović et al*, Case No. IT-05-88-T, Judgement, 10 June 2010, para. 1532; *Prosecutor v. Milutonović et al*, Case No. IT-05-87-T, Judgement, Volume 2 of 4, 26 February 2009, paras 265 and 1175; *Prosecutor v. Haradinaj et al*, Case No. IT-04-84-T, Judgement, 3 April 2008, paras 196-197 and 317; *Prosecutor v. Krajišnik*, Case No. IT-00-39-T, Judgement, 27 September

120. The grounds of appeal in relation to the Sentencing Judgement, as set out below, are independent of whether the relief sought in any of the above grounds is granted.

121. For each of the Grounds of Appeal set out in Part V, the precise relief sought as a result of the Trial Chamber's abuse of its discretion, is the quashing of the sentence imposed by the Trial Chamber, and the imposition of a new and appropriate sentence.

i) GROUND OF APPEAL 42: The Trial Chamber erred in fact and in law when it imposed on Charles Taylor a sentence of 50 years imprisonment, which is manifestly unreasonable in the circumstances of this case.[141]

122. Trial Chamber abused its discretion as no reasonable trier of law and fact, having assessed the totality of the evidence on the record, could have imposed such a harsh punishment, which is manifestly excessive in the circumstances of this case.

ii) GROUND OF APPEAL 43: The Trial Chamber committed discernible error when it noted Sierra Leonean law on sentencing practice when Mr Taylor has not been convicted of any offences under Article 5 of the Statute.[142]

123. Trial Chamber's discernible error had a significant effect on the determination of the sentence imposed on Charles Taylor.

iii) GROUND OF APPEAL 44: The Trial Chamber committed a discernible error when it considered *proprio motu*, aggravating factors that the Prosecution did not plead and, consequently to which, the Defence has not had the opportunity to respond.

[141] Sentencing Judgement, p. 40, Disposition.
[142] Sentencing Judgement, p.16, para. 37 citing: Section 1 of the Accessories and Abettors Act, 1861, which applies in Sierra Leone, cited in *The State v. Archilla and Others*, March 16, 2009, para. 4.

v) **GROUND OF APPEAL 5: The Chamber erred in law by disregarding the principle that substantial payments to witnesses, in itself, requires that their testimony be treated with caution.**

22. The Trial Chamber erred in law in finding that it need not treat the testimony of witnesses who had received substantial payments from the Prosecution unless these incentives "appeared to influence [their] testimony" or "influenced [their] testimony" in some palpable manner.[31]

23. All factual findings based on this error of law are invalid, necessitating a *de novo* review by the Appeals Chamber and the quashing of any convictions that rely on factual findings arising from this error.

II. ERRORS WHICH INVALIDATE THE PLANNING CONVICTIONS

24. For each of the Grounds of Appeal enumerated in this Part II, the precise relief sought is the quashing of Charles Taylor's convictions for planning the crimes set out in Counts 1 to 11.[32]

(a) Errors Relating to Planning: General

i) **GROUND OF APPEAL 6: The Trial Chamber erred in fact and law in finding that the Prosecution had successfully challenged the truth of Adjudicated Fact 15 from the AFRC trial, thus requiring the Trial Chamber's re-consideration of the matters in question**

25. The Trial Chamber erred in fact and in law in finding that the Prosecution had successfully challenged Adjudicated Facat 15, particularly given that the challenge

[31] Judgement, p. 91, para. 234; pp. 100-101, para. 260; pp. 109-110, para. 287; pp. 126-127, para. 344; p. 131, para. 357.
[32] Judgement, pp. 2476-2468, para. 6994 (b).

during this operation and the retreat from Freetown.[41] As such, the Chamber's error is material to all Counts, invalidates the convictions based on liability for planning, and occasions a miscarriage of justice.

iv) GROUND OF APPEAL 10: The Trial Chamber erred in fact and law in finding that SAJ Musa's plan to attack Freetown was abandoned

33. No reasonable trier of fact having assessed the totality of evidence could have concluded that SAJ Musa's original plan was abandoned.[42] The Trial Chamber's error arises from an improper evaluation of the evidence, including its systematically-erroneous evaluation of the evidence, as set out in Part I.

34. The Trial Chamber relied on this finding to erroneously conclude that Gullit's movements then became incorporated into the Bockarie/Taylor plan, and as such found Charles Taylor liable for the crimes committed by Gullit's forces.[43] These errors are material to all Counts, invalidate the decision, and occasion a miscarriage of justice.

v) GROUND OF APPEAL 11: The Trial Chamber erred in fact and in law in convicting Charles Taylor for crimes committed during the implementation of a different plan from the one it erroneously attributed to him

35. The Trial Chamber erred in law in convicting Charles Taylor of crimes which occurred during the implementation of a different plan than the one the Chamber erroneously found he devised.[44] Finding that an accused could be liable for an "evolving" plan, on the basis that this evolution had been "contemplated" is an error of law.

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[41] Judgement, pp. 2461-2465, paras. 6958-6971; pp. 2476-2468, para. 6994 (b).
[42] Judgement, p. 1230-1, para. 3480; p. 1232, para. 3486; p. 1281, para. 3611(xiii).
[43] Judgement, pp. 2463-4, para. 6965.
[44] Judgement, pp. 1093-1094, paras. 3118-3124; p. 1230, para. 1230; p.1232, para. 3486; p.1281, para. 3611 (xiii); p.1284, paras. 3616-3617; pp. 2461-2465, paras. 6958-6971.

36. This error of law was the basis for the Trial Chamber's finding that Charles Taylor is liable for the crimes in Counts 1 – 11[45], despite having found that attempts to carry out significant elements of his plan were unsuccessful.[46] As such, the error is material to all Counts, invalidate the decision, and occasions a miscarriage of justice.

vi) GROUND OF APPEAL 12: The Trial Chamber erred in fact and law in finding that Charles Taylor received daily updates as to the implementation of the "evolving" plan and in finding him liable on the basis of these updates

37. No reasonable trier of fact, having assessed the totality of evidence could have concluded that Charles Taylor received daily updates as to the implementation of the "evolving" plan.[47] The Trial Chamber's error arises from an improper evaluation of the evidence, including its systematically-erroneous evaluation of the evidence, as set out in Part I. The Trial Chamber also erred in law in finding that receiving updates about an "evolving" plan gives rise to liability as regards the evolved plan.

38. The Trial Chamber relied on this finding to erroneously conclude that the plan allegedly devised by Charles Taylor and Sam Bockarie substantially contributed to the RUF/AFRC military attacks leading to and involving the Freetown invasion and subsequent retreat, and as such found Charles Taylor liable for the crimes committed during this operation.[48] As such, the Chamber's error is material to all Counts, invalidates the convictions based on liability for planning, and occasions a miscarriage of justice.

vii) GROUND OF APPEAL 13: The Trial Chamber erred in fact and law in finding that Sam Bockarie exercised effective command and control over Gullit whether before, during or after the capture of State House and Pademba Road Prison in Freetown

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[45] Judgement, pp. 2461-2465, paras. 6958-6971; pp. 2476-2468, para. 6994 (b).
[46] Judgement, pp.1230-1231, para. 3480
[47] Judgement, p. 1079-1096, paras. 3098-3130; see in particular p. 1096, para. 3127
[48] Judgement, pp. 2461-2465, paras. 6958-6971; pp. 2476-2468, para. 6994 (b).

THE SPECIAL COURT FOR SIERRA LEONE

Trial Chamber II

Before:	Justice Richard Lussick, Presiding Justice Teresa Doherty Justice Julia Sebutinde Justice El Hadji Malick Sow, Alternate
Registrar:	Ms. Binta Mansaray
Date:	18 May 2012
Case No.:	SCSL-03-01-T

THE PROSECUTOR

–v–

CHARLES GHANKAY TAYLOR

PUBLIC, WITH ANNEXES A & B

STATEMENT OF DAHKPANNAH DR. CHARLES GHANKAY TAYLOR

Office of the Prosecutor:
Ms. Brenda J. Hollis

SPECIAL COURT FOR SIERRA LEONE
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18 MAY 2012
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Counsel for Charles G. Taylor:
Mr. Courtenay Griffiths, QC
Mr. Terry Munyard
Mr. Morris Anyah
Mr. Silas Chekera
Mr. James Supuwood
Ms. Logan Hambrick

The Defence hereby files, as Annex A, a copy of Mr. Charles Ghankay Taylor's speaking notes, from which he addressed the Court during the Sentencing Hearing on 16 May 2012. During his statement,[1] and at para. 27 of the attached notes, Mr. Taylor referred to comments made by Femi Fani-Kayode, the Nigerian Press Secretary to President Obasanjo. The complete context of those comments is hereby attached as Annex B.

Respectfully Submitted,

Courtenay Griffiths, Q.C.
Lead Counsel for Charles Ghankay Taylor
Dated this 18th Day of May 2012,
The Hague, The Netherlands

[1] *Prosecutor v. Taylor,* SCSL-03-01-T, Sentencing Hearing Transcript, 16 May 2012, p. 49730.

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SCSL-03-01-T
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THE SPECIAL COURT FOR SIERRA LEONE

Trial Chamber II

Before:	Justice Richard Lussick, Presiding Justice Julia Sebutinde Justice Teresa Doherty Justice El Hadji Malick Sow, Alternate
Registrar:	Ms. Binta Mansaray
Date:	10 May 2012
Case No.:	SCSL-03-01-T

THE PROSECUTOR

–v–

CHARLES GHANKAY TAYLOR

SPECIAL COURT FOR SIERRA LEONE
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PUBLIC, WITH ANNEXES A–AH AND CONFIDENTIAL ANNEX AI

SENTENCING BRIEF
ON BEHALF OF CHARLES GHANKAY TAYLOR

Office of the Prosecutor:
Ms. Brenda J. Hollis

Counsel for Charles G. Taylor:
Mr. Courtenay Griffiths, Q.C.
Mr. Terry Munyard
Mr. Morris Anyah
Mr. Silas Chekera
Ms. Logan Hambrick

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rights of little boys and girls, the men and women, the mothers and fathers, brothers and sisters of this great republic."[254]

173. In an effort to improve the health and well-being of children in Liberia, he also, with the cooperation of international partners, such as the International Committee on polio eradication[255] or the United States Agency for International Development, instituted a program to vaccinate all children under five years to eradicate polio from the country.[256]

174. Even before Mr. Taylor became President, when he was leader of the NPFL, he was involved in charitable initiatives. Even though there is evidence that the NPFL committed atrocities against civilians, there is also evidence that the NPFL played a protective role in relation to civilians, including orphans and refugees from Sierra Leone.

175. There were several orphanages in operation in NPFL controlled territory. The largest orphanage was located in Gbarnga;[257] another was at Totota. The NPFL would actually take orphaned children to stay there.[258] Mother Young, who has run an orphanage in Liberia for 42 years, has stated that Mr. Taylor gave significant assistance and protection to several orphanages during the conflict and during his Presidency.[259]

Mitigating Factor: Regret and Sympathy for Victims

176. As indicated herein, Mr. Taylor does not accept responsibility for the crimes for which he has been convicted, and he seeks to appeal this Judgement. But he does evince a "real and sincere" [260] sense of regret and sympathy for the victims of the Sierra Leonean conflict, the Liberian conflict, and indeed any other conflict involving civilian casualties.

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[254] Exhibit D-141, Part 5, p. 209.
[255] There is a photo of Mr. Taylor immunizing an infant during the kick-off of the National Polio Immunization Programme for the benefit of 600,000 children on 28 December 1998 (Exhibit D-141, p. 178).
[256] Exhibit D-141, Part 6, p. 274-75.
[257] TT, Charles Taylor, 21 Jul 2009, p. 24898-99.
[258] TT, Charles Taylor, 05 Aug 2009, p. 25999.
[259] Annex G, Statement from Mother Young.
[260] *Orić* Trial Judgement, para. 752.

177. The SCSL, ICTR and ICTY Appeals Chambers have held that an accused can express sincere regrets without admitting his participation in a crime, and that this is a factor that may be taken into account in mitigation.[261] As the ICTY Appeals Chamber held:

> an accused can express sincere regrets without admitting his participation in a crime. In such circumstances, remorse nonetheless requires acceptance of some measure of moral blameworthiness for personal wrongdoing, falling short of the admission of criminal responsibility or guilt. This follows from the ordinary meaning of the term remorse as well as the approach taken in the few cases where expressions of remorse made by accused who maintained their innocence have been accepted in mitigation.
>
> However, beyond such expressions of remorse, an accused might also express sympathy, compassion or sorrow for the victims of the crimes with which he is charged. Although this does not amount to remorse as such, it may nonetheless be considered as a mitigating factor. The Appeals Chamber notes that such expressions of sympathy or compassion have been accepted as mitigating circumstances by Trial Chambers of both the ICTR and this Tribunal.[262]

178. In the *CDF* Appeal Judgement, however, the Chamber noted that in only a minority of cases have trial chambers found that an accused's expressions or regret or empathy for victims, without acknowledgement of responsibility for the crimes, constituted a mitigating factor.[263] The Defence notes that subsequent to the *CDF* Appeal Judgement, the ICTY *Brđanin* Trial Chamber considered regret as a mitigating factor even where the accused did not admit participation in the crime nor make any statement to this effect. It was found to be sufficient that there were a few instances when, through defence counsel, he told witnesses that he felt sorry for what they suffered.[264]

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[261] *CDF* Appeal Judgement, para. 488, citing *Orić* Trial Judgement, para. 752. *Nchamihigo* Appeal Judgement, para. 396; *Vasiljević* Appeal Judgement, para. 177; *Sikirica* Sentencing Judgement, paras. 152, 194 and 230; *Todorović* Sentencing Judgement, paras. 89-92; *Erdemović* Sentencing Judgement, para. 16(iii).
[262] *Strugar* Appeal Judgement, paras. 365 and 366.
[263] *CDF* Appeal Judgement, para. 488. At the time, it seemed as if the ICTY Trial Judgement of *Orić* was the only case in which a convicted person received credit for offering expressions of sympathy for the victims without acknowledging criminal responsibility. In *Orić*, an expression of sympathy made by defence counsel to the victim witnesses during the trial was considered as a mitigating factor even though the accused made no statement.
[264] *Brđjanin* Trial Judgement, para. 1139.

179. Nothing said by Mr. Taylor nor his counsel, in his defence, was ever intended to minimize the great harm that befell the people of Sierra Leone during its civil war. As Lead Counsel said during the Defence Opening Statement:

> "We consequently do not and never have taken issue with the fact that terrible things, atrocities, were committed in Sierra Leone. We've never done that. We still cannot therefore understand why more than half of the witnesses called were so-called crime base witnesses to prove a fact not in dispute."[265]

180. Another counsel for Mr. Taylor, on behalf of the Defence and the accused, expressed his sympathy for the victims of the conflict, when he stated before cross-examining one crime-based witness:

> Sir, first of all, can I express to you on behalf of the Defence our sympathy and understanding at the violence that you have seen in your life and we can certainly inform you now that it's not because of us that you have been brought here to speak about these events that you observed nearly 10 years ago.[266]

181. Mr. Taylor has always been a religious man. He grew up in the Baptist church.[267] While in detention, Mr. Taylor has continued his spiritual journey, meeting routinely with a rabbi and studying and observing the tenants of faith and practice.[268] He is a student of the Jewish Holy books. These disciplines have strengthened his sense of compassion for the victims of the Sierra Leonean conflict and other wars. Given that the character of an accused subsequent to the commission of the alleged crimes should be considered in mitigation,[269] the Defence submits that these expressions and feelings of sympathy for those who suffered should be given due weight.

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[265] Defence Opening Statement, p. 24295-96.
[266] TT, Defence Counsel to Witness TF1-015, 8 Jan 2008, p. 742.
[267] TT, Charles Taylor, 14 Jul 2009, p. 24366-7 (Mr. Taylor got a scholarship to study at Ricks Institute, the foreign missionary Baptist school).
[268] TT, Charles Taylor, 14 Jul 2009, p. 24380 and 10 Nov 2009, p. 31523 (stating that he is Jewish). On several occasions, Defence Counsel have also addressed the Court when Mr. Taylor needed to be absent on account of observing a Jewish holiday. For example, TT, 30 Sept 2008, p. 17551; 26 Jan 2010, p. 34060; and 8 Sept 2010, p. 48305.
[269] *Babić* Sentencing Appeal Judgement, para. 43.

182. In light of the expressions of regret and sympathy expressed by the Defence on behalf of Mr. Taylor throughout the trial, as well as Mr. Taylor's own contemporaneous statements condemning the atrocities in Sierra Leone,[270] the Chamber should not outrightly dismiss - as the Prosecution suggests[271] - any further expression of remorse or sympathy that Mr. Taylor may make during the Sentencing Hearing.[272]

183. As the SCSL Appeals Chamber has held that it is not an error to take such expressions of sympathy into account, even in the absence of an acceptance of guilt by the accused person, and so the Defence requests that the Trial Chamber attach due weight to this mitigating factor.

Mitigating Factor: Family Circumstances, Health, and Advanced Age

184. Contrary to the Prosecution's claims,[273] Mr. Taylor's age, health and family circumstances may constitute mitigating factors as they go to the essence of his personal or *individual circumstances* envisaged in Article 19(2) of the Statute. Individual circumstances are exactly that: any consideration personal to the convicted person, which might move the Trial Chamber to impose a lesser sentence. What weight the court may attach - a distinction lost on the Prosecution - is however a different issue.

185. Mr Taylor is now 64;[274] a ripe age, dwarfed only by the 80-year sentence requested by the Prosecution. Clearly, the design to "put Taylor away for a very long time", is, in practice, a euphemism to sentence him for a life term.

186. Indeed, it is the practice of this court to consider the advanced age of a convicted person in mitigation. Trial Chamber I, for instance, held that Augustine Gbao's age of 60 years

[270] Exhibit P-338 (Taylor is quoted in *Le Monde* as saying, "The RUF committed terrible atrocities. People will have to answer for that.").
[271] Prosecution Sentencing Brief, para. 93.
[272] Judgement, p. 49678.
[273] Prosecution Sentencing Brief, para. 94.
[274] Mr. Taylor was born on 28 January 1948. TT, Charles Taylor, 14 Jul 2009, p. 24354.

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SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR

TRIAL CHAMBER II

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

Registrar: Ms. Binta Mansaray

Date filed: 3 May 2012

THE PROSECUTOR **Against** **Charles Ghankay Taylor**

Case No. SCSL-03-01-T

PUBLIC

PROSECUTION SENTENCING BRIEF

Office of the Prosecutor:
Ms. Brenda J. Hollis
Mr. James C. Johnson
Mr. Nicholas Koumjian
Mr. Mohamed A. Bangura
Mr. Christopher Santora
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significance, are the Trial Chamber's findings that Mr. Taylor supplied or facilitated arms and ammunition which were "*indispensable* for the RUF/AFRC military offensives"[14] and "materiel [which was] *critical* in enabling the operational strategy of the RUF and AFRC".[15] This strategy was "*characterized by a campaign of crimes* against the Sierra Leonean civilian population, including murders, rapes, sexual slavery, looting, abductions, forced labour, conscription of child soldiers, amputations, and other forms of physical violence and acts of terror."[16] Indeed, the centrality of Mr. Taylor's support to the AFRC/RUF is highlighted by the finding that their other "sources of materiel were of *minor importance* in comparison to those supplied or facilitated by the accused" and that they "in fact *heavily and frequently relied on* the materiel supplied and facilitated by the accused."[17]

7. Mr. Taylor's positions both as President of Liberia and within the West African regional bodies distinguish him from any other individual that has appeared before this Court. Mr. Taylor's abuse of his authority and influence is especially egregious given that West African leaders repeatedly entrusted him with a role to facilitate peace. Crucially, the findings reveal the reality of Taylor's role in the peace process, noting that "while the accused publicly played a substantial role in the Sierra Leone peace process ... secretly he was fuelling hostilities between the AFRC/RUF and the democratically elected authorities in Sierra Leone, by urging the former not to disarm and actively providing them with arms and ammunition, acting ... as "a two-headed Janus.""[18]

8. Considering the extreme magnitude and seriousness of the crimes that were committed against the people of Sierra Leone for which Mr. Taylor has been found responsible and Mr. Taylor's "instrumental",[19] "critical"[20], "indispensable"[21] and continued role in their commission, the Prosecution recommends that Charles Taylor be sentenced to a prison term of no less than 80 years.

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[14] T. 26 April 2012 p. 49650, lines 2-3 (emphasis added).
[15] T. 26 April 2012 p. 49650, lines 3-5 (emphasis added).
[16] T. 26 April 2012 p. 49667, lines 10-14 (emphasis added).
[17] T. 26 April 2012 p. 49649, lines 20-23 (emphasis added).
[18] T. 26 April 2012 p. 49657 p. 49657, line 26 to p. 49658, line 4.
[19] T. 26 April 2012 p. 49649, lines 5-6.
[20] T. 26 April 2012 p. 49650, lines 3-5.
[21] T. 26 April 2012 p. 49650, line 2.

52. Diamonds were a particular focus of Mr. Taylor.[141] Far removed from the suffering in Sierra Leone, Mr. Taylor sent critical advice, instructions, materials, personnel and supplies to the AFRC/RUF forces so that they could gain control over Kono, the most diamondiferous area of the country.[142] Mr. Taylor's support enabled the perpetrators to carry out the bloodiest operation in the campaign of atrocities against the civilian population of Sierra Leone. The people in Kono District endured widespread burning of their homes, killings, rapes, and being held as sexual slaves.[143] Particularly brutal amongst the harrowing acts committed against civilians were the large scale amputations of limbs and the carving of words onto bodies.[144]

53. Contemporary reports indicate the scale of the atrocities being committed in Kono by the very troops Mr. Taylor was supporting. Amnesty International reported:

> **Many hundreds of men, women and children of all ages** have suffered mutilation and crude amputations of their arms, legs, lips or ears, lacerations and gunshot wounds. Women and girls have been raped or suffered other forms of sexual assault. [...] The UN Under-Secretary-General for Humanitarian Affairs and Emergency Relief [...] said that **the brutal treatment of civilians by the AFRC and RUF was unlike anything he had seen in 29 years of humanitarian work**".[145]

> **More than 650 bodies**, many of them women and children, were reported to have been buried following fighting in the area around Koidu in mid-June 1998. With these attacks came reports of mutilations. [...] By October 1998 estimates of **the number of victims of mutilations since February 1998 were put as high as 4,000**.[146]

54. Witnesses also testified about the scale of destruction in Kono. Sahr Charles testified about what he saw when he returned to Tombodu:

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[141] *See, e.g.* T. 26 April 2012 p. 49639, lines 8-10, establishing that "[f]rom the time of the ECOMOG intervention, the accused and his subordinates communicated to the AFRC/RUF forces the imperative to maintain control over Kono, a diamondiferous area" and lines 21-24 establishing that "[o]nce Kono had been recaptured, the accused told Bockarie to be sure to maintain control of Kono for the purpose of trading diamonds with him for arms and ammunition"; T. 26 April 2012 p. 49638, lines 6-8, establishing that the Accused's focus on Kono stretched as far back as November 1992 when he provided arms and ammunition to Sankoh for an attack on Kono. *See also* T. 26 April 2012 p. 49671, lines 20-23; p. 49654, lines 8-11.
[142] As discussed in Section III.B.2 below.
[143] T. 26 April 2012 p. 49629, lines 6-9, 12-13, 20-26; p. 49630, lines 6-13; p. 49636, lines 4-9; p. 49676, line 13 to p. 49677, line 5.
[144] T. 26 April 2012 p. 49631, lines 19-22; p. 49676, lines 13-21; p. 49677, lines 9-14.
[145] Exh. P-81 (Amnesty International Report dated 24 July 1998), pp. 1-2 (emphasis added).
[146] Exh. P-78 (AI report: Sierra Leone: 1998 – a year of atrocities against civilians), p. 11 (emphasis added).

74. It was not just assistance in physical form which arrived at strategically significant moments. Mr. Taylor's advice and encouragement were also provided at critical junctures, their content particularly potent. The Trial Chamber found that Mr. Taylor: "advised Sankoh to participate in the Abidjan peace talks in 1996 in order to obtain arms and ammunition for the RUF"; "instructed the RUF to open a training base in Bunumbu in 1998 and to construct an airfield in Buedu"; "instructed the AFRC/RUF to capture Kono and subsequently advised them to hold and recapture it, as a source of revenue through diamonds that could be used to secure arms and ammunition."[227]

75. The Trial Chamber's findings clearly establish that Mr. Taylor was one of the conflict's primary protagonists, shoring up the RUF/AFRC's foundations by the regular supply of support and ensuring it did not collapse by providing vital assistance at key moments. It can be inferred from the Chamber's findings that the support provided by Mr. Taylor was the lifeblood of the Sierra Leonean conflict. The pervasive quality of the support he provided to the ARFC/RUF throughout the Indictment period combined with its scale and significance increases the gravity of his criminal conduct to the highest level.

C. Aggravating Circumstances

1. Length of Time during which the Crimes were Committed

76. The individual crimes Mr. Taylor has been found guilty of planning, and aiding and abetting lasted for months and, in some cases, years. Indeed, Mr. Taylor's crimes, taken as a whole, span more than 5 years with crimes being committed in at least one or more parts of Sierra Leone throughout this period. This aggravating factor, alone or in conjunction with the other factors detailed below, justifies the imposition of the suggested term(s) of imprisonment.

77. Specifically, Mr. Taylor's involvement in the murder of civilians lasted over two years, from 25 May 1997 to 31 January 2000.[228] During this period, widespread acts of

[227] T. 26 April 2012, p. 49671, lines 16-23.
[228] In Kenema District between 25th of May, 1997, and about 31 March 1998; In Kono District between about 1 February 1998 and about 31 January 2000; In Freetown and the Western Area between about 21 December 1998 and 28 February 1999; In Kailahun District between about 1 February 1998 and about 30 June 1998 (*see* T. 26 April 2012 p. 49629, lines 6-17).

2. Mr. Taylor's Willing and Enthusiastic Participation in the Crimes

79. Mr. Taylor had detailed knowledge of the atrocities being committed against civilians in Sierra Leone by the AFRC/RUF forces from at least August 1997.[239] In fact, the Trial Chamber found that Mr. Taylor's knowledge of the RUF's criminal *modus operandi* dated back to the early years of the war in Sierra Leone.[240] Given Mr. Taylor's positions as leader of the NPFL and then President of Liberia, it cannot be argued that he was "merely following orders" or directions from superiors. He participated willingly and enthusiastically. Such participation in the commission of mass atrocities over such a considerable number of years represents an aggravating factor.

80. As found by the Trial Chamber, from 1997, Mr. Taylor received daily press and intelligence reports, as well as "numerous reports" from ECOWAS about the crimes committed by the Junta forces.[241] The Trial Chamber found that Mr. Taylor was informed "in detail" by such reports which documented massive looting of property, murder and rapes, as well as amputations and killings of civilians.[242] In the face of these reports, however, Mr. Taylor and his subordinates facilitated the Magburaka arms shipment which was delivered in late 1997.[243]

81. In April 1998, as Mr. Taylor testified, there were news reports of a horrific campaign being waged against civilians in Sierra Leone.[244] Mr. Taylor himself admitted that by April 1998 if "someone was providing support to the AFRC/RUF" he "would be supporting a group engaged in a campaign of atrocities against the civilian population of Sierra Leone."[245] In fact, in July 1998, Mr. Taylor publicly condemned the "horrendous atrocities" being committed.[246] However, even after this public condemnation, Mr. Taylor increased his support, supplying Sam Bockarie with arms and ammunition

[239] T. 26 April 2012 p. 49672, lines 13-19.
[240] T. 26 April 2012 p. 49660, line 27 to p. 49661, line 5.
[241] T. 26 April 2012 p. 49661, lines 6-14.
[242] T. 26 April 2012 p. 49661, lines 15-27; p. 49662, lines 14-17; p. 49663, lines 9-14.
[243] T. 26 April 2012 p. 49648, lines 13-27.
[244] T. 26 April 2012 p.49663, lines 3-5.
[245] T. 26 April 2012 p. 49662, line 29 to p. 49663, line 3.
[246] T. 26 April 2012 p. 49663, lines 5-8.

"unprecedented in volume" flown in from Burkina Faso to enable the late 1998 offensive culminating in the Freetown Invasion.[247]

82. Perhaps the most telling example of Mr. Taylor's willing and enthusiastic participation is that, even in the face of the unimaginable cruelty and crimes inflicted upon the people of Freetown during the "January 6" invasion which he planned, Mr. Taylor responded by continuing to support the AFRC/RUF.[248]

3. Mr. Taylor's Leadership Positions and Betrayal of Positions of Trust

83. Throughout the Indictment period, Mr. Taylor held senior leadership roles, both nationally and internationally. He became President of Liberia in August 1997,[249] a position he still held when hostilities ended in Sierra Leone.[250] In addition, Mr. Taylor joined the ECOWAS Committee of Five shortly after his election.[251] As identified by the Trial Chamber, these positions imbued Mr. Taylor with an "inherent authority"[252] and "substantial influence over the leadership of the RUF, and to a lesser extent that of the AFRC."[253]

84. Rather than using his positions for positive change, Mr. Taylor abused his authority and influence. Mr. Taylor gave extensive advice, direction and guidance,[254] and "by virtue of his position", Bockarie deferred to him and generally followed his instruction.[255] The Trial Chamber further found that Mr. Taylor, as "an elder statesman and as president of Liberia," was accorded a certain deference by other AFRC/RUF leadership, which meant "his advice was generally heeded by them."[256] At no time did Mr. Taylor exert this influence over the AFRC/RUF high command to alleviate the suffering of the people of

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[247] *See, e.g.* T. 26 April 2012 p. 49649, lines 9-11.
[248] See Section III.B.2.
[249] T. 26 April 2012 p. 49624, lines 11-13 ("Charles Ghankay Taylor was elected president of Liberia and took office on the 2nd of August, 1997"); p. 49672, lines 13-16 ("the Trial Chamber is satisfied that as of August 1997, the accused knew of the atrocities committed against civilians in Sierra Leone by the RUF/AFRC forces and of their propensity to commit crimes").
[250] T. 26 April 2012 p. 49624, lines 14-15 (Taylor stepped down from the Presidency on 11 August 2003).
[251] T. 26 April 2012 p. 49661, lines 9-10.
[252] T. 26 April 2012 p. 49658, line 24.
[253] T. 26 April 2012 p. 49664, lines 17-18.
[254] See Section III.B.2.
[255] T. 26 April 2012 p. 49658, lines 24-26.
[256] T. 26 April 2012 p. 49671, lines 23-27.

Sierra Leone. Rather, he deliberately used his authority and position to fan the flames of conflict and to continue the perpetration of the crimes.

85. In addition to these general findings, the Chamber made many particular findings on Mr. Taylor's authority and influence relating to the period February 1998 to February 1999, a time that coincides with the perpetration of a significant proportion of the crimes. The Chamber referred to several discrete instances in which Mr. Taylor specifically exercised his influence over the AFRC/RUF.[257] These instances are characterized variously as "ordering", "instructing", "advising", "emphasizing", "communicating", or "telling". Regardless of the characterization, all are demonstrations of Mr. Taylor abusing his position of "inherent authority"[258] in relation to the AFRC/RUF.

86. Mr. Taylor was also a President who demonstrated a disregard for the international community's efforts to protect international peace and security. He deliberately flouted ECOWAS and UN arms embargoes practically from the first moment of their imposition.[259] While "the Junta was perceived by the international community as a threat to peace ... and it was recognised that military support could facilitate the commission of

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[257] In relation to the immediate period after the Intervention, the Trial Chamber found that "[t]he Accused and his subordinates communicated to the AFRC/RUF forces the imperative to maintain control over Kono" (T. 26 April 2012 p. 49639, lines 8-10), Taylor "told Koroma to capture Kono" (T. 26 April 2012 p. 49639, lines 15-18), and "[a]fter the first failed attempt, the Accused gave instructions for a second attack" (T. 26 April 2012 p. 49639, lines 18-21). The Chamber also found that, once recaptured, "the Accused told Bockarie to be sure to maintain control of Kono" (T. 26 April 2012 p. 49639, lines 21-24). Further, the Chamber found that in June 1998 "[t]he accused advised Bockarie to recapture Kono following its loss to ECOMOG" (T. 26 April 2012 p. 49639, lines 25-26) and, in relation to the late 1998 offensive and the Freetown invasion, "the Accused emphasised to Bockarie the need to first attack Kono" (T. 26 April 2012 p. 49640, lines 11-12) and "told Bockarie to make the operation 'fearful'....as well as use 'all means' to get to Freetown" (T. 26 April 2012 p. 49640, lines 12-15). The Chamber also noted that Bockarie's invitation to Musa was "[c]onsistent with discussions with the accused" (T. 26 April 2012 p. 49640, lines 22-23) and that "[t]he accused gave advice to Bockarie and received updates in relation to the progress of the operations in Kono and Freetown" (T. 26 April 2012 p. 49641, lines 10-12). The Trial Chamber also found that the Accused instructed Bockarie to transfer some of the Pademba Road prisoners to Buedu (T. 26 April 2012 p. 49641, lines 20-21). Other findings bearing out the Accused's authority over the AFRC/RUF during this period include that the Accused "instructed Bockarie in 1998 to open a training base in Bunumbu, Kailahun district" (T. 26 April 2012 p. 49646, lines 4-6), as well as the finding that the decision to incorporate the Scorpion Unit into Bockarie's command was approved by the Accused through his subordinate Daniel Tamba (T. 26 April 2012 p. 49651, lines 4-8).

[258] T. 26 April 2012 p. 49658, line 24.

[259] T. 26 April 2012 p. 49661, lines 28-29 to p. 49662, lines 1-3 ("Following a coup on 29 August 1997, ECOWAS decided to place a total embargo on all supplies of petroleum products, arms and military equipment to Sierra Leone. Similarly on 8 October 1997, the United Nations Security Council decided to impose an embargo on arms and ammunition to Sierra Leone").

the crimes",[260] Mr. Taylor and his subordinates were already busy circumventing the embargoes by facilitating the above mentioned Magburaka arms shipment.[261] In addition, the Trial Chamber found that the "facilitation of road and air transportation of materiel as well as security escorts played a vital role of the operations of the RUF/AFRC during a period when an international arms embargo was in force."[262] As the embargo was in place during the Indictment period,[263] this finding applies equally to all instances where Mr. Taylor either provided or facilitated the provision of arms and ammunition to the AFRC/RUF in defiance of the international ban. Clearly, Mr. Taylor's acts ran directly counter to the purpose of the arms embargo. Rather than shorten the conflict and stabilise the region by denying weapons to those threatening international peace and security, Mr. Taylor sought to deliberately but clandestinely defy the international community and to prolong and exacerbate the war. These actions undertaken by a serving head of State are particularly reprehensible and blameworthy and should be recognised as such when sentencing Mr. Taylor.

87. The most egregious example of Mr. Taylor's abuse of his positions of leadership relates to his role in the Sierra Leone peace process which he actively worked against. As established by the Trial Chamber's findings, from Abidjan to Lomé and at all points thereafter, peace in Sierra Leone was never a genuine goal for Mr. Taylor.[264] While Sierra Leone literally burned, Mr. Taylor paid lip service to peace, deliberately deceiving all those who placed much store in his "considerable influence over the warring factions in Sierra Leone."[265]

88. During his Presidency, Mr. Taylor attempted to play the role of the concerned humanitarian. In a July 1998 statement, he strongly condemned the rebel activities and horrendous atrocities being committed in Sierra Leone.[266] While telling the ECOWAS Chairman and UN Secretary-General that he would "cooperate to promote an end to the

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[260] T. 26 April 2012 p. 49661, lines 28-29 to p. 49662, lines 1-7.
[261] *See, e.g.* T. 26 April 2012 p. 49668, lines 6-8.
[262] T. 26 April 2012 p. 49645, lines 2-5. *See also* T. 26 April 2012 p. 49656, lines 24-26.
[263] T. 26 April 2012 p. 49644, line 25 to p. 49645, line 5.
[264] T. 26 April 2012 p. 49655, lines 7-9 ("The accused instructed Foday Sankoh to participate in the Abidjan peace talks from March to November 1996 in order to obtain ammunition and materiel for the RUF"); p. 49655, lines 23-27; p. 49657, line 26 to p. 49658, line 4.
[265] T. 26 April 2012 p. 49656, lines 17-18.
[266] T. 26 April 2012 p. 49663, lines 5-8.

fighting in Sierra Leone and to foster peace and security in the sub region",[267] he was in reality a "two-headed Janus".[268] At the same time as making such laudable statements, Mr. Taylor was coldly calculating how to ensure he continued to benefit from Sierra Leone's diamonds.

89. In relation to Mr. Taylor's "active role in the Lomé peace negotiations", the Trial Chamber found that Mr. Taylor "was engaged in arms transactions at the same time that he was involved in the peace negotiations in Lomé, publicly promoting peace ... while privately providing arms and ammunitions to the RUF."[269] As regards Mr. Taylor's participation in the ECOWAS Committee of Five (later Committee of Six) via his Presidency of Liberia, the Trial Chamber found "strong evidence showing that while publicly participating in regional efforts to broker peace in Sierra Leone, the accused was secretly fuelling hostilities between the AFRC/RUF and the democratically elected authorities in Sierra Leone" and was, thus, clandestinely "undermining ... the peace process".[270] Finally, Mr. Taylor's dealings with Issa Sesay in 2000 were also determined by the Trial Chamber to be part of Mr. Taylor's continued efforts to prolong the conflict. In May 2000, the Trial Chamber found that Mr. Taylor "had significant influence over the RUF decision to release the UN peacekeepers and that in his meeting with Issa Sesay, Taylor promised him assistance 'in the struggle.'"[271] Further, in July 2000, when it was proposed that Sesay take over the RUF leadership, the Trial Chamber found that, at a covert meeting held late at night, Mr. Taylor "privately advised Issa Sesay to say that he would disarm but 'not do it in reality.'"[272] The Chamber also found that "[a]t that time, the accused was supplying Sesay with arms and ammunition, and also calling on the RUF to send forces to help him fight his own enemies together with the AFL in Liberia and in Guinea."[273]

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[267] See the July 1998 statement alluded to by the Trial Chamber: Exh. D-36 (UN Document S/1998/629 dated 10 July 1998 containing Joint Communiqué issued on 2 July 1998 at Abuja), Annex para. 3(b).
[268] T. 26 April 2012 p. 49658, line 4.
[269] T. 26 April 2012 p. 49655, lines 23-27.
[270] T. 26 April 2012 p. 49656, lines 20-26.
[271] T. 26 April 2012 p. 49657, lines 7-10.
[272] T. 26 April 2012 p. 49657, lines 19-21.
[273] T. 26 April 2012 p. 49657, lines 22-25.

1229)

SCSL-03-01-T
(34947-35521)

34947

THE SPECIAL COURT FOR SIERRA LEONE

Trial Chamber II

Before:	Justice Teresa Doherty, Presiding Justice Richard Lussick Justice Julia Sebutinde Justice El Hadji Malick Sow, Alternate
Registrar:	Ms. Binta Mansaray
Date:	9 March 2011
Case No.:	SCSL-03-01-T

SPECIAL COURT FOR SIERRA LEONE
RECEIVED
COURT MANAGEMENT
THE HAGUE
09 MAR 2011
NAME ALHASSAN FORWAH
SIGN
TIME 14:26

THE PROSECUTOR

–v–

CHARLES GHANKAY TAYLOR

PUBLIC, WITH CONFIDENTIAL ANNEX

DEFENCE CORRECTED AND AMENDED FINAL TRIAL BRIEF

Office of the Prosecutor:
Ms. Brenda J. Hollis

Counsel for Charles G. Taylor:
Mr. Courtenay Griffiths, Q.C.
Mr. Terry Munyard
Mr. Morris Anyah
Mr. Silas Chekera
Mr. James Supuwood
Ms. Logan Hambrick

deliberations for judgment in this important trial and all charges against Taylor be dismissed as a consequence thereof.

Discretionary Payments and other Inducements to Witnesses by the Prosecution

23. Not much changed in the OTP's approach to the investigation and prosecution of Taylor after Crane's departure and during the respective tenures of all successor prosecutors up to the current one. This Court will recall the Defence's request for disclosure and an accounting by the OTP of payments made in cash and kind (allegedly totaling $30,000 United States Dollars) to prospective witness, DCT-097.[41] In noting that seventeen Money Gram receipts provided by the Defence linked the Prosecution to the payments made to the witness, the Court observed that, "The payments do not appear to have been made by the Witness and Victims Service of the Special Court (WVS) and on the face of it, appear to be beyond that which is reasonably required for the management of witnesses or victims."[42] The Court found that evidence of the payments was exculpatory material which the Defence had demonstrated the Prosecution failed to disclose[43]; it went on to hold that the payments should have been disclosed by the Prosecution as evidence which may affect the credibility of Prosecution evidence under Rule 68(B).[44]

24. The Defence took exception in its Contempt Motion to inducements (monetary bribes, offers of relocation, etc.) that were offered and/ or provided to potential witnesses and sources by the Prosecution's Witness Management Unit (WMU) in exchange for cooperation and testimony. [45] The payments were independent of, and distinct from, those made to both Prosecution and Defence witnesses by the Court's Witnesses and Victims Section (WVS). The Defence argued and provided supporting documentation to demonstrate that the WMU payments/ inducements (i) were contrary to the letter

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[41] See, *Prosecutor v. Taylor,* SCSL-03-01-T-1039, Public, with Public Annex F and Confidential Annexes A, B, C, D, E, G, H, I, Defence Motion for Disclosure of Statement and Prosecution Payments Made to DCT-097, 4 August 2010 and *Prosecutor v. Taylor,* SCSL-03-01-T-1084, Decision on Defence Motion for Disclosure of Statement and Prosecution Payments Made to DCT-097, 23 September 2010 [DCT-097 Payments Decision], paras 17 to 20. The witness was, in the first instance, a prospective Prosecution witness known by the pseudonym, TF1-354. See, para. 10, DCT-097 Payments Decision. The payments were made between 8 April 2004 and 19 June 2006. See, para. 22, DCT-097 Payments Decision.

[42] DCT-097 Payments Decision, para. 22.

[43] DCT-097 Payments Decision, para. 22.

[44] DCT-097 Payments Decision, para. 22. See, also, *Rules of Procedure and Evidence of the Special Court for Sierra Leone*, as amended on 28 May 2010 [Rules], Rule 68(B).

[45] Contempt Motion, paras 19 – 28 and related annexes, K, L and N.

and/ or spirit of Rule 39(ii),[46] in that some were impermissible under that Rule, while those that were permissible were demonstrably exorbitant and irregular (ii), were duplicative and supplemental to payments made by WVS, (iii) occurred pre-trial and throughout the life of the trial, and (iv) were deliberate and designed to influence the cooperation and evidence of potential witnesses, witnesses, suspects or sources, and to otherwise interfere with the administration of justice.[47]

25. In its Decision on the Contempt Motion, this Court observed that the "question of discretionary payments and a possible abuse of that discretion under Rule 39(ii) in that the payments might not have been necessary for the safety, support or assistance of the potential witnesses and sources..." would "only be considered at the stage of final deliberations, taking into account the evidence adduced and the cross-examination of the witnesses in question"[48] Accordingly, and bearing in mind the proximity of those deliberations and the finality of these submissions, the Defence renews with vigor, all averments and arguments made on this issue in the Contempt Motion and incorporates the same herein by reference, as if set out in full below.[49] Additionally, and as and when appropriate below, the Defence addresses the contaminating impact that these payments/ inducements had on the reliability and credibility of specific Prosecution witnesses and on the Prosecution's case as a whole. At a minimum, an adverse inference (if not presumption) should be drawn *vis-à-vis* the reliability and credibility of Prosecution evidence in those instances where the payments/ inducements to particular witnesses are objectively unreasonable and/ or excessive. In appropriate circumstances of egregious and unmitigated abuse of discretionary payments/ inducements by the Prosecution, the Court should exclude the evidence of the applicable witnesses in their entirety.

26. To be sure, a clear and regrettable case of prosecutorial abuse of process has consequently been made out[50] with one inescapable consequence being the deprivation of a fair trial to the Accused at bar.

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[46] Rule 39(ii) indicates that a Prosecutor may, in the conduct of an investigation, "[t]ake all measures deemed necessary for the purpose of the investigation, including the taking of any special measures to provide for the safety, the support and the assistance of potential witnesses and sources."
[47] Ibid.
[48] *Prosecutor v. Taylor,* SCSL-03-01-T-1118, Decision on Public with Confidential Annexes A-J and Public Annexes K-O Defence Motion Requesting an Investigation into Contempt of Court by the Office of the Prosecutor and its Investigators, dated 11 November 2010, filed 12 November 2010 [Contempt Decision], para. 40.
[49] Contempt Motion, paras 19 – 28 and related annexes, K, L and N.
[50] See, for example, Contempt Motion, Motion to Recall, and DCT-097 Payments Decision.

Taylor was involved in the shipment. Once, again, this is clear evidence that prosecution witnesses were keen to link Taylor with arms and ammunitions dealings even when they knew full well he was not involved. It is also evidence that prosecution witnesses cannot be relied upon as evidence of Taylor's involvement.

1053. In conclusion, given the inconsistency of the evidence surrounding the organisation of the shipment, there is not sufficient evidence to impute to Taylor any involvement in the Magburaka Shipment.

1054. The materiel delivered at Magburaka was taken to JP Koroma's house in Freetown and then distributed from there.[3037] Some of the material was given to the RUF.[3038] One of the heavy weapons, whether it was a heavy machine gun or an anti-aircraft gun (the evidence seems to suggest there was a least a gun), was given to Bockarie.[3039]

1055. The evidence suggests material obtained from the Magburaka Shipment was used in fighting ECOMOG in Freetown in February 1998.[3040] However, it is not clear how much then was left over or used in subsequent operations or used in the commission of crimes. The fact that both the RUF and AFRC often struggled with ammunition supplies throughout 1998 may suggest the ammunition obtained from the Magburaka Shipment did not last long, but this is of course conjecture, as no conclusions can properly be drawn as to what ammunition actually arrived or to what use the ammunition obtained from the Magburaka Shipment was put after February 1998.[3041]

1056. There is some evidence that the trade with former ULIMO combatants continued throughout 1997, though it is not at all clear as to how significant trade was during this period. For instance, Lamin, Varmuyan Sherif, Mohamed Kabbah and Issa Sesay suggest the trade continued into 1997.[3042]

1057. There is a small amount of evidence that the trade with Guinea continued, though it is not at all clear as to how significant trade was during this period. Several witness have

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[3037] TT, Samuel Kargbo, TF1-597, 21 May 08, p. 10482; TT, Issa Sesay, DCT-172, 7 Jul 10, p. 43867-8.
[3038] TT, Mike Lamin, TF1-371, 28 Jan 08, p. 2316-7; Samuel Kargbo, TF1-597, 21 May 08, p. 10482.
[3039] TT, Mike Lamin, TF1-371, 28 Jan 08, p. 2316; Isaac Mongor, TF1-532, 11 Mar 08, p. 5733-4; Issa Sesay, DCT-172, 7 Jul 10, p. 43915-6.
[3040] TT, Francis Charles, TF1-338, 5 Sep 08, p. 15557-8; Isaac Mongor, TF1-532, 11 Mar 08, p. 5733-4.
[3041] For the lack of ammunition throughout 1998, see below.
[3042] TT, Mohamed Kabbah, TF1-568, p. 16423; Issa Sesay, DCT-172, 26 Jul 10, p. 44626-7; Varmuyan Sherif, TF1-406, 10 Jan 2008, p. 1018 (RUF bought arms from ULIMO from the end of 1997 to 2003); Mike Lamin, TF1-371, 31 Jan 2008, p. 2696-7 (RUF bought arms from ULIMO in 1997; Varmuyan Sherif and Abu Keita were both involved on the part of ULIMO).

allegedly introduced the herbalist to a group of fighters in Buedu at the same time as he explained that Taylor had given him the "plan" for how the Fitta-Fatta mission and the attack on Freetown should go.[3403] Bockarie threatened to kill anyone who refused to participate, and thus the herbalist carve little marks into the fighters arms and backs and rubbed a concoction on their bodies.[3404] King Perry subsequently testified that Fitti-Fatta was a failure despite these "protections".[3405] Alice Pyne belatedly supported the evidence that the herbalists were sent by Taylor in regard to this operation; however, she admitted that she only linked Taylor to this account regarding the herbalists about 10 days prior to testimony (previously she had told the Prosecution that Bockarie hired the herbalists).[3406] The Defence submits this is an inconsistency solely designed to implicate Taylor. Pyne's testimony was directly refuted by John Vincent[3407] and Issa Sesay,[3408] though Sesay does agree that herbalists came from Liberia and were sent by a man named Titus, who was known to Bockarie.[3409]

1194. This inculpatory evidence also is composed entirely of hearsay accounts of herbalists being sent by Charles Taylor to support troops, and as such it is no stronger than that relating to other forms of assistance allegedly sent by Taylor. Additionally, there is evidence that the RUF used herbalists and juju well before Taylor allegedly sent these herbalists from Liberia,[3410] thus there would have been no need for Taylor to send such (and he did not believe in juju anyway).[3411]

Conclusion on Aiding and Abetting

1195. The complete paucity of anything but circumstantial and hearsay evidence of Taylor's aiding and abetting the RUF or AFRC/RUF during the Indictment period is striking and troubling. The majority of the evidence upon which the Prosecution relies for a conviction is based on second-hand stories told and retold by combatants and insider witnesses who have embellished their accounts to implicate Taylor. The resulting

[3403] TT, Perry Kamara, TF1-360, 5 Feb 08, p. 3164-6. Note that an analysis of King Perry's evidence with regard to the existence of a "plan" by Taylor to attack Kono has been addressed in JCE.
[3404] TT, Perry Kamara, TF1-360, 5 Feb 08, p. 3164-6.
[3405] TT, Perry Kamara, TF1-360, 5 Feb 08, p. 3171.
[3406] TT, Alice Pyne, TF1-584, 19 Jun 08, p. 12235-44; 12313-7.
[3407] TT, John Vincent, DCT-215, 30 Mar 10, p. 38231.
[3408] TT, Issa Sesay, DCT-172, 11 Aug 10, p. 46059.
[3409] TT, Issa Sesay, DCT-172, 12 Aug 10, p. 46118-20.
[3410] TT, Alimamy Bobson Sesay, TF1-334, 21 Apr 08, p. 8075-6; Samuel Kargbo, TF1-597, 3 Jun 08, p. 10819-20; Komba Sumana, TF1-263, 6 Oct 08, 17982-3; Charles Ngebeh, DCT-146, 22 Mar 10, p. 37767-8; John Vincent, DCT-215, 30 Mar 10, p. 38230-1
[3411] TT, Charles Taylor, 16 Sep 09, p. 29027-8; 30 Sep 09, p. 29982-4 (doubting Alice Pyne's account, especially since women were not typically allowed in the zoebush).

conclusion, that there is indeed smoke but no fire, is confirmed by a code cable, dated 19 June 2000, from Downes-Thomas of the UNOL in Monrovia to Prendergrast of the UN in New York.[3412] Therein, Downes-Thomas states that the crucial aspects of the "omnibus allegation" against Taylor are: that he provides arms, ammunition and training and personnel to the RUF; that he is able to assist the RUF because the RUF supplies him with illicitly mined diamonds for personal profit; and that he has a vested interest in the continuation of the crises in Sierra Leone as the maintenance of the status quo promises the continuation of the lucrative arrangement.[3413]

1196. However, Downes-Thomas goes on to acknowledge that while Western newspapers have carried stories on this matter they have only provided "generalized snippets of related information which only whets the appetite but offers nothing truly substantive". He goes on to note that the evidence underlying these crucial allegations is unknown and unavailable to the United Nations Office in Liberia, which he suggests means that the evidence does not in fact exist.

1197. Likewise, the Defence submits that the fabricated and generalized stories of Taylor's alleged aiding and abetting of the RUF and/or AFRC/RUF as presented by the Prosecution may whet the Trial Chamber's appetite for a conviction, but offer nothing truly substantive to upon which the Trial Chamber can rely beyond a reasonable doubt to support a conviction.

Diamonds in Exchange for Assistance

1198. The Prosecution contends that the RUF, Junta and AFRC/RUF gave Taylor diamonds obtained from Sierra Leone in exchange for arms, ammunition and other supplies.[3414] Taylor denies all such allegations.[3415] The Prosecution called "diamond expert" Stephen Ellis as its first witness. Following that act, the Hollywood phenomenon of "blood diamonds" and the late infusion of a Supermodel helped to raise the profile of the Prosecution case against Taylor, but in the end, all that glitters is not gold. The hype did little to substantiate the underlying allegations. Of more than twenty linkage witnesses that testified to the effect that the RUF and/or AFRC/RUF gave diamonds to Taylor, only two of them give a first-hand account of the alleged transactions. One of those two witnesses is ZigZag Marzah, who drew the Trial Chamber a picture[3416]

[3412] Exhibit D-255.
[3413] Exhibit D-255, para. 15.
[3414] Prosecution Pre-Trial Brief, para. 53.
[3415] Exhibit D-400.
[3416] Exhibit P-92.

material. There can be little reason to fail to accept such evidence. The prosecution has produced no such evidence in this case. There is then hearsay which comes from a witness so proximate to the source of the statement that there may be an initial temptation to accept it. Unfortunately such evidence in this case tends to emanate from individuals who are themselves accomplices and thus independent of the care which must be exercised in treating hearsay evidence there is the added urgency to corroborate the tainted source. There is then the hearsay which is little more than tittle tattle or general gossip. Such evidence, in our submission can never carry sufficient weight to be regarded as proof.

1395. Returning to the point about the impact of prior inconsistent statements, and keeping in mind the above arguments with relation to hearsay and accomplice evidence, the Defence submits that a "material discrepancy" would certainly arise where the witness has given multiple previous statements to the Prosecution, and yet, it is not until that witness has been in the "care" of the Prosecution and its Witness Management Unit that the witness makes any mention or link to the Accused. The Trial Chamber should be vigilant in ascertaining when and if this has happened.

1396. Furthermore, with regard to payments of witnesses, the Defence appreciates that all witnesses appearing before the Special Court are entitled to receive compensation from the Witness and Victims Section of the Registry for legitimate travel expenses, lodging, meals and other expenses incurred as a result of his/her cooperation with the Special Court. *The Practice Direction on Allowance for Witnesses and Victims* is meant to balance the Special Court's interest in encouraging cooperation by minimizing pecuniary harm to witnesses with the need to prevent the parties from providing financial benefit to their witnesses in exchange for favourable testimony. Where payments made to witnesses by the Prosecution are challenged here, it is the Defence's assertion that such payments exceeded the level of financial support authorized by the Practice Direction, or came from a different source entirely: the Prosecution. The Appeals Chamber has recently noted that the issue of improper payments and inducements to witnesses or potential witnesses and sources is a live issue in this trial.[3808] Payments received by prospective witnesses and witnesses have tarnished the quest for truth. While in some instances, the sums involved have on

[3808] *Prosecutor v. Taylor*, SCSL-03-01-T-1168, Decision on Defence Appeal Regarding the Decision on the Defence Motion for Admission of Documents and Drawing of an Adverse Inference Relating to the Alleged Death of Johnny Paul Koroma, 25 Jan 2011 ("JPK Appeal Decision").

occasion been small, when viewed through Western eyes, but must be viewed in the context of the developing nations of Liberia and Sierra Leone.

TF1-276 Abu Keita

Excessive financial compensation

1397. Abu Keita was paid a substantial sum of money to testify in the trial of the Accused and appears to have been influenced by the debt he feels that he owes to his benefactors to alter his testimony to support hyper-specific Prosecution charges. Abu Keita was primarily provided funds for excessive travel expenses. While some payments were directed toward legitimate travel costs, the large amount of "other expenses" covered by the Prosecution damage Keita's credibility. Between 20 June 2003 and 23 June 2003, the Witness Management Unit provided $2,180 US for travel and hotel expenses, and an additional $322 US for unspecified "other expenses."[3809] In this case, while only $57 US were required for hotel expenses, it is difficult to understand the necessity of $322 US for "other expenses." Similarly, a $793 US plane ticket was accompanied by over $1,000 US for "transportation expenses."

1398. In a vacuum, such large payments may not suggest an issue with a witness's credibility. However, when coupled with a number of very specific propositions and considerable inconsistencies in his testimony, Keita cannot be considered to be a reliable witness.

Inconsistent and self-aggrandising statements

1399. With this financial history in mind, consider Abu Keita's claims that on the *very* first introduction to Ibrahim Bah, Samuel Bockarie and Charles Taylor the following events occurred: Bah spoke with him about diamond transactions, Bockarie showed him a jar full of diamonds and Taylor spoke directly to him about supporting the RUF.[3810] Given the magnitude of those assertions, it is difficult to understand why such issues would be brought up without a prior relationship. The suggestion that all three individuals chose the same day to express such specific opinions, about issues so pointedly related to the Prosecution's case against Taylor, to a perfect stranger strains credulity. Moreover, Keita's meeting with the Accused was omitted from his early

[3809] TT, Abu Keita, TF1-276, 24 Jan 08, p. 2154-5.
[3810] TT, Abu Keita, TF1-276, 24 Jan 08, p. 2113.

occasions to bring diamonds to Charles Taylor;[3820] Keita further denying from his 2003 interview that he sat near Issa Sesay and Charles Taylor as they spoke in 2000 about diamonds.[3821]

Keita's credibility in light of other evidence

1404. Keita's credibility is seriously undermined when viewed in the light of other Prosecution witness testimony. Keita himself claimed that he was sent to Sierra Leone following his imprisonment and subsequent release after his role in the Camp Johnson Road Incident of September 1998. However, he omitted to mention that he had previously been in contact with and known to the RUF as one of the ULIMO Generals from whom the RUF had purchased arms.[3822] He omitted to mention that he was independently close to the RUF as his girlfriend's father was a senior advisor for Sankoh.[3823] Indeed, Ellie Mabey, TF1-516, testified that Abu Keita came to join the RUF after the disarmament in Liberia in 1996 or 1997.[3824] Ellie Mabey saw him in Kenema in 1997 (the suggestion he was with Bockarie) at about the time Taylor was inaugurated as president.[3825] Samuel Kargbo, TF1-597, claimed that Keita was present in Buedu in March 1998.[3826] This evidence, when taken together, presents the picture that Keita was involved with the RUF long before he claimed he was sent to join the RUF by Taylor. It completely undermines his allegation that he was sent to join the RUF by Taylor and his general credibility as a witness.

TF1-375 Edward Joseph Woody

1405. The testimony of Joseph Woody must be seen in light of two crucial issues. First, that he received exorbitant amounts of money from the Prosecution and the WVS and, second, that his statements to the Prosecution and a substantial portion of his evidence changed to fit the narratives of other witnesses immediately after they testified against the Accused. While Woody denied having ever heard other testimony, his inclusion of specific facts at an extremely late date in his interviews, coupled with his inability to explain why such issues were not discussed sooner, suggests that his longstanding and beneficial relationship with the Prosecution influenced his testimony.

[3820] TT, Abu Keita, TF1-276, 24 Jan 08, p. 2119.
[3821] TT, Abu Keita, TF1-276, 24 Jan 08, p. 2120.
[3822] TT, Mohamed Kabbah, TF1-568, 15 Sep 08, p. 16278.
[3823] TT, Mike Lamin, TF1-371, 1 Feb 08, p. 2805-7.
[3824] TT, Ellie Mabey, TF1-516, 9 Apr 08, p. 7101-2.
[3825] TT, Ellie Mabey, TF1-516, 9 Apr 08, p. 7102.
[3826] TT, Samuel Kargbo, TF1-597, p. 10525.

Excessive payments

1406. Before setting out the multiple inconsistencies in his testimony, it is necessary to look at the excessive payments made to Woody by the Prosecution and WVS, in his capacity as both a witness and a source of information.[3827] The Defence submits that these payments, as well as payments made by the Prosecution and an indemnity letter written to DCT-032,[3828] led to High Command and Moses Blah giving a fabricated account of the alleged death of Johnny Paul Koroma. That part of High Command's testimony should be disregarded entirely. Indeed, the bulk of his evidence should be viewed with great caution in light of this fabrication and his willingness to lie to the Court.From September 2005 to May 2008 the Prosecution paid the witness 4,325 USD and 825,000 Leones.[3829] In addition, Woody was provided 13,122,800 Leones for general living fees by the WVS.[3830] Woody's medical expenses totaled 775,000 Leones.[3831] Rent, maintenance and utility bills were covered for 19,750,000 Leones.[3832] Not surprisingly given the massive expenditure of funds, Woody was unable to provide justification for over 3,000,000 Leones labeled as "miscellaneous," except to explain that the Special Court also paid for him to go to an expensive computer school.[3833] All told, in addition to money received from the Prosecution, Woody was given or had paid on his behalf 38,359,200 Leones by WVS.[3834]

1407. These payments to Woody are problematic given his understanding of the purpose of the payments, and his explanation for their use. It is important to note that Woody was given money on a consistent basis by the Prosecution which he viewed not as payment for expenses incurred as a result of conducting interviews, but as a means to support his large family in an unfamiliar city.[3835] While arguing these were not payments for information, Woody provided inconsistent answers and occasionally admitted they were done solely as a favour to him. Specifically, he stated that he was not satisfied with being given only 50 USD for a five minute motor bike ride during his first visit, and was then given 100 USD for a second visit, when during both visits

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[3827] See *Prosecutor v. Taylor*, Notice of Appeal and Submissions Regarding the Decision on the Defence Motion for Admission of Documents and Drawing of an Adverse Inference Relating to the Alleged Death of Johnny Paul Koroma, 10 December 2010, especially paras. 40-57.
[3828] Exhibits D-483 and D-484.
[3829] TT, TF1-375, 27 Aug 08, p. 14719.
[3830] TT, TF1-375, 27 Aug 08, p. 14720.
[3831] TT, TF1-375, 27 Aug 08, p. 14722.
[3832] TT, TF1-375, 27 Aug 08, p. 14725.
[3833] TT, TF1-375, 27 Aug 08, p. 14724-7.
[3834] TT, TF1-375, 27 Aug 08, p. 14728.
[3835] TT, TF1-375, 22 Aug 08, p. 14345.

he gave them false information and was generally uncooperative.[3836] Woody admitted that he had no transportation costs related to that day's meeting. Later, in June 2006, Woody stated that the Prosecution "gave me money and I accepted the money. I didn't know what it was for. They gave it me and I accepted it. I knew it was for the same transport purpose, but for the meantime take this amount of money. I can't remember what the money was for".[3837]

1408. Woody was also used at times purely as a source, such as on 22 July 2006 when he was given 25 USD to collect someone else and bring them to the Prosecutors.[3838] During the course of 2005 and 2006 the witness continued to receive payments of 100 USD for interviews that contained little information.[3839] Upon returning from a trip from Monrovia to Freetown, for which he was paid 200 USD, Woody was given an additional 100 USD which he stated was an "appreciation" from the Prosecution, for him to use for his family.[3840] It is difficult to understand how a payment of 50 USD for "crossing the street" and taking up some of the witness's time is to be viewed other than as inducement for the witness to testify or provide information.[3841]

1409. Woody attempted to justify his earnings by claiming that money received from the Prosecution was a paltry sum. He stated that he earned money from the Sirleaf campaign as well as money from a house rental and motor bike rentals, and from the Sierra Leonean embassy.[3842] Woody claimed that the money from the Prosecution was pocket money compared to his own earnings.[3843] Additionally, Woody made the dubious claim that he earned 175 USD a month from the Sierra Leonean embassy for a two year period for making a total of three trips to the border of Sierra Leone and Liberia.[3844] Despite these objections, it is clear that Woody received a far greater living allowance from his work with the Special Court.

Specific Choice to Include Testimony after Zigzag Marzah's Hearing

1410. Particularly troubling in light of the payments made is Woody's inclusion at trial of several claims corroborating the testimony of Zigzag Marzah, despite failing to make

[3836] TT, TF1-375, 26 Aug 08, p. 14649.
[3837] TT, TF1-375, 26 Aug 08, p. 14653.
[3838] TT, TF1-375, 26 Aug 08, p. 14657.
[3839] TT, TF1-375, 26 Aug 08, p. 14663-5.
[3840] TT, TF1-375, 27 Aug 08, p. 14701-2.
[3841] TT, TF1-375, 22 Aug 08, p. 14334.
[3842] TT, TF1-375, 22 Aug 08, p. 14329; 27 Aug 08, p. 14676.
[3843] TT, TF1-375, 22 Aug 08, p. 1433.
[3844] TT, TF1-375, 27 Aug 08, p. 14689.

covering up his own concern that his synchronization of testimony with Marzah's would be blatantly obvious.

1470. In addition, Seiatoe admitted that he kept visiting the defence office, while crucial Prosecution witnesses were giving testimony, even though he had already decided to give evidence for the Prosecution.[3983]

1471. When coupled with Seiatoe's decision to lie about the defence office in open court, Seiatoe's testimony becomes hard to view as credible or without bias.

Payment schedule

1472. Finally, Seiatoe's payments, and the lack of identification of their purpose in the Prosecution records, provide another basis to assume his testimony may have become more favourable to the Prosecution. In total, he was provided over 2,345 USD.[3984] Seiatoe was paid 150 USD on three occasions for transport and lost wages at the end of March and again in the beginning of April 2008, following Zigzah Marzah's testimony, despite no interview being scheduled.[3985] While there is no associated payment schedule, Seiatoe is insistent that an interview occurred and notes were recorded.[3986] Claims that the Prosecution would take notes on a subject, so close to the testimony of Marzah and after a recent visit to the defence office, should raise suspicion of the highest concern of, at a minimum, the witness's credibility and interests in testifying in this trial.

1473. Seiatoe further claims that his meetings during this period were for "security" concerns, which also lacks credibility, as he had been giving 500 USD the previous year to fix up his aunt's house for the purposes of relocation. He also states that the payments in March and April of 2008 were for this purpose, despite not having any apparent connection to security issues.[3987] Another 500 USD was paid in June to Seiatoe for relocation of his family, although the money was actually used to move him for business purposes and for his mother to travel home to Guinea.[3988] Again in August, Seiatoe was paid 250 USD for family assistance.[3989] Seiatoe can provide no explanation, whatsoever, for this 250 USD, although he tried to explain that it was for

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[3983] TT, Ambary Seiatoe, TF1-375, 26 Nov 2008, p. 21237 (Private Session).
[3984] TT, Ambary Seiatoe, TF1-375, 26 Nov 2008, p. 21267 (Private Session).
[3985] TT, Ambary Seiatoe, TF1-375, 26 Nov 08, p. 21239; 26 Nov 08, p. 21246.
[3986] TT, Ambary Seiatoe, TF1-375, 26 Nov 08, p. 21242.
[3987] TT, Ambary Seiatoe, TF1-375, 26 Nov 08, p. 21246.
[3988] TT, Ambary Seiatoe, TF1-375, 26 Nov 08, p. 21252.
[3989] TT, Ambary Seiatoe, TF1-375, 26 Nov 08, p. 21258.

lost wages or transportation despite having already been reimbursed separately for those items.[3990] Yet again, one week later, Seiatoe was paid 100 more USD.[3991]

1474. Seiatoe obsessively provides the same explanation over and over, that the payments were "for business," without providing any explanation and despite the fact that lost wages were included.[3992] Even more problematic, Seiatoe claims that a group of many meetings during August and September were all for the sole purpose of discussing travel, and no other discussion ensued, despite the apparently large losses in "business" he was suffering.[3993]

After Bockarie's death

1475. Seiatoe stated in court that he went into hiding for one week after Bockarie's death and was shortly thereafter ordered to conduct a mission by Benjamin Yeaten. In his 2007 statement, however, Seiatoe stated that he went into hiding until 2004, after Yeaten left the country.[3994] The statement is very clearly worded and absolutely contradicts Seiatoe's testimony. Seiatoe admits that he had the opportunity to correct his statement on this issue, but chose not to, preferring to wait until he could do so in court.[3995]

TF1-337 Mustapha Mansaray

Payment of unauthorized allowances

1476. Contrary to the intention of the Practice Direction, the Prosecution covered significant medical costs for both Mansaray and his wife in such a manner as to cast doubt on his credibility as a witness. Mansaray was made aware during the course of his interviews that he would be provided funds for medical expenses.[3996] Mansaray described the arrangement as one where he would be provided funds for family medical expenses upon request, saying "sometimes in 2006 my family members could get sick and even my wife at a point underwent an operation. I had a cellular phone, I called them, told them my problems, and at that time I was unemployed, I hadn't any money and so

[3990] TT, Ambary Seiatoe, TF1-375, 26 Nov 08, p. 21261.
[3991] TT, Ambary Seiatoe, TF1-375, 26 Nov 08, p. 21261.
[3992] TT, Ambary Seiatoe, TF1-375, 26 Nov 08, p. 21260-2.
[3993] TT, Ambary Seiatoe, TF1-375, 26 Nov 08, p. 21262-3.
[3994] TT, Ambary Seiatoe, TF1-375, 26 Nov 08, p. 21184-5.
[3995] TT, Ambary Seiatoe, TF1-375, 26 Nov 08, p. 21197.
[3996] TT, Mustapha Mansaray, TF1-337, 10 Mar 08, p. 5623.

they assisted me to pay the medical bill."[3997] At times, Mansaray viewed these medical issues as being life-threatening.

1477. In July 2006, Mansaray was given a total of 330,000 Leones for his wife's surgery, paid by the Special Court to the government hospital at Pujehun.[3998] Mansaray was given a separate total of 260,000 Leones in early December 2006 for emergency surgeries on his eye and teeth.[3999] Mansaray was paid an additional 450,000 Leones in February 2007 for medical assistance for himself and his wife[4000] and 150,000 more in further medical expenses in July 2007[4001]. Through all of this, Mansaray acknowledged that "I wouldn't have been able to pay because I hadn't the opportunity to get set [sic] money".[4002] This payment history, when coupled with Mansaray's testimony that he felt comfortable calling the Prosecution and informing them that he needed money for his family's medical care, casts significant doubt on the witness's ability to testify independent of the Prosecution's influence.

Favourable testimony given at trial which is at odds with prior statements

1478. It with this series of extraordinarily generous acts by the Prosecution that Mansaray's testimony, often inconsistent and heavily favourable to the Prosecution, should be viewed. His inconsistencies are specific to portions of his testimony which pertain to the indictment and the allegations against the Accused.

1479. Notably, Mansaray claimed at trial to have seen the Accused and Foday Sankoh speak at a rally in the Bomi Hills in November 1991.[4003] He failed to mention this event until his seventh interview with the Prosecution in October 2007, after having received significant medical assistance, when he was asked repeatedly and specifically about Charles Taylor.[4004] Mansaray did not mention the rally when asked directly about Charles Taylor during his fourth interview, conducted prior to the Prosecution's medical assistance. When asked to explain the disparity, Mansaray suggested only that troubles at home might have led him to mistakes.[4005] Mansaray's choice to finally include direct evidence favourable to the Prosecution after three

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[3997] TT, Mustapha Mansaray, TF1-337, 07 Mar 08, p. 5541
[3998] TT, Mustapha Mansaray, TF1-337, 07 Mar 08, p. 5568-9.
[3999] TT, Mustapha Mansaray, TF1-337, 10 Mar 08, p. 5597-8.
[4000] TT, Mustapha Mansaray, TF1-337, 10 Mar 08, p. 5600.
[4001] TT, Mustapha Mansaray, TF1-337, 10 Mar 08, p. 5602-3.
[4002] TT, Mustapha Mansaray, TF1-337, 10 Mar 08, p. 5619.
[4003] TT, Mustapha Mansaray, TF1-337, 06 Mar 08, p. 5447.
[4004] TT, Mustapha Mansaray, TF1-337, 06 Mar 08, p. 5506-7.
[4005] TT, Mustapha Mansaray, TF1-337, 10 Mar 08, p. 5610.

years of being questioned may be attributed to a feeling of indebtedness following the extraordinarily generous medical allowances paid to Mansaray and his family.

1480. Mansaray's testimony concerning the execution of miners who attempted to escape the diamond fields also changed as he continued to receive payments from the Prosecution. In his May 2006 statement, Mansaray reported that he did not witness any executions personally, but only heard of them indirectly.[4006] When given an opportunity to correct this statement in 2008, Mansaray specifically stated that he had been told by others that killings had occurred at the Kaisambo and No. 11 mining sites, but did not provide any direct evidence that he had witnessed executions.[4007] At trial, however, Mansaray claimed that he had personally witnessed individuals being executed, and that his earlier statements were simply a mistake on his part.[4008] Mansaray seems to be unable to distinguish between directly witnessing the killings and hearing about them from others.[4009]

TF1-588 Stephen Smith

1481. Stephen Smith, while being an expert at journalistic reporting and French-speaking Africa, is not an expert on Sierra Leone or Liberia and has spent little time in those countries during the period relevant to the indictment. Smith has written thirteen books and presented at nearly twenty conferences and never has Sierra Leone or Liberia been the primary subject.[4010] Smith claims that his books generally focus on issues in Africa, pointing out that few of his books focus on only one country, but this is a misleading assertion. As noted by counsel during cross-examination, many of his books are only said to deal with a single, French-speaking country because Smith invokes the concept of "Franco-African" relations.[4011] It should be clear that even large scale studies of "Franco-African" relations have absolutely no bearing on Smith's understanding or experience with issues related to Sierra Leone or Liberia, and yet, when evaluating Smith's CV, his various lectures, and his many books, they predominately focus on French Africa.[4012] Smith's closest direct work, besides a few

[4006] TT, Mustapha Mansaray, TF1-337, 06 Mar 08, p. 5451.
[4007] TT, Mustapha Mansaray, TF1-337, 06 Mar 08, p. 5468-70.
[4008] TT, Mustapha Mansaray, TF1-337, 06 Mar 08, p. 5461.
[4009] TT, Mustapha Mansaray, TF1-337, 06 Mar 08, p. 5470-2.
[4010] TT, Stephen Smith, TF1-588, 22 Sep 08, p. 16840 (Rather see various references to issues "touching" on Sierra Leone or Liberia at p. 16833-9).
[4011] TT, Stephen Smith, TF1-588, 22 Sep 08, p. 16842.
[4012] TT, Stephen Smith, TF1-588, 22 Sep 08, p. 16842.

war.[4033] Consciously or subconsciously, there is the danger that he has moulded his own account to include what he was told by those other prisoners. Perhaps one instance is the fate of Martin Moinama: in November 2003, he told the Prosecution he did not know Moinama's whereabouts; yet in January 2007, he was able to inform the Prosecution that Moinama had been killed in 1999.[4034] Though he denied he heard this story while at Pademba,[4035] it is suspicious that his recollection of this occurred while he was imprisoned with the very man who had killed Moinama.[4036] Equally, in an interview in November 2003, the witness stated that he obtained the information about the group that entered Freetown in January 1999 from the other inmates at Pademba; though, he denied this in court.[4037]

1491. The witness had a clear motive to help the Prosecution's case, since he owes his early release from Pademba Road Prison to the Prosecution (he even told another witness, Seibatu Jusu, that the Court released him from prison).[4038] Indeed, this debt continues as the Prosecution promised the witness that it would take care of him and his family,[4039] including supporting them when sick, paying his children's school fees, and providing school uniform for them.[4040] There is therefore the danger that the witness may have been motivated to tailor his testimony to aid the Prosecution.

TF1-584 Alice Pyne

Inconsistencies

1492. Alice Pyne like many prosecution witnesses, has a tendency to link Taylor with the events in Sierra Leone despite saying otherwise in previous statements. Her testimony regarding the herbalists supposedly sent by Taylor provides a case-in-point. In her statement of October 2007, Pyne stated it was Bockarie who hired the herbalists; in her statement of March 2008, it was Taylor.[4041]

1493. Though there are numerous examples of inconsistencies in her testimony, the Defence draws the Trial Chamber's attention to the following two, as representative of first her

[4033] TT, Foday Lansana, TF1-275, 25 Feb 08, p. 4622.
[4034] TT, Foday Lansana, TF1-275, 26 Feb 08, p. 4747-51.
[4035] TT, Foday Lansana, TF1-275, 26 Feb 08, p. 4753-4.
[4036] TT, Foday Lansana, TF1-275, 26 Feb 08, p. 4765 (with p. 4749-50 explaining that Alhaji Conteh had been the one to kill Moinama).
[4037] TT, Foday Lansana, TF1-275, 26 Feb 08, p. 4746-7.
[4038] TT, Seibatu Jusu, TF1-585, 10 Sep 08, p. 15947.
[4039] TT, Foday Lansana, TF1-275, 25 Feb 08, p. 4612-4.
[4040] TT, Foday Lansana, TF1-275, 25 Feb 08, p. 4616.
[4041] TT, Alice Pyne, TF1-584, 19 Jun 08, p. 12314-7.

Other matters going to credibility

1502. TF1-516 displayed a great reluctance to agree with previous statements made to the Prosecution that were exculpatory in nature. The most telling example is when he was asked whether he agreed with his previous statement that he never heard a directive from Taylor or Yeaten concerning the Freetown Invasion.[4082] He tried to dodge the question, and only after an intervention from Justice Lussick did he confirm the statement. This example is representative of his testimony as a whole. He was not interested in telling the truth, but in providing a inculpatory testimony.

TF1-274 Dauda Aruna Fornie

His evidence for the period 1991 to 1992

1503. There is evidence to believe that while DAF may have been in Liberia for a time in about 1991 to 1992, he understood little of the events going on about him. In that respect his hearsay evidence from this period should be treated with caution.

1504. For instance, his treatment of Black Gadaffa is brief and unsupported by corroborative evidence. He claimed Black Gadaffa was a unit composed of "Sankoh recruits", i.e. Sierra Leoneans, with a Liberian known as Kpelle Boy for its leader,[4083] dating the creation of this unit to the time he was in Liberia, which was about mid-1991 (the rainy season) to late 1992.[4084] This forms a rather cursory description of the Black Gadaffa situation, given all the detail supplied by other witnesses, suggesting that DAF did not know much about it, which in turn would suggest he is not the most reliable informant on the matter. That is not quite the end of the story, however, since it emerges in cross-examination that, in a previous interview with prosecution investigators, DAF had stated that the leaders of Black Gadaffa were rumoured to have connived against Taylor, including Kpelle Boy, Dixon Wolo and Yegbeh Degbon.[4085] This, of course, would support Taylor's own position regarding Black Gadaffa, and suggests that DAF knew a good deal more than he was willing to admit; but knew also that such an account would undermine his own credibility and his own account of how Black Gadaffa came into being. Perhaps that is why he seemed to recant what he said in that interview, and deny the leaders of Black Gadaffa connived

[4082] TT, Ellie Mabey, TF1-516, 16 Apr 08, 7777-9.
[4083] TT, DAF, TF1-274, 1 Dec 08, p. 21313-5.
[4084] TT, DAF, TF1-274, 1 Dec 08, p. 21306 and p. 21359.
[4085] TT, DAF, TF1-274, 8 Dec 08, p. 21990-2.

against Taylor.[4086] Either way, his evidence about the episode comes across as unreliable: at best he is poorly informed; at worst he is disingenuous.

1505. Another reason one may wish to treat his account of this period with caution is his lack of knowledge of the command structure of the NPFL. Despite the fact that it was well-known that Oliver Varney commanded the sixth battalion of the NPFL, DAF failed to mention him, testifying instead that it was a man known as One Man One.[4087] Given that Oliver Varney had his base in Tubmanburg, also known as Bomi or Bomi Hills, and that DAF claimed to be in that same location at the precise time Varney was also there, one again comes to the conclusion that DAF is poorly informed.

1506. DAF is certainly poorly informed about other events, such as Top 20, Top 40 or Top Final; this time by his own admission.[4088]

1507. Now while it might seem insignificant as to whether the witness recalled specific details from a long time ago, such as the above, it is important when taken into context with DAF's main allegation from the period in question, namely his account that Taylor came to Kakata together with Sankoh just before Operation Octopus in 1992; and that Sankoh spoke to the Sierra Leonean fighters present.[4089] That the witness should remember so little of certain key events from this period and yet recall such a fleeting episode should perhaps provide our first note of caution; if so, it is the first note of many. For DAF never saw Taylor present, despite the fact he claimed he "saw" Taylor in his evidence;[4090] he was told Taylor was in the vehicle,[4091] which is not the same thing. Now one might be prepared to be generous and put the confusion down to semantics, but the witness continued to try to buttress his evidence by speculation: at first he supposed the windows of the vehicle were down,[4092] though then he claimed not to recall,[4093] before claiming to "recall well" that the windows were closed, but only after his previous evidence that they were closed had been put to him.[4094] At best, this is forgetful, at worst it is dishonest; either way it renders his testimony in this area unreliable. It also adds a more sinister note: that is a conviction

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[4086] TT, DAF, TF1-274, 8 Dec 08, p. 21990-2. He insisted Kpelle Boy was the leader of Black Gadaffa, denying Degbon was a leader, despite what he said in the previous interview.
[4087] TT, DAF, TF1-274, 1 Dec 08, p. 21310 and p. 21317.
[4088] TT, DAF, TF1-274, 4 Dec 08, p. 21752-5.
[4089] TT, DAF, TF1-274, 1 Dec 08, p. 21362-6.
[4090] TT, DAF, TF1-274, 1 Dec 08, p. 21365.
[4091] TT, DAF, TF1-274, 1 Dec 08, p. 21365; 8 Dec 08, p. 21993-5.
[4092] TT, DAF, TF1-274, 8 Dec 08, p. 21993.
[4093] TT, DAF, TF1-274, 8 Dec 08, p. 21993.
[4094] TT, DAF, TF1-274, 8 Dec 08, p. 21995.

to cement a link with Taylor, and shape the evidence around that conviction. That is another reason to distrust the witness, not just for the period 1991 to 1992, but for the entirety of his evidence.

Radio operations

1508. The witness testified about radio communication between Taylor and the RUF. However, there are major holes in his evidence which make it unreliable. For instance, DAF testifies about the need to exchange codes between the NPFL and RUF, and later between the Liberian government and the RUF, by hand delivery.[4095] However, he does not explain how such codes were exchanged during the periods in which the borders were sealed and the supply line was cut.[4096]

1509. So he testified that the first RUF code was prepared in late 1992, and that this was sent to Gbarnga,[4097] and seems to have been hand-delivered by Sankoh.[4098] However, while there was no standard time for the RUF code being changed, it seems to have usually been changed every few months.[4099] This means that for the RUF to have been in effective radio contact with the NPFL, the new codes would have had to have been delivered by the RUF to the NPFL every few months. However, as even DAF has testified, there were periods in which the border was cut off, and there was no way for the either the NPFL to supply the RUF, or the RUF to supply the NPFL.[4100] Thus, there seems to have been no way for the RUF to deliver new codes to the NPFL,[4101] and thus it would have been impossible for the RUF and NPFL to communicate effectively during such periods.

1510. This should be seen alongside the lack of evidence for contact between Top Final and the AFRC coup, and that all allegations of radio or satellite phone communication in that period are unsupported by corroborating testimony.

Period at Tongo

1511. DAF testified he spent about 3 months in Tongo, as a radio operator, arriving in 1997.[4102] He remained there until late 1997.[4103] However, there are serious question

[4095] TT, DAF, TF1-274, 2 Dec 08, p. 21416-7.
[4096] TT, DAF, TF1-274, 1 Dec 08, p. 21384.
[4097] TT, DAF, TF1-274, 2 Dec 08, p. 21416.
[4098] TT, DAF, TF1-274, 2 Dec 08, p. 21417.
[4099] TT, DAF, TF1-274, 2 Dec 08, p. 21416.
[4100] See e.g. TT, DAF, TF1-274, 5 Dec 08, p. 21785-6 in which he testified that between 1993 and 1996 there was no supply to the RUF from Taylor, and that there was little direct contact either.
[4101] Of course they could have come up with a new method of delivery, but there is no evidence of this, and so it cannot simply be assumed.
[4102] TT, DAF, TF1-274, 2 Dec 08, p. 21419-20.

marks over his claim to be a radio operator at this time. Firstly, during evidence-in-chief, his testimony focuses on mining, and not radio communications.[4104] Secondly, in a previous interview, he does not say anything about radio communications.[4105] Thirdly, because he did not tell his interviewers in the interview he was a radio operator, but told them it was following his time in Tongo that he was assigned by Bockarie to be a radio operator at Buedu.[4106] The witness tries to get around this by claiming that it was out of fear of being prosecuted that he did not tell them he was a radio operator in Tongo, only to undermine his own argument by being preparing to tell the same interviewers in the same interview that he was a radio operator in Buedu.[4107] So his argument changes: he claimed he only told them he was a radio operator in Buedu, but not Tongo, because his interviewers only asked him about that,[4108] which is hardly credible in itself, but made even weaker by his marked volte-face

1512. The suggestion put to him is that he was only in Tongo for personal mining,[4109] which is why he is knowledgeable about mining at the place rather than radio operations, and that it was only in Buedu, as he initially told his interviewers, that he became a radio operator.

Bockarie's trip to Liberia

1513. DAF claimed Bockarie was called by Sunlight and that through him and Yeaten, it was Taylor's instruction for Bockarie to travel to Monrovia.[4110] This was in early 1998, at the time of the ECOMOG Intervention, while Bockarie was retreating from Kenema to Buedu.[4111]

1514. However, there are serious problems with this account. Firstly, and most fundamentally, it is in complete contrast to the Prosecution's other account of Bockarie's first trip to Monrovia following the ECOMOG Intervention, as presented in the testimony of Varmuyan Sherif. There Varmuyan Sherif testified that he was sent by Taylor to pick up Bockarie and take him to Monrovia. In DAF's account, there is no Varmuyan Sherif, and there is no need for anyone to fetch Bockarie, since

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[4103] TT, DAF, TF1-274, 2 Dec 08, p. 21431.
[4104] TT, DAF, TF1-274, 2 Dec 08, p. 21419-28.
[4105] TT, DAF, TF1-274, 8 Dec 08, p. 21938-41.
[4106] TT, DAF, TF1-274, 8 Dec 08, p. 21940-4; 10 Dec 08, p. 22026-7.
[4107] TT, DAF, TF1-274, 8 Dec 08, p. 21944-5.
[4108] TT, DAF, TF1-274, 8 Dec 08, p. 21944-5.
[4109] TT, DAF, TF1-274, 8 Dec 08, p. 21941.
[4110] TT, DAF, TF1-274, 2 Dec 08, p. 21441-4.
[4111] TT, DAF, TF1-274, 2 Dec 08, p. 21438-44

Bockarie is in communication with Yeaten and Taylor via Sunlight and Base 1. Neither are these separate accounts of different trips undertaken by Bockarie, since both make clear the trip was made during the ECOMOG Intervention while Bockarie was retreating from Kenema. They are thus describing the same trip in completely different terms, in such a way that one, if not both, of them must be mistaken; indeed, one, if not both, must be lying.

1515. Secondly, DAF claims to have met Jungle in Voinjama along the way, but makes no mention of this in a previous interview in May 2006.[4112]

1516. Thirdly, DAF claims to have stayed at Base 1 during the trip. Sunlight testified that Base 1 was not set up at this time, but even if one ignores that DAF describes Base 1 as the radio room outside Yeaten's house, despite the fact that Base 1 was originally set up inside Yeaten's house and it was only later that it was moved into the outhouse.

1517. Fourthly, DAF is extremely inconsistent about the number of trucks and ammunition he meets coming back from Monrovia following the journey.[4113]

1518. Fifthly, the radio message came from Sunlight for Bockarie to travel to Monrovia, but DAF himself testified the Liberians were only given the RUF radio code when he took the code to them on Bockarie's second visit.[4114] So how was Sunlight, or any Liberian operator, able to communicate with the RUF?

Radios in Buedu

1519. DAF testified that there were three radio stations in Buedu: one, a monitoring station; two, a station with the call sign Lemon, later Mike November 5; three, Bockarie's radio station known as Bravo Zulu 4; there was also a mobile radio known as Planet 1.[4115] These radios operated during DAF's time in Buedu from 1998 to about April 1999.[4116] This testimony is in contrast to that of TF1-516, who testified that there was one radio in Buedu, known as Bravo Zulu 4, which was then supplemented with two additional radios following an operation undertaken by the RUF in 1999: one known as Planet 1, the other as Marvel.[4117] One again this is a major inconsistency between witnesses that goes to the reliability of the evidence; given that Taylor's intermediaries were supposed to be exchanging messages on these radio stations, it

[4112] TT, DAF, TF1-274, 10 Dec 08, p. 22025-9.
[4113] TT, DAF, TF1-274, 10 Dec 08, p. 22031-47.
[4114] TT, DAF, TF1-274, 2 Dec 08, p. 21516.
[4115] TT, DAF, TF1-274, 2 Dec 08, p. 21457-68. The names, or call-signs, of the radio stations changed from time to time.
[4116] TT, DAF, TF1-274, 2 Dec 08, p. 21457-8.
[4117] TT, Ellie Mabey, TF1-516, 8 Apr 08, p. 6872-5.

does matter which radios were in operation at any given time, since if a particular radio only came into being at a specific time, then Taylor cannot be responsible for any crimes linked to him through that radio for earlier periods.

Satellite phones

1520. Bockarie obtained a satellite phone from JPK, and later from Taylor.[4118] Bockarie obtained JPK's phone when JPK came to Buedu in early 1998.[4119] Taylor gave Bockarie the satellite phone on his second trip to Monrovia,[4120] this was in mid-1998.[4121] However, in cross DAF stated for the first time that Taylor gave Bockarie more than one satellite phone.[4122] Once again this seems to be an attempt to discredit Taylor. Other witnesses have testified that Bockarie only had one satellite phone. For instance, Mohamed Kabbah testified that he only ever saw Bockarie with one satellite phone.[4123] Perry Kamara testified that Bockarie had a satellite phone from Liberia.[4124]

Additional inconsistencies in his evidence

1521. DAF testified that the RUF's supply lines were cut when they came to Kailahun, which was in early 1993 to mid-1993.[4125] However, later he stated that the first attempt to cut off the supply route came while he was at Sandeyalu, which was from mid-1993 to late 1993.[4126]

1522. DAF's account of being freed by Kamajors is highly suspect.[4127] In examination-in-chief, he testified that he was released in mid-1997 following hearing Sankoh's broadcast on the radio telling the RUF to join with the AFRC. In cross-examination, he was unable to explain how he escaped, and his account does not co-incide with the RUF and AFRC union.[4128]

1523. DAF testified that Jungle was one of Sankoh's men in about 1993.[4129] However, no other witness placed Jungle with RUF so early on in the war. Indeed, TF1-516 testified that Jungle was trapped by ULIMO in a separate jungle.[4130]

[4118] TT, DAF, TF1-274, 2 Dec 08, p. 21479.
[4119] TT, DAF, TF1-274, 2 Dec 08, p. 21512.
[4120] TT, DAF, TF1-274, 2 Dec 08, p. 21512.
[4121] TT, DAF, TF1-274, 2 Dec 08, p. 21519.
[4122] TT, DAF, TF1-274, 10 Dec 08, p. 22048.
[4123] TT, Mohamed Kabbah, TF1-568, 16 Sep 08, p. 16360.
[4124] TT, Perry Kamara, TF1-360, 5 Feb 08, p. 3082. In the context of this statement, it is clear "a satellite phone" means one satellite phone.
[4125] TT, DAF, TF1-274, 1 Dec 08, p. 21383-4.
[4126] TT, DAF, TF1-274, 1 Dec 08, p. 21390-2.
[4127] TT, DAF, TF1-274, 1 Dec 08, p. 21400-6.
[4128] TT, DAF, TF1-274, 8 Dec 08, p. 21924-38.
[4129] TT, DAF, TF1-274, 1 Dec 08, p. 21388.
[4130] TT, Ellie Mabey, TF1-516, 8 Apr 08, p. 6914.

12) TF1-532's allegation that the plan for the Freetown invasion was Taylor's idea contradicts the witness's other evidence that during the meeting at Buedu in late 1998, Bockarie called Taylor from his bedroom and told him about the plan. The question is, why Bockarie should Bockarie have called Taylor (by other witnesses' accounts, in the middle of the night), to simply tell him of a plan that he (Taylor) had already planned.

13) Concerning the invasion itself, it is interesting to note that TF1-532 did not implicate Taylor in any way in the Invasion in his initial interviews with the Prosecution. As argued in the JCE section, TF1-532 suggested that he had not mentioned the issue to the Prosecution because he did not trust them and feared that they might later turn against him. The witness however could not explain how withholding evidence on this issue would have assisted his cause. Further, the witness at that time had been given an indemnity latter anyway.[4269] In fact in another statement clarifying the first, the witness had gone on to state categorically that the Freetown invasion was largely an AFRC affair.[4270] So hopeless was the witness on this issue that the court even observed that he was being evasive.[4271]

14) In assessing the witness's credibility, further to the fact that witness is an accomplice at the highest level; by his evidence, one of the top dozen, the Trial Chamber must also bear in mind other incentives that were given to the witness by the Prosecution, including indemnity from prosecution as well as other financial benefit such rent, subsistence and medical allowances.

1556. For all the foregoing reasons, the Trial Chamber must therefore reject the witness's evidence *in toto*. At the very least the evidence must be approached with utmost caution.

[4269] TT, Isaac Mongor, TF1-532, 7 Apr 08, p. 6735 *et seq.*
[4270] TT, Isaac Mongor, TF1-532, 7 Apr 08, p. 6765-6.
[4271] TT, Isaac Mongor, TF1-532, 7 Apr 08, p. 6756-7.

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SPECIAL COURT FOR SIERRA LEONE

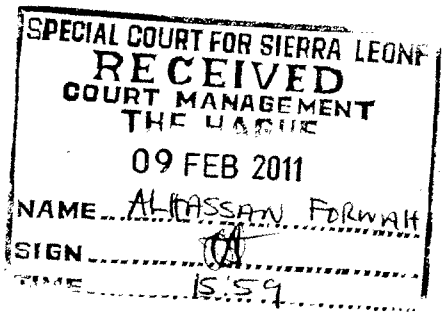
TRIAL CHAMBER II

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

Registrar: Binta Mansaray

Case No.: SCSL-03-1-T

Date: 9 February 2011



PROSECUTOR

v.

Charles Ghankay TAYLOR

DIRECTION TO LEAD COUNSEL TO APPEAR BEFORE THE TRIAL CHAMBER

Office of the Prosecutor:
Brenda J. Hollis

Counsel for the Accused:
Courtenay Griffiths, Q.C.
Terry Munyard
Morris Anyah
Silas Chekera
James Supuwood

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

RECALLING that on 8 February 2011, Lead Counsel for the Accused, Courtenay Griffiths, evinced an intention to withdraw and leave the court hearing submitting, inter alia:

> [...] We feel it is our professional duty to withdraw pending a decision on our motion to appeal yesterday's decision which will be filed today. We cannot, in our professional view, bearing particularly in mind Articles 5, 8 and 14 of the Code of Conduct for Counsel of this Special Court for Sierra Leone, adequately represent the accused's rights within the permitted six hours of oral argument allowed us tomorrow and the two hours on Friday, given the vast volume of transcripts and exhibits and the complexity of the issues that we have analysed in our written submission which two of you have refused to accept. And also, volume of material which has been adverted to by the Prosecution on more than one occasion. In our submission, our very presence in court is incompatible with our duty to protect Mr Taylor's interest and it is our intention, both myself and Mr Taylor, to leave court at this point.[1]

CONSIDERING that following an exchange between Mr. Griffiths and Judges of the Trial Chamber, and after hearing the submissions of the Prosecution, the Presiding Judge issued the majority order of the Trial Chamber, Justice Sebutinde dissenting, holding that:

> I have not heard any arguments that amount to exceptional circumstances that would enable this Court to exercise a discretion under Rule 46(E) [sic] to permit counsel to withdraw. Accordingly, the trial will continue. There have already been too many delays in this Court, many of them emanating from the accused's decisions and the court will proceed in – as directed. The accused and counsel will remain and hear the evidence and the submissions of the Prosecution as scheduled.[2]

CONSIDERING that following this order, Mr. Griffiths nevertheless attempted to leave the courtroom, at which point the Presiding Judge stated:

> Mr Griffiths, please sit down and remain as directed by the Court. If you continue to remain on your feet, and prevent counsel for the Prosecution speaking by doing so, then I will be obliged to consider that your conduct is verging on a contempt.[3]

CONSIDERING that, contrary the express warning of the Presiding Judge, Mr. Griffiths left the court room and absented himself from the proceedings on that day and subsequently did not appear for the Defence closing arguments scheduled for 9 February 2011;

HEREBY, by majority, Justice Sebutinde dissenting;

DIRECTS Lead Counsel for the Accused, Courtenay Griffiths to attend court on Friday 11 February 2011 at 11:30 and warns Lead Counsel that unless he apologises for his behaviour on 8 February 2011 the Trial Chamber may impose sanctions pursuant to Rule 46 of the Rules of Procedure and Evidence.

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[1] Transcript, pp. 49137-49138.
[2] Transcript, pp. 49144-49145.
[3] Transcript, pp. 49145 (the words "your conduct is" were incorrectly transcribed as "you are coming and").

Done at The Hague, The Netherlands, this 9th day of February 2011.

Doherty J.

Justice Teresa Doherty
Presiding Judge

[Seal of the Special Court for Sierra Leone]

1146)

SCSL-03-01-T
(31338-31360)

31338

THE SPECIAL COURT FOR SIERRA LEONE

Trial Chamber II

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

Registrar: Ms. Binta Mansaray

Date: 10 January 2011

Case No.: SCSL-03-01-T

SPECIAL COURT FOR SIERRA LEONE
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THE PROSECUTOR

–v–

CHARLES GHANKAY TAYLOR

URGENT AND PUBLIC WITH ANNEXES A-C

DEFENCE MOTION TO RE-OPEN ITS CASE IN ORDER TO SEEK ADMISSION OF DOCUMENTS RELATING TO THE RELATIONSHIP BETWEEN THE UNITED STATES GOVERNMENT AND THE PROSECUTION OF CHARLES TAYLOR

Office of the Prosecutor:
Ms. Brenda J. Hollis

Counsel for Charles G. Taylor:
Mr. Courtenay Griffiths, Q.C.
Mr. Terry Munyard
Mr. Morris Anyah
Mr. Silas Chekera
Mr. James Supuwood
Ms. Logan Hambrick, Legal Assistant

I. INTRODUCTION

1. On 17 December 2010, the Guardian News and Media, Ltd.,[1] published two United States embassy cables relating to the ongoing trial against the Accused at bar, which were leaked through WikiLeaks.[2] The first cable, dated 10 March 2009,[3] makes it clear that the United States Government ("USG") wants to keep Charles Taylor out of Liberia at all costs. Confirming the position of the USG, the United States Ambassador to Liberia, Linda Thomas-Greenfield, states in that cable that "...the best we can do for Liberia is to see to it that Taylor is put away for a long time and we cannot delay for the results of the present trial to consider next steps. All legal options should be studied to ensure that Taylor cannot return to destabilize Liberia".[4] The second cable, dated 15 April 2009,[5] reveals that sensitive information about the trial has been leaked to the United States Embassy in The Hague by unnamed contacts in the Trial Chamber, the Office of the Prosecutor (OTP) and the Registry.[6]

2. On 23 December 2010, a Liberian newspaper, the New Democrat, published an article titled, "Sorry for the Leaks: Pres. Sirleaf Acknowledges US Ambassador's Apology".[7] Therein, it states that Liberian President Ellen Johnson-Sirleaf says the United States Ambassador Linda Thomas-Greenfield has "apologized for the WikiLeaks classified cables emanating from the American embassy regarding key political developments".

3. The Defence seeks permission to re-open its case for the limited purpose of seeking admission of the following documents into evidence pursuant to Rule 92*bis*:

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[1] Hereinafter "the Guardian." The company owns the website, http://www.guardian.co.uk.
[2] WikiLeaks is a website run by Julian Assange that allows anonymous disclosure of leaked information. See www.wikileaks.org.
[3] "March 2009 cable."
[4] The March 2009 cable is at: http://www.guardian.co.uk/world/us-embassy-cables-documents/196077 [**Annex A**]. Ms. Thomas-Greenfield was reacting to public statements made by then Special Court prosecutor, Stephen Rapp, regarding funding shortfalls at the Court. References by Ms. Thomas-Greenfield to the results of "the present trial" were to the outcome of the trial at bar. No reference was made by Ms. Thomas-Greenfield to the Accused's guilt or innocence regarding any alleged crimes in Sierra Leone.
[5] "April 2009 cable." Collectively, "Cables".
[6] The April 2009 cable is at: http://www.guardian.co.uk/world/us-embassy-cables-documents/202468 [**Annex B**]. Sensitive comments, *inter alia*, relate to the pace and efficiency of the trial, as well as funding and personnel issues.
[7] The full text of the New Democrat article is attached ("the Apology") [**Annex C**].

a) portions of the March 2009 cable;[8]

b) the entirety of the April 2009 cable; and

c) the first paragraph of the New Democrat Apology article.

4. The documents meet the requirements of Rule 92*bis* and are relevant to the Defence theory of selective prosecution, in that the prosecution of Mr. Taylor was politically-motivated and deliberately designed to keep the Accused out of West Africa.

5. The Defence simultaneously files a *Motion for Disclosure and/or Investigation of United States Government Sources within the Trial Chamber, the Prosecution and the Registry Based on Leaked USG Cables*.[9] The Defence incorporates all of the arguments made therein, especially with regard to Section II, "Background".

6. The Defence seeks urgent adjudication of this matter given the advanced stage of the proceedings and the current filing schedule for the Final Brief submissions.[10] The Defence attempted to file this motion during the judicial recess on 31 December 2010,[11] but was refused permission by the Registry[12] and subsequently by the President.[13]

II. APPLICABLE LAW

7. United Nations Security Council Resolution 1315 (2000), which called for the creation of the Special Court, emphasized "the importance of ensuring the impartiality, independence and credibility of the process, in particular with regard to the status of the judges and the prosecutors".[14] Consequently, Articles 13(1) and 15(1) of the Statute unequivocally state that

[8] The selected portions of the March 2009 cable are marked in Annex A.
[9] *Prosecutor v. Taylor*, SCSL-03-01-T, Urgent and Public with Annexes A-N Defence Motion for Disclosure and/or Investigation of United States Government Sources within the Trial Chamber, the Prosecution and the Registry Based on Leaked USG Cables, 10 January 2011 ("**U.S. Government Sources Motion**").
[10] *Prosecutor v. Taylor*, SCSL-03-01-T-1105, Order Setting a Date for the Closure of the Defence Case and Dates for Filing Final Trial Briefs and the Presentation of Closing Arguments, 22 October 2010.
[11] *Prosecutor v. Taylor*, SCSL-03-01-T-1120, Order Scheduling Judicial Recess, 15 November 2010.
[12] See Email from Defence to CMS, dated 31 December 2010 and the Response from the Registry dated the same day [**Annex D of U.S. Government Sources Motion**].
[13] See Letter from the Defence to the President, dated 3 January 2011 and the Response from the President, dated 5 January 2011 [**Annex E of U.S. Government Sources Motion**].
[14] Available at: http://www.ictj.org/static/Africa/SierraLeone/sres.1315.2000.eng.pdf.

the organs of the Court must act independently and impartially, and without instructions from any Government or other source.[15]

Re-opening of Defence Case

8. The Rules do not contain any provision for a party to re-open its case. However, the Trial Chamber has previously determined that the party seeking to re-open a case must meet a twofold test: "Firstly, the party must meet the threshold test of establishing that the evidence could not, with reasonable diligence, have been obtained and presented during its case-in-chief. Secondly, and if the first prong of the test is met, the probative value of the evidence must not be substantially outweighed by the need to ensure a fair trial".[16]

9. The discretionary test, whether the probative value of the material is substantially outweighed, as such, is typically determined by whether it is *fair to the accused* to admit the material late in the proceedings.[17]

*Admission of Documents pursuant to Rule 92*bis

10. The core requirements of Rule 92*bis* – that the information (of fact, not opinion) sought to be tendered in lieu of oral testimony must be relevant; that the information must not go to proof of the acts and conduct of the accused;[18] and that the reliability of such information must be susceptible of confirmation in due course – are well-established. The Defence respectfully refers to the statement of law pertaining to Rule 92*bis* from the Trial Chamber's recent Rule 92*bis* decision of 5 October 2010.[19]

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[15] See, Statute, Article 13(1) regarding judicial independence and Article 15(1) regarding the independence of the Prosecutor.

[16] *Prosecutor v. Taylor*, SCSL-03-01-T-993, Decision on Public with Confidential Annexes A and B Prosecution Motion to Call Three Additional Witnesses, 29 June 2010 ("**Re-Opening Decision**"), para. 8, citing *Prosecutor v. Brima et al*, SCSL-04-16-T, Decision on Confidential Prosecution Motion to Reopen the Prosecution Case to Present an Additional Prosecution Witness, 28 September 2006, paras. 17-18 and 21.

[17] Re-Opening Decision, para. 9, citing *Prosecution v. Delalic et al*, IT-96-21-A, Judgement, 20 February 2001 ("***Celebici* Appeal Judgement**"), para. 283. See also Re-Opening Decision, para. 13, citing *Celebici* Appeal Judgement, para. 288.

[18] The disputed aspects of this prohibition, as outlined in the Defence Rule 92*bis* Appeal filed on 10 December 2010, do not arise in the instant request for admission of the Cables, given that any information potentially relating to acts and conduct of the accused and/or his subordinates has been redacted from the March 2009 cable and the Apology.

[19] *Prosecutor v. Taylor*, SCSL-03-01-T-1099, Decision on Public with Annex A Defence Motion for Admission of Documents Pursuant to Rule 92*bis* – Newspaper Article, 5 October 2010, p. 3-4.

III. ARGUMENT

The Defence Should be Allowed to Re-open

11. The Trial Chamber should grant the Defence's request to re-open its case for the limited purpose of seeking admission of the Cables and the Apology, pursuant to Rule 92*bis*.

12. The Defence meets the threshold that the evidence could not, with reasonable diligence, have been obtained and presented during its case in chief. The Cables are confidential and classified documents of the USG. The publication of the Apology was in consequence of the leak and publication of the cables. No amount of diligence on the part of the Defence could have resulted in these Cables being disclosed or given to the Defence. It is through sheer luck that the Cables were obtained by the Wikileaks website and published in the Guardian on 17 December 2010, five weeks after the Defence had closed its case.

13. The probative value of the evidence in the Cables is significant and is not outweighed by the need to ensure a fair trial. In fact, the Defence submits that the admission of the evidence contained in the Cables and the Apology is critical to ensuring that Mr. Taylor receives a fair trial. The Cables clearly indicate, *inter alia*, two things: 1) the USG's desire to ensure that Mr. Taylor does not return to Liberia;[20] and 2) proof that there is and have been contacts between the Trial Chamber, the Prosecution and the Registry, respectively, and agents of the USG outside the official lines of communication.[21] This, it is submitted, raises grave doubts about the independence and impartiality of the Special Court's prosecution of Charles Taylor. Viewed objectively, the evidence could lead to the reasonable conclusion that the indictment and trial of Mr. Taylor by the Special Court is no more than an extension of United States foreign policy interests in West Africa, with there being no genuine connection to any alleged crimes in Sierra Leone.

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[20] March 2009 cable, paras. 11, 13 and 14.

[21] April 2009 cable: communication from a source in the Trial Chamber, para. 7 ("one Chamber contact believes that the Trial Chamber could have accelerated the Court's work by excluding extraneous material and arguments"); communications from sources in the Prosecution and Registry, para. 7 ("contacts in the Prosecution and Registry speculate that Justice Sebutinde may have a timing agenda. They think she, as the only African judge, wants to hold the gavel as presiding judge when the Trial Chamber announces the Taylor judgment. Reportedly, her next stint as presiding judge begins in January").

14. Should the Trial Chamber grant the application to re-open the Defence case, there would be limited delays to the trial proceedings, as the Defence does not request any *viva voce* testimony, but rather the admission of three short documents pursuant to Rule 92*bis*.

*Admission of Documents into Evidence under Rule 92*bis

15. Should the Defence be granted leave to re-open its case for the limited purpose of seeking admission of the redacted March 2009 Cable, the entire April 2009 Cable, and the first paragraph of the Apology, the Defence further submits that all of the documents sought to be tendered meet the requirements of Rule 92*bis*.

16. In terms of relevance, the Cables and the Apology support the Defence position that the prosecution of Mr. Taylor is in fact political and his indictment was deliberately selective.[22] It will be recalled that Lead Defence Counsel submitted during the Defence's opening statement that Mr. Taylor was only indicted and arrested because of the USG's interests and pressure.[23] Mr. Taylor subsequently testified that the USG had a vendetta against him and sought to remove him from power through various means, including by demonizing[24] and destabilizing his government,[25] giving military support to opposition LURD rebels,[26] and working to install Ellen Johnson-Sirleaf as President.[27] Mr. Taylor also testified that the United States also attempted to oust him in furtherance of U.S. commercial interests in the sub-region.[28] Other accounts imply the USG targeted Mr. Taylor because of unsubstantiated evidence linking Liberia to Al Qaeda and the attacks on U.S. Embassies in 1998.[29]

17. When the Prosecution called Hassan Bility, a Liberian journalist, as a witness, the Defence challenged him on the basis that he was acting in cahoots with the United States Government.

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[22] *Prosecutor v. Taylor*, SCSL-03-01-T, Defence Opening Statement, 13 July 2009, p. 24321 (especially when considered against the decision not to indict similarly-situated Tejan Kabbah). To demonstrate selective prosecution, the Defence must show: i) an improper or unlawful motive for prosecution and ii) that similarly situated persons were not prosecuted. *Prosecution v. Delalic et al*, IT-96-21-A, Judgement, 20 February 2001, para. 611

[23] Defence Opening Statement, p. 24290-94 and 24318-19 (likening the Indictment of Mr. Taylor to the US foreign policy of "regime change").

[24] *Prosecutor v. Taylor*, SCSL-03-01-T, **Testimony of Charles Taylor**, 27 August 2009, 27903-6.

[25] *Prosecutor v. Taylor*, SCSL-03-01-T, **Testimony of Charles Taylor**, 5 August 2009, p. 25991-2.

[26] See, ex, *Prosecutor v. Taylor*, SCSL-03-01-T, **Testimony of Charles Taylor**, 14 July 2009, p. 24342-3; 24346; and 24405. See also, Confidential Annexes B and I of the Defence Contempt Motion, which are affidavits from potential witnesses suggesting that the LURD was a *de facto* military wing of the SCSL's Office of the Prosecutor.

[27] *Prosecutor v. Taylor*, SCSL-03-01-T, **Testimony of Charles Taylor**, 27 August 2009, p. 27872.

[28] *Prosecutor v. Taylor*, SCSL-03-01-T, **Testimony of Charles Taylor**, 10 August 2009, p. 26300-1.

[29] See Exhibit D-392, an article written by Douglas Farah, a Washington Post investigative reporter.

During cross-examination of Bility, Lead Defence Counsel suggested that Bility was serving as a spy for the USG during the conflict in Liberia. Bility denied being a spy, but did say he had dinners with political counselors and one human rights officer of the United States Embassy in Monrovia, during which they "talked like friends" and would "share opinions".[30] Bility also cooperated with the United States Government's Federal Bureau of Investigation in its investigations of Charles Taylor and his son, Chucky.[31] Furthermore, while in the hospital, Bility was visited by a US Embassy official whom Bility refused to name (for no appreciable reason) until compelled by the Presiding Judge to do so.[32] Mr. Taylor testified that Bility was an intelligence officer for the United States embassy in Monrovia[33] and Defence Witness DCT-190 subsequently testified that Bility served as a source of information for LURD.[34]

18. In short it is submitted that the contents of the Cables further suggest that the Special Court has been used to pursue "war by other means", thus corrupting international law and justice in pursuit of a particular state's enemy. The Apology generally authenticates the contents of the March 2009 cable. The April 2009 cable exposes the fact that there are persons in the Trial Chamber, the Prosecution and the Registry, giving information to the United States Government, outside the official channels of communication.

19. The reliability of the Cables and the Apology are susceptible of corroboration in due course, in regard to each other and in regard to the evidence already on record, such as that described above.[35] The reliability of the contents is further bolstered by the fact that they emanate from United States diplomatic posts. Furthermore, the Apology as argued above, authenticates the March 2009 Cable.

20. The portions of the Cables and the Apology for which the Defence seeks admission do not go to proof of the acts and conduct of the accused. The selected portions of the March 2009

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[30] *Prosecutor v. Taylor*, SCSL-03-01-T, **Testimony of Hassan Bility**, 13 Jan 09, p. 22418-9.
[31] *Prosecutor v. Taylor*, SCSL-03-01-T, **Testimony of Hassan Bility**, 13 Jan 09, p. 22414-6.
[32] *Prosecutor v. Taylor*, SCSL-03-01-T, **Testimony of Hassan Bility**, 15 Jan 09, p. 22706-14.
[33] See, for ex., *Prosecutor v. Taylor*, SCSL-03-01-T, **Testimony of Charles Taylor**, 2 Nov 09, p. 30910.
[34] *Prosecutor v. Taylor*, SCSL-03-01-T, **Testimony of DCT-190**, 8 June 10, p. 42336-7.
[35] See also Exhibit D-404, the statement of former Prosecutor David M. Crane in February 2006 before the Subcommittee on Africa, Global Human Rights and International Operations of the United States House of Representatives' Committee on International Relations.

cable and the Apology have been chosen to ensure that even evidence relating to acts and conduct of alleged subordinates of the accused has been excluded from consideration.

21. Furthermore, the information contained in the Cables are facts as reported by the United States diplomatic personnel and do not constitute opinion evidence. The Defence does not now make any claim as to the veracity of the reported information but simply wants it on record that the information was in fact reported. The New Democrat article containing the apology from the U.S. Ambassador to the Liberian President can in no way be considered opinion evidence.

22. Thus, the selected portions of the Cables and the first paragraph of the Apology meet the requirements of Rule 92*bis* and should be admitted.

V. CONCLUSION & RELIEF REQUESTED

23. Given the seemingly compromised impartiality and independence of the Special Court for Sierra Leone in light of its connection to the USG as alleged herein, the Trial Chamber should allow the Defence to re-open its case and admit the selected portions of the March 2009 cable, the entirety of the April 2009 cable, and the first paragraph of the Apology into evidence pursuant to Rule 92*bis*.

24. The Defence further requests that the issue be considered on an expedited basis, given the advanced stage of the proceedings.

Respectfully Submitted,

Courtenay Griffiths, Q.C.
Lead Counsel for Charles G. Taylor
Dated this 10th Day of January 2011,
The Hague, The Netherlands

LIST OF AUTHORITIES

Prosecutor v. Taylor

Prosecutor v. Taylor, SCSL-03-01-T, Urgent and Public with Annexes A-N Defence Motion for Disclosure and/or Investigation of United States Government Sources within the Trial Chamber, the Prosecution and the Registry Based on Leaked USG Cables, 10 January 2011

Prosecutor v. Taylor, SCSL-03-01-T-1120, Order Scheduling Judicial Recess, 15 November 2010

Prosecutor v. Taylor, SCSL-03-01-T-1105, Order Setting a Date for the Closure of the Defence Case and Dates for Filing Final Trial Briefs and the Presentation of Closing Arguments, 22 October 2010

Prosecutor v. Taylor, SCSL-03-01-T-1099, Decision on Public with Annex A Defence Motion for Admission of Documents Pursuant to Rule 92*bis* – Newspaper Article, 5 October 2010

Prosecutor v. Taylor, SCSL-03-01-T-1090, Public with Confidential Annexes A-J and Public Annexes K-O Defence Motion Requesting an Investigation into Contempt of Court by the Office of the Prosecution and its Investigators, 27 September 2010

Prosecutor v. Taylor, SCSL-03-01-T-993, Decision on Public with Confidential Annexes A and B Prosecution Motion to Call Three Additional Witnesses, 29 June 2010

Prosecutor v. Brima et al.

Prosecutor v. Brima et al, SCSL-04-16-T, Decision on Confidential Prosecution Motion to Reopen the Prosecution Case to Present an Additional Prosecution Witness, 28 September 2006

ICTY

Prosecution v. Delalic et al, IT-96-21-A, Judgement, 20 February 2001
http://www.icty.org/x/cases/mucic/acjug/en/cel-aj010220.pdf

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Annex A

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The US embassy cables:
The documents

US embassy cables: Rising concern about the Charles Taylor prosecution case

guardian.co.uk, Friday 17 December 2010 21.30 GMT

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Tuesday, 10 March 2009, 12:51
C O N F I D E N T I A L SECTION 01 OF 02 MONROVIA 000188
SIPDIS
EO 12958 DECL: 03/10/2019
TAGS PREL, PGOV, UNSC, PHUM, KCRM, LI
SUBJECT: PRO-TAYLOR ELEMENTS STILL A FORCE TO BE RECKONED WITH
Classified By: Ambassador Linda Thomas-Greenfield for Reasons 1.4 (b) a nd (d).

Summary
A US ambassador warns that a cash shortfall could jeopardise the case against the former Sierra Leone president, stirring up old resentments in Sierra Leone and Liberia. Key passages highlighted in yellow.

1. (C) Summary: The recent remarks by Special Court for Sierra Leone prosecutor Stephen Rapp suggesting Charles Taylor may go free because of budgetary reasons caused alarm within the GOL and has emboldened Taylor supporters. Communication inside the Taylor camp remains intact, and those in leadership roles continue to be active and unrepentant. Should Taylor be acquitted in The Hague or given a light sentence, his return to Liberia could tip the balance in a fragile peace. *The international community must consider steps should Taylor not be sent to prison for a long time. We should look at the possibility of trying Taylor in the United States.* End Summary.

RAPP'S COMMENTS RAISE CONCERN WITHIN THE GOL

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2. (C) Chief Prosecutor Stephen Rapp's ill considered announcement in the press February 24 that Charles Taylor may walk free because of a supposed budget shortfall for the Special Court for Sierra Leone, where Taylor is presently on trial, made

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headlines in the local press, and raised anxiety here about Taylor's imminent return. The GOL was alarmed enough that President Sirleaf called Ambassador on February 28 to raise her concerns. Sirleaf pointed out that Liberia's stability remains fragile, and such remarks reverberated throughout the country, as people are still traumatized by Taylor and the war.

3. (C) The press accounts out of The Hague have also emboldened the pro-Taylor factions here, including his extended family members, financiers and National Patriotic Party (NPP) loyalists, raising their hopes that Taylor might be acquitted soon. Despite their rhetoric about "moving on," they have thus far refused to appear before the Truth and Reconciliation Commission (TRC) to account for their activities, and those on the UN Sanctions lists continue to request delisting on the basis they have done nothing wrong rather than demonstrating what they have done to provide restitution for their activities.

GOL TREADING CAREFULLY WITH TAYLOR FACTIONS

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4. (C) The government itself is caught in the middle. There is quite little the GOL can do legally to arrest, prosecute or freeze assets of those who were close to Taylor, even if the political will were there, which remains an open question. The TRC has recommended a domestic war crimes court be set up, but under statute an Independent National Commission on Human Rights (INHCR) would implement the recommendation, and the Legislature (some of whom had close ties to Taylor) has thus far failed to establish the INCHR. The Legislature has also refused to pass any law that would allow the GOL to freeze assets of those on the UN sanctions list, and the Supreme Court has ruled that any confiscation of property can be done only after a trial.

5. (C) The Accra Comprehensive Peace Agreement (CPA) of August 2003 that ended the 14-year civil war, did not require the NPP to disband and in fact permitted the NPP to participate in the transitional government and in the 2005 elections. The NPP now holds seven seats in the Legislature (which may be one reason the legislation is being blocked). As well, none of Taylor's properties have been seized by the government and they remain in good shape and remarkably free of squatters, as no one dares to take the risk of retribution.

COMMUNICATIONS AMONG TAYLOR SUPPORTERS REMAIN STRONG

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6. (C) *The pro-Taylor forces still have the ability to organize themselves.* An NPP rally in December 2008 gathered a sizeable crowd, and Taylor supporters in June 2008 succeeded in preventing FBI investigators from entering Taylor's residence "White Flower" to obtain evidence for the Chucky Taylor trial in Florida. The most recent example was their effort on March 7 to disrupt the International Women's Colloquium. Taylor remains popular within many rural communities, especially in Bong, Lofa and Nimba counties, and is seen as someone who was able to unite Liberia's different ethnic groups. We also suspect there is some sympathy within the Americo-Liberian

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population who saw him as their deliverance from their losses following the 1979 coup. While we do not suggest they would want Taylor to return, we are sure that they do no want too many rocks to be turned over.

7. (C) Although we do not have any direct evidence to support the belief that pro-Taylor factions are behind much of the

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armed robbery on the premise that crime will keep the government weak and the country unstable, the GOL is certainly convinced of this, and has taken steps to counteract the threat. The most recent act was to put Taylor-era head of police Paul Mulbah into the LNP as an "advisor" that some accuse (and the government denies) was in order to placate the Taylor people in advance of the March 7-8 International Women's Colloquium. That the Taylor crowd can still motivate such a reaction in the government is a testament to their influence.

8. (C) Lines of communications within Taylor's faction, the National Patriotic Front of Liberia (NPFL) remain intact. To be sure, the disarmament of the factions following the CPA has been extremely successful, and we have thus far been unable to confirm the existence of any large weapons caches, despite the persistent rumors. But the reintegration of the ex-combatants is far from complete. Former NPFL commanders Roland Duo (the only senior Taylor supporter to have testified before the TRC), Christopher "General Mosquito" Vambo and Melvin Sogbandi (none of whom are on the sanctions lists) remain in contact with the ex-combatants, and would have the capability to organize an uprising or even criminal activity.

9. (C) Certainly, the same is true for the other factions, the Liberians United for Reconciliation and Democracy (LURD) and the Movement for Democracy in Liberia (MODEL). While apparently unarmed and not active in Liberia, we continue to receive reports that LURD is recruiting ex-combatants for militias in Guinea and MODEL is doing the same for Cote d'Ivoire.

THREAT OF TAYLOR'S RETURN ADVANCES THEIR CAUSE

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10. (C) XXXXXXXXXXXX

11. (C) The threat of a return of Taylor strengthens their hand and for now they see no need to give in at all. However, if Taylor is put away for a long time, the government may feel a bit bolder in recovering assets and bringing Taylor backers who committed war crimes to justice.

12. (C) The international community has just a few tools to pressure the Taylor people into accepting the new reality. The UN sanctions appear to have the intended effect of keeping them somewhat marginalized and fearful of further attempts to strip them of their ill-gotten gains. However, we have regularly heard of travel outside Liberia of those on the travel ban list without prior approval.

NEXT STEPS FOR THE INTERNATIONAL COMMUNITY

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13. (C) However, the best we can do for Liberia is to see to it that Taylor is put away for a long time and we cannot delay for the results of the present trial to consider next steps. All legal options should be studied to ensure that Taylor cannot return to destabilize Liberia. Building a case in the United States against Taylor for financial crimes such as wire fraud would probably be the best route. There may be other options, such as applying the new law criminalizing the use of child soldiers or terrorism statutes.

14. (C) The peace in Liberia remains fragile, and its only guarantee is the robust and adaptable UNMIL presence. The GOL does not have the ability to quell violence, monitor its borders or operate independently to fight crime. A free Taylor could tip the balance in the wrong direction. THOMAS-GREENFIELD

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Annex B

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The US embassy cables:
The documents

US embassy cables: The protracted case against Charles Taylor

guardian.co.uk, Friday 17 December 2010 21.30 GMT

Wednesday, 15 April 2009, 15:00
CONFIDENTIAL THE HAGUE 000247
DEPARTMENT FOR S/WCI - WILLIAMSON/DOHERTY, L - DONOGHUE,
L/UNA - BUCHWALD, L/AN - OHAHS
EO 12958 DECL: 04/15/2019
TAGS PREL, PGOV, KAWC
SUBJECT: SCSL'S TAYLOR TRIAL MEETS KEY MILESTONE, BUT SCSL STILL FACES SERIOUS HURDLES
REF: A. REF: A) 2008 THE HAGUE 00021 B. B) 2008 THE HAGUE 00226
Classified By: Legal Counselor Denise G. Manning per reasons 1.5(b, d).

Summary

US officials wonder why a special court judge might be interested in slowing down the prosecution case against the former Sierra Leonean president. Key passages highlighted in yellow.

-- SUMMARY: SCSL MEETS A KEY MILESTONE, BUT FACES UNCERTAINTY IN TERMS OF TIMING, FINANCES, AND COMPLETION ISSUES --

1. (SBU) On February 27, 2009, the Special Court for Sierra Leone (SCSL or Court) took another step toward completing its work when the Prosecution rested its case against former Liberian President Charles Taylor -- the last SCSL case at the trial stage. The Court could potentially complete its work before the end of 2010. A number of open issues, however, may affect timing, including the start date and length of the Taylor Defense case. Timing may be particularly important given expected funding shortfalls and the possible loss of courtroom space this coming September. Additionally, the current Registrar, Herman von Hebel (Netherlands), has resigned effective June 1, and his successor will inherit a host of difficult issues and a complex transition during the final days of the Court,s operations.

--BACKGROUND: A SMALL COURT WITH SEVERAL FIRSTS --

2. (U) A Trailblazing Court. The hybrid SCSL, created in 2002 through an agreement between the United Nations and the Government of Sierra Leone (GOSL) and funded entirely by voluntary contributions, has jurisdiction over those who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in Sierra Leone after November 30, 1996. Although established almost ten years after the creation of the International Criminal Tribunals for the former Yugoslavia and Rwanda (ICTY and ICTR), the SCSL is poised to complete its work before these tribunals. The SCSL has also been the first internationalized criminal tribunal to: 1) issue an indictment for an African head of state (Liberian President Charles Taylor); 2) enter convictions for the crime of recruiting and using child soldiers; and 3) successfully prosecute forced marriage as a crime against humanity and intentional attacks on U.N. peacekeepers as a serious violation of international humanitarian law.

3. (U) Last Trial Standing. In 2003, the SCSL indicted Charles Taylor, the leader of the National Patriotic Front of Liberia from 1989 to 1997 and the President of Liberia from 1997 until the 2003 indictment. The indictment alleges Taylor,s deep involvement in the Sierra Leone conflict including his role in arming, training and acting in concert with the RUF and in trafficking the Sierra Leonean &blood diamonds8 that fueled and financed the fighting. The SCSL charged Taylor with eleven counts, including, inter alia, terrorizing the civilian population, unlawful killings, sexual violence, abductions and forced labor, and conscripting child soldiers.

))TIMING: TAYLOR TRIAL'S LINK TO CLOSING SCSL))

4. (SBU) Status of Trial. As the only ongoing SCSL trial, the Taylor trial is the linchpin to the SCSL completing its work. From April 6-9, 2009, the Court held the &judgment of acquittal8 hearing, with Defense arguing for acquittal on all of the charges. (Comment: In the &judgment of acquittal8 hearing, the Court considers whether Prosecution Qacquittal8 hearing, the Court considers whether Prosecution has presented any evidence that could sustain conviction on the charges, acquitting only if Prosecution has presented &no evidence8 to sustain the charge. End Comment.) In this hearing, Defense acknowledged that crimes had occurred in Sierra Leone but argued that the Prosecution had failed to 1) present evidence linking Taylor to those crimes and 2)establish that Taylor had been part of a joint criminal enterprise (JCE) because, if a JCE existed, it existed before November 30, 1996, the date at which the temporal jurisdiction of the SCSL begins. The Prosecution responded to these arguments by summarizing Taylor,s responsibility for the crimes and pointing to Taylor,s liability for JCE crimes committed after November 30, 1996, even if the planning of the JCE took place before that date. (Comment: The Court will most likely not issue its Rule 98 decision in April, especially since the Judges may recess through May. An acquittal does not seem likely. End Comment.)

5. (SBU) Next Up: Defense Case. A contact in the Registry has indicated that Defense will likely request three months to prepare for trial and four months to present its case. If the Court grants this request, the Defense case may start at the end of August. However, the same Registry source predicts that the Trial Chamber may order Defense

to begin its case as early as June, working through July and August with a possible recess in September. One wild-card factor, however, is the Defense,s pending interlocutory appeal arguing that the Prosecution failed to properly plead the JCE theory of liability. The Trial Chamber may not schedule the Defense case before the appeals decision so the Defense knows which mode(s) of liability it must defend against. (Comment: Currently, the Registry,s budget milestone document projects an October 31 trial termination date, a March 2010 judgment, sentencing in April 2010, and the conclusion of appeals in October 2010. If, however, the Defense case starts in August, the timeline could be pushed back by approximately two months. End Comment.)

6. (U) Spill-Over Timing Effects. A delay in the timing for the Taylor trial may create additional challenges. First, the International Criminal Court (ICC), the location of the Taylor trial, has informed the SCSL that it will need its second courtroom as of September 2009. (The ICC scheduled its second trial to start September 24th, and will likely need the courtroom prior to September 24th for pre-trial work). Back-up options explored by the Registry include finding other space or working during gaps in the ICC schedule. Second, according to Registry sources, each additional month of trial time costs approximately one million dollars.

))THE JUDICIAL FACTOR))

7. (C) *Judges Slowing Things Down? Further muddying timing predictions, Court employees have intimated that the Trial Chamber could work more expeditiously.* The Taylor Chamber consists of three judges who take turns presiding: Justice Richard Lussick (Samoa), Justice Teresa Doherty (Northern Ireland) and Justice Julia Sebutinde (Uganda), along with an alternate judge, Justice El Hadji Malick Sow (Senegal). A couple of Court employees have grumbled that when the last Prosecution witness testified on January 30, 2009, the Court still had 11 outstanding motions, some over a year old. Additionally, one Chamber contact believes that the Trial Chamber could have accelerated the Court,s work by excluding extraneous material and arguments. Moreover, *contacts in Prosecution and Registry speculate that Justice Sebutinde may have a timing agenda. They think she, as the only African judge, wants to hold the gavel as presiding judge when the Trial Chamber announces the Taylor judgment. Reportedly, her next stint as presiding judge begins in January.*

8. (SBU) Expedited Appeals? The Appeals Chamber, with one empty seat, consists of President Renate Winter (Austria); Vice President Jon Kamanda (Sierra Leone); Justice George Gelaga King (Sierra Leone); and Justice Emmanuel Ayoola (Nigeria). President Winter reportedly has indicated that the Appeals Chamber intends to expedite any Taylor trial Qthe Appeals Chamber intends to expedite any Taylor trial appeals. Up for election in May, Winter may not, however, preside over the Appeals Chamber for any Taylor trial appeals, reportedly she will step down after the RUF appeal if she is not re-elected President.

))DEFENSE STRATEGY: WHO ME?))

9. (SBU) Drama-Bound Defense Case. A British Queen,s Counsel, Courtenay Griffiths, heads Charles Taylor,s top-notch and quick-tongued defense team, which reportedly

finds itself in the midst of identifying and proofing witnesses. All signs indicate that Taylor himself will take the stand as their first witness possibly staying in the box for 6 to 8 weeks, and based on Defense,s actions to date, the Defense team will likely argue that although the crimes may have occurred, Taylor has no link to the crimes.

))AN IMMINENT BUDGET CRISIS))

10. (C) Funding Shortfall. The Registry fears that the Court will run out of money as early as next month, although an expected Canadian USD 6 million contribution would keep the Court financed until early July 2009. In a marathon campaign, Registrar Von Hebel attended 250 meetings in 15 months to drum up funds from potential donor countries, but with, according Von Hebel, little traction, due to donor fatigue, the difficult economic situation, and contributions going to other tribunals (e.g., the Special Tribunal for Lebanon (STL) or the Extraordinary Chambers in the Courts of Cambodia). Von Hebel wants to make another run at the Arab countries of Saudi Arabia, Qatar, Kuwait, and the United Arab Emirates. He also believes that a letter from U.N. Secretary General Ban Ki-Moon asking countries to contribute might help open wallets. According to Von Hebel, when Ban sent out a similar letter in 2007, a number of countries made first-time donations. In addition, a couple of traditional donor countries have advised him they may need a similar letter in order to donate this year.

11. (U) Cost-cutting Measures: Concerned about the looming financial crisis, the Registry has undertaken cost-saving measures, reducing staffing costs by downsizing, incorporating liquidation clauses in contracts, and encouraging The Hague staff to use leave during the break between prosecution and defense cases. The Registry also plans to hand over the Freetown facilities to the GOSL in July 2010, reserving some space for its own continued use. Finally, Registry may look to consolidate the Appeals Chamber and the Taylor trial operations in The Hague, after the Appeals Chamber finalizes the RUF appeal.

12. (SBU) Help from Washington. The Registry may also seek USG,s assistance on financial issues. First, it may press the USG not to reduce its FY2009 contribution by 2 million, but to stay at last year,s level of 9 million USD. (Comment: The extra sum would not solve the Court,s immediate financial problem, since the USG generally contributes in the fall. End Comment.) Second, the Registry may ask for USG political support in the form of demarches to Arab countries, impressing upon the targeted Arab countries the critical nature of the SCSL,s financial situation.

))COMPLETION HICCUPS AND ISSUES))

13. (SBU) Registrar Musical Chairs. On April 8, 2009, the Court announced Registrar von Hebel,s resignation, effective as of June 1, 2009. Von Hebel will assume the Deputy Registrar position at the newly established Hague-based STL. (According to Embassy contacts, STL offered Von Hebel the position at the insistence of and to placate the Dutch, who believe the Dutch ICTY Registrar had been treated unfairly when the ICTY President unexpectedly declined to renew his contract). Given that the STL Registrar Robin Vincent (U.K.) recently resigned, Von Hebel may eventually step into Vincent,s shoes. Von Hebel is also tying up as many SCSL loose ends as possible, including signing

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a sentence-enforcement agreement with the Government of Rwanda. In terms of a successor Registrar, a Registry contact believes that the current Deputy Registrar Binta Mansaray (Sierra Leone) will surface as a strong candidate.

))COMMENT: RESIDUAL ISSUES))

14. (SBU) A Larger Role for The Hague? Although currently headquartered in Freetown, Sierra Leone, the Registry has toyed with the possibility of locating any Residual Mechanism Qtoyed with the possibility of locating any Residual Mechanism) or parts thereof) in The Hague. For instance, Von Hebel believes that the Court may need to move its archives out of Sierra Leone in order to properly maintain and secure them. The City of The Hague has indicated its willingness to provide archiving facilities in connection with the ICTY,s closure. Some have also suggested combining some or part of the SCSL,s residual functions with those of The Hague-based ICTY and the Arusha-based ICTR. A combined residual mechanism might prevent duplication, but it would also face significant hurdles, given SCSL,s structural differences, e.g. funding, oversight mechanism and applicable legal framework. Furthermore, GOSL desires will be key, since a joint GOSL-UN agreement created the Court.

GALLAGHER

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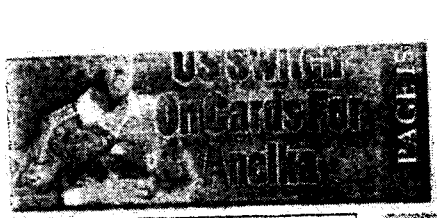
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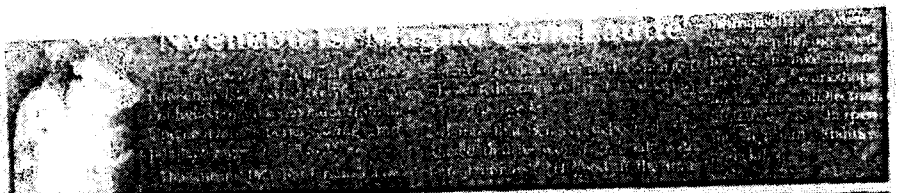
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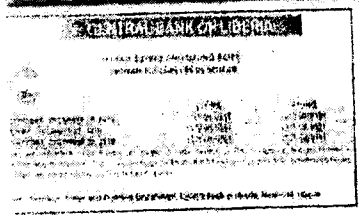
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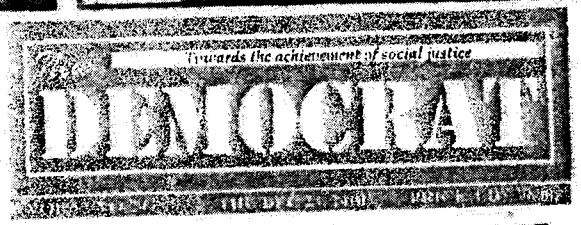
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Hints for The Wise: The Redeeming Aspects of Leaked US Cables

Cote d'Ivoire Exodus Swells To Over 6000

As the political stalemate in neighbouring Cote d'Ivoire continues with escalating insecurity, the number of refugees fleeing into Liberia and Guinea is rising, with the UN now



...ising the figure to over 6,000, up from ...last week.

...eports More than 6,000 people have fled ...e d'Ivoire into two neighboring coun...es of Liberia and Guinea, the UN refu... agency (UNHCR) has said.

...ote d'Ivoire has been plunged into po...ical uncertainty after incumbent Presi... Laurent Gbagbo refused to concede ...eneral defeat to Alassane Ouattara.

...he agency said in a statement reaching ...ters on Wednesday that some

Sorry For The Leaks

Pres. Sirleaf Acknowledges US Ambassador's Apology



President Ellen Johnson Sirleaf ... US Ambassador Linda Thom... Greenfield has apologized ... WikiLeaks classified cables ... nating from the American embas... sy regarding key political developments.

...materials regarding their operations.

Here, the cables mainly dealt with issues of sustainable peace, primarily the role and continuing influence of former President Charles Taylor even as he stands trial for war crimes in The Hague.

The cables also reveal the difficulties facing the government in meeting UN Security Council demands, amongst them the freezing of assets belonging to Mr. Taylor and his associates.

Portions of the cables read: "The press accounts of The Hague have also unu...

Chinese Envoy Diagnoses Roots Of

Underdevelopment

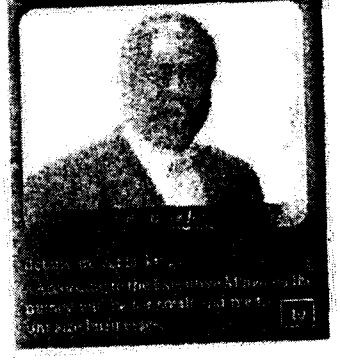


China's ambassador here, Mr. Zhou Yuxiao, is calling for proper use of materials by transforming them into finished products for a heavily consumer driven country.

Delivering the 48th commencement address for the University of Liberia Wednesday at the Chinese built SKD Sports Stadium, Ambassador Zhou said Liberia has the largest rainforest, but has no furniture production factories, large rubber plantations, but (it) has no tire or sneakers manufacturing factories.

He blamed the huge gap between the "richly endowed" natural resources and their utilization to produce goods and services in Liberia as the main cause of underdevelopment in the country.

CBL's US5m For Liberian-Owned Businesses



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Sorry For The Leaks

...land Group (ICG) has become very unpopular with wanted Liberia members, financiers ... National Patriotic Party (NPP) loyalists, ... their hopes that Taylor might be ... soon. Despite their distaste about ... they have thus far refused to ... before the Truth and Reconciliation ... (TRC) to account for their ac... and those on the UN sanctions lists ... to request delisting on the basis they ... nothing wrong rather than demonstrating what they have done to provide restitution for their activities.

The government itself is caught in the mid... There is quite little the GOL can do legal... to arrest, prosecute or freeze assets of those who were close to Taylor, even if the political will were there, which means an open question. The TRC has recommended a domestic war crimes court be set up, but under statute, an independent National Human Rights Commission (INHCR) would implement the recommendation, and the Legislature (some of whom had close ties to Taylor) has thus far failed to establish the INCHR. The Legislature has also refused to pass any law that would allow the GOL to freeze assets of those on the UN sanctions list, and the Supreme Court has ruled that any confiscation of property can be done only after a trial."

Accused Taylor Weapons Supplier

...flict areas: they do not have impunity," the environmental group said.

It said Kouwenhoven was sentenced to eight years imprisonment for illegal arms trading in 2007. The landmark decision was one of the few instances of an individual being held to account in their own country for crimes allegedly committed in another. Global Witness first documented the involvement of Kouwenhoven in state-sanctioned illegal logging and arms trafficking in its 2001 report, Taylor Made, and later testified before the court and submitted extensive evidence supporting the prosecution's case.

The release: Kouwenhoven was head of the Oriental Timber Corporation (OTC) during the regime of President Charles Taylor, who waged a brutal war against the people of Liberia and Sierra Leone, funded largely through the sale of diamonds and illegal logging. OTC, also known as 'Old Taylor's Children' or 'Only Taylor Chops', was the most notorious logging company in the country and dominated the Liberian timber industry with 1.6 million hectares of concessions.

Kouwenhoven's sentence was overturned in 2008 by the Appeals Court. However, this appeal was quashed in April 2010 by the Supreme Court, which sent the case back to the Appeals Court – where the hearing starts today.

Under development

...Yuxina lamented that despite all the ... resources present in Liberia, it lacks ... to produce enough goods for the ... of its' time population."

...ambassador, I can easily name the huge



...ration on the richly endowed natural re... and the scarcity of locally made prod...

...country of arable land, but does not ... enough food for its own popula... Liberia has large rubber plantations, but ... produce a sneaker or a tyre. Liber... ...ron ore deposits, but it does ... produce a car or a plane. Liberia has the ... in Africa but it does not produce ... stressed at the ... Wednesday.

Instead of merely graduating students yearly, Amb. Yuxina urged Liberian educational institutions to focus on quality education in science and technology to "produce more qualified engineers, geologists, agriculturists" ... to help solve the problem of local production in the country.

With production on course, he said, "the country can better utilize its natural resources, change the lopsided economy, bring peace and stability, improve human rights by generating jobs and national independence."

"One should make a living by utilizing the readily available natural resources around him or her," the Chinese diplomat added.

His candid statement underscores the need for government to woo businesses quickly into manufacturing instead of simply importing manufactured goods and commodities for sale.

The acute shortage of manufacturing factories in the country prompted this paper to reflect that Gardnersville, an industrial zone in prewar time, nowadays contain ruins of so so factories, but without production.

Goods and food commodities flooding the Liberian market are imported mainly from faraway Asian countries and the Indian subcontinent.

--Burima J.V. Bolima

Cote d'Ivoire Exodus

...gees have fled into eastern Liberia, ... over 200 have arrived in Guinea.

...boosting its contingency plans for ... and had airlifted additional re... to Liberia and Guinea from its ... stockpiles in Copenhagen, the UN ... said.

...ency quoted UNHCR spokesper... Sara Edwards as saying that most of ... refugees seeking protective shel... Liberia and Guinea were women and ...

...agency has deployed additional staff ... Nimba County, which is hosting ... refugees, the spokesperson said.

...d said the deployment was to ensure ... border monitoring, proper registra... incoming refugees and distribution ... items.

...had endorsed the victory of oppo... President-elect Ouattara, ... 28 run-off presidential elections, ... Gbagbo claim to have won.

...have been alleged clashes between ... forces and Gbagbo's military forces.

...ngo said that at least 52 people have ... from the clashes, 300 injured, 470 ... detained and disarmed and many ... missing.

...the UN Security Council ex... tended the mandate of its peacekeeping mission in Cote d'Ivoire, initially due to expire on Dec. 31, to June 30, 2011.

The Council rejected Gbagbo's presidential order for UN and foreign troops to leave the country where the UN has more than 10,000 troops.

Meanwhile, the Economic Community of West African States (ECOWAS) announced on Tuesday that it would hold an emergency summit on the situation in Cote d'Ivoire on Friday. The regional body said in a statement reported by Xinhua that ECOWAS Heads of State and Government will be discussing the developments in Cote d'Ivoire.

The ECOWAS Commission said it has learnt with surprise and disappointment, the ultimatum issued by the outgoing President of Cote d'Ivoire, Gbagbo, to UNOCI, the UN Peacekeeping Mission, and the French Forces, Licorne, to leave the country immediately. "ECOWAS wishes to state that the ultimatum, far from helping the situation, would further heighten tensions and worsen the plight of the vulnerable in the country," the body said. "The Commission calls on the outgoing President to desist from his stand-off with the peacekeeping forces but rather to join in the effort in seeking ways of creating an environment of peace and security in the country," it added.

CBL's US5m For Liberian-Owned

4 Armed Robbers

...verdict of the crime armed robbery against Moses Dopo, Varney Othello, Varilee Kromah and Aurise Gathen.

After the men were convicted of armed robbery, they rejected their fate by challenging police in fisticuffs in the full glare of Judge Gilayeneh, lawyers from both sides, and spectators, degenerating the courtroom into momentary chaos.

The men rejected the jurors' verdict arguing that a co-defendant was used as witness against them.

They also accused prosecutors of injustice by entering into a 'deal' with the codefendant as witness.

Story & Photo Peter N. Tuby

SALALA RUBBER CORPORATION

VACANCY ANNOUNCEMENT

Salala Rubber Corporation has a vacancy for the position of Senior Human Resource Supervisor

Assignment: Full time, and resident at Weala, Margibi County

Salary: Attractive depending on qualification and job experience

Reports: directly to the SRC Human Resource Superintendent

Starting date: As soon as possible

Industry: Rubber

Requirement: University Degree in Management or Public Administration, with at least four years working experience in personnel supervision

Job Description:

Coordinate the overall daily operations SRC HR Department, and report to the Human Resource Superintendent. Ensure that SRC Personnel Policies, and Code of Conduct are respected. Monitor monthly payroll preparations for the purpose of timely salary payment. Work along with the HR Superintendent, and his team in strengthening the Human Resource Department, among others.

Address all applications, with two passport size photographs, and all relevant credentials to the Human Resource Department, Salala Rubber Corporation, P.O .Box 6569 Weala, Margibi County, Liberia

Deadline for the submission of applications is Wednesday January 4, 2011.

Signed: _____
SRC MANAGEMENT

2021

DECLARATION OF JUSTICE JULIA SEBUTINDE

1. For the reasons set out below, it is my considered opinion that it would be in the interests of justice for me to voluntarily withdraw myself from a decision on this Motion. The USG Code Cable contained in Annex B of the Motion involves a statement that un-named "sources in the Prosecution, Chambers and the Registry" of the Special Court allegedly made certain specific allegations against me.

2. In the Motion, the Defence requests an investigation into the contacts or sources in the Court who made these allegations. Indeed, the Defence has observed that "[t]he only sign of how seriously some members of this Court have taken the matter is through the personal response of Justice Julia Sebutinde to the allegations in one of the cables which impinge on her integrity, as reported in the media".[1]

3. I declare that while I am completely innocent of the allegations contained in the USG Code Cable and consider myself to be impartial and free of bias in relation to the issues at stake in this Motion, it is my considered view that in order for justice to be seen to be done, I should not participate in the deliberations or decision relating to this Motion.

4. Accordingly, I voluntarily withdraw from participating in the deliberations and the Decision on this Motion.

Done at The Hague, The Netherlands, this 26th day of January 2011.

Justice Julia Sebutinde

[Seal of the Special Court for Sierra Leone]

[1] *Prosecutor v. Taylor*, SCSL-03-01-T-1155, Public with Annex A Defence Motion Seeking Leave to Appeal the Decision on Defence Request for a Status Conference Pursuant to Rule 65*bis* and Defence Motion for Stay of Proceedings Pending Resolution of Outstanding Issues, 14 January 2011, para. 13.

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SCSL-03-01-T
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THE SPECIAL COURT FOR SIERRA LEONE

Trial Chamber II

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

Registrar: Ms. Binta Mansaray

Date: 10 January 2011

Case No.: SCSL-03-01-T

SPECIAL COURT FOR SIERRA LEONE
RECEIVED
COURT MANAGEMENT
THE HAGUE
10 JAN 2011
NAME ALHASSAN FORNAH
SIGN
TIME 09:03

THE PROSECUTOR

–v–

CHARLES GHANKAY TAYLOR

URGENT AND PUBLIC WITH ANNEXES A-N

DEFENCE MOTION FOR DISCLOSURE AND/OR INVESTIGATION OF UNITED STATES GOVERNMENT SOURCES WITHIN THE TRIAL CHAMBER, THE PROSECUTION AND THE REGISTRY BASED ON LEAKED USG CABLES

Office of the Prosecutor:
Ms. Brenda J. Hollis

Counsel for Charles G. Taylor:
Mr. Courtenay Griffiths, Q.C.
Mr. Terry Munyard
Mr. Morris Anyah
Mr. Silas Chekera
Mr. James Supuwood
Ms. Logan Hambrick, Legal Assistant

2029

I. INTRODUCTION

1. On 17 December 2010, the Guardian News and Media, Ltd.,[1] published two United States embassy cables relating to the ongoing trial against the Accused at bar, which were leaked through WikiLeaks.[2] The first cable, dated 10 March 2009,[3] makes it clear that the United States Government ("USG") wants to keep Charles Taylor out of Liberia at all costs. Confirming the position of the USG, the United States Ambassador to Liberia, Linda Thomas-Greenfield, states in that cable that "...the best we can do for Liberia is to see to it that Taylor is put away for a long time and we cannot delay for the results of the present trial to consider next steps. All legal options should be studied to ensure that Taylor cannot return to destabilize Liberia".[4] The second cable, dated 15 April 2009,[5] reveals that sensitive information about the trial has been leaked to the United States Embassy in The Hague by unnamed contacts in the Trial Chamber, the Office of the Prosecutor (OTP) and the Registry.[6]
2. On 23 December 2010, a Liberian newspaper, the New Democrat, published an article titled, "Sorry for the Leaks: Pres. Sirleaf Acknowledges US Ambassador's Apology".[7] Therein, it states that Liberian President Ellen Johnson-Sirleaf says the United States Ambassador Linda Thomas-Greenfield has "apologized for the WikiLeaks classified cables emanating from the American embassy regarding key political developments".
3. Based on these Cables, the Apology, and other available information, there is an inescapable and axiomatic concern that the impartiality and the independence of the Court may have been compromised. No third party should be privy to such sensitive information about the trial. No third party should have secret sources in all three organs of the Court.[8] The disclosures in

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[1] Hereinafter "the Guardian." The company owns the website, http://www.guardian.co.uk.
[2] WikiLeaks is a website run by Julian Assange that allows anonymous disclosure of leaked information. See www.wikileaks.org.
[3] "March 2009 cable."
[4] The March 2009 cable is at: http://www.guardian.co.uk/world/us-embassy-cables-documents/196077 [**Annex A**]. Ms. Thomas-Greenfield was reacting to public statements made by then Special Court prosecutor, Stephen Rapp, regarding funding shortfalls at the Court. References by Ms. Thomas-Greenfield to the results of "the present trial" were to the outcome of the trial at bar. No reference was made by Ms. Thomas-Greenfield to the Accused's guilt or innocence regarding any alleged crimes in Sierra Leone.
[5] "April 2009 cable." Collectively, "Cables".
[6] The April 2009 cable is at: http://www.guardian.co.uk/world/us-embassy-cables-documents/202468 [**Annex B**]. Sensitive comments, *inter alia*, relate to the pace and efficiency of the trial, as well as funding and personnel issues.
[7] The full text of the New Democrat article is attached ("the Apology") [**Annex C**].
[8] Article 11 of the Court's Statute lists its three organs as being (i) the Chambers, (ii) the Prosecutor, and (iii) the Registry.

these Cables, in no small measure, place the integrity of the Court itself on trial, and the Court would have failed (regardless of whatever verdict it ultimately renders) if it is not seen to have been fair, or if it appears that the hidden hand of a third party influenced the proceedings. The Defence submits that the leakage of sensitive information to the USG by multiple officers of the Court suggests that the impartial and independent administration of justice has been interfered with and must be investigated.

4. For these and other obvious reasons, the Defence seeks immediate disclosure by the Prosecution and the Registry of the USG contact(s) within their respective organs, as well as the nature and extent of the relationship and the information that has been exchanged between the contact(s) and the USG. If either organ is unable or unwilling to fully disclose the requested information, the Defence requests that the Trial Chamber order an independent investigation to determine the identity of the sources and the nature and extent of their relationship with the USG, pursuant to its inherent powers and Rule 54 of the Rules of Procedure and Evidence.

5. Likewise, and in respect of the USG contact within the Chambers,[9] the Defence invokes the Court's inherent powers and Rule 54 in requesting that the Court commission an immediate and independent inquiry within its own quarters to determine the identity of the contact and the nature and extent of their relationship with the USG. The results of that internal inquiry should thereafter be made available to the parties and are sought through this motion.

6. The Defence seeks urgent adjudication of this matter given the advanced stage of the proceedings and the current filing schedule for the Final Brief submissions.[10] The Defence attempted to file this motion during the judicial recess on 31 December 2010,[11] but was refused permission by the Registry[12] and subsequently by the President.[13]

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[9] "Chambers" here has the meaning given it in Article 11 of the Statute – i.e., the Trial Chambers and the Appeals Chamber.
[10] *Prosecutor v. Taylor*, SCSL-03-01-T-1105, Order Setting a Date for the Closure of the Defence Case and Dates for Filing Final Trial Briefs and the Presentation of Closing Arguments, 22 October 2010.
[11] *Prosecutor v. Taylor*, SCSL-03-01-T-1120, Order Scheduling Judicial Recess, 15 November 2010.
[12] See Email from Defence to CMS, dated 31 December 2010 and the Response from the Registry dated the same day [**Annex D**].
[13] See Letter from the Defence to the President, dated 3 January 2011 and the Response from the President, dated 5 January 2011 [**Annex E**].

II. BACKGROUND

7. The USG has always politically and financially sponsored the arrest, prosecution and *conviction* of the Accused. The USG has also contributed significant if not strategic personnel to the Court. Three of the Special Court's four Prosecutors (David M. Crane, Stephen Rapp, and Brenda J. Hollis), as well as the Court's first Chief of Investigations (Dr. Alan White) and the Court's Chief of Prosecutions (James C. Johnson), are Americans who have been employed by the USG prior and/ or subsequent to their respective tenures as high-level employees of the Special Court.[14]

8. On 8 February 2006, then Special Court prosecutor, David M. Crane, appeared before the Subcommittee on Africa, Global Human Rights and International Operations of the United States House of Representatives' Committee on International Relations. A copy of his address and his written speech are contained in Exhibit D-404, and some portions of his address were quoted during the Defence's Opening Statement on 13 July 2009.[15] Crane's remarks provide clear evidence of the USG's intention to convict Mr. Taylor through the auspices of the Special Court in order to keep him out of Liberia, using whatever monetary and political pressure that is necessary. Crane explained that the USG had decided that if Nigeria (who was hosting Mr. Taylor in exile at the time) did not turn Mr. Taylor over to the Special Court, the United States would not give any further monetary assistance to the Nigerian Government.[16] Crane also highlighted his fear that Taylor would return to Liberia from exile, stating that the United States must "...hand Charles Taylor over to the Special Court for Sierra Leone for a fair trial. This *takes him out* of the local and regional dynamic

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[14] David M. Crane, the Special Court's first Prosecutor, and Dr. Alan White, the Special Court's first Chief of Investigations, worked in the United States Department of Defence for more 30 years [**Annex F**, available at: http://turtlebay.foreignpolicy.com/posts/2010/02/24/guinea_s_junta_hires_ex_war_crimes_prosecutors_and_gets_a_favorable_report]. Stephen Rapp, the Special Court's third Prosecutor, was previously a U.S. Attorney and left the Court after he was appointed U.S. Ambassador at Large for War Crimes [**Annex G**, available at: http://www.state.gov/r/pa/ei/biog/129455.htm]. Brenda J. Hollis, the Special Court's fourth and present Prosecutor served in the United States Air Force as an intelligence officer and Judge Advocate before being seconded by the U.S. Government to the ICTY and starting her career in international criminal law [**Annex H**, available in full at: http://globetrotter.berkeley.edu/people/Hollis/hollis-con0.html]. James C. Johnson, presently the Chief of Prosecutions, but with the Special Court since January 2003, served in the United States Army for 20 years, taught at the U.S. Army Judge Advocate General's School, and served as a prosecutor and international / operational law advisor to conventional and special operations units [**Annex I**, available at: http://www.roberthjackson.org/the-center/events/international-humanitarian-law-dialogs/ihld-2010/james-c-johnson/].

[15] *Prosecutor v. Taylor*, SCSL-03-01-T, Defence Opening Statement, 13 July 2009 ("**Defence Opening Statement**"), p. 24290-93. The pertinent part of Exhibit D-404 is reproduced in **Annex J**.

[16] Exhibit D-404, p. 53. According to David Crane, the United States had "induced" Nigeria to allow Taylor to go into exile in Calabar. Exhibit D-404, p. 79, FN 14.

that is West Africa".[17] Crane further stated that he had given a copy of Taylor's Indictment to the U.S. Assistant Secretary of State and the U.S. Ambassador to Sierra Leone at a breakfast meeting two months before the Indictment was officially unsealed in June 2003.[18] Crane acknowledged that during his tenure as Prosecutor, the OTP had developed an "information asset system" and passed along information gleaned through that system to appropriate governments and law enforcement agencies, no doubt including those of the United States and Liberian Governments.[19]

9. Furthermore, Crane declared that the United States has been the biggest financial contributor to the Special Court.[20] The United States is also on the Special Court's United Nations-sponsored Management Committee.[21] Crane further stated that the United States had given undisclosed sums of money directly to the OTP,[22] in addition to, and separate from, its contributions to the Court as a whole.[23]

10. It will be recalled that Lead Defence Counsel submitted during the Defence's opening statement that Mr. Taylor was only indicted and arrested because of the USG's interests and

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[17] Exhibit D-404, p. 75.

[18] Exhibit D-404, p. 79, FN 10. A copy of the Taylor Indictment was given to U.S. Ambassador at Large for War Crimes Issues as well, but it is not clear when this happened.

[19] Exhibit D-404, p. 81, FN 25. Footnote 25 reads "[a]ll of this information has been passed to appropriate governments and law enforcement agencies." While it does not expressly mention the USG, the context of the remarks and appearance by Crane make exceedingly clear that the USG is one of the governments in question. The Defence further recalls allegations included in an affidavit filed as Confidential Annex D of the Defence Contempt Motion, which stated that a potential witness had been arrested for treason by the Liberian National Security Agency on the basis of information given to the NSA by "'their friends in the sub-Region', the Prosecution for the Special Court of Sierra Leone". See *Prosecutor v. Taylor*, SCSL-03-01-T-1090, Public with Confidential Annexes A-J and Public Annexes K-O Defence Motion Requesting an Investigation into Contempt of Court by the Office of the Prosecution and its Investigators, 27 September 2010 ("**Defence Contempt Motion**").

[20] Exhibit D-404, p. 74. See also, for example, First Annual Report of the President of the Special Court for Sierra Leone, for the period 2 December 2002 – 1 December 2003, Annexes IV (Contributions) and V (Management Committee Member States) [**Annex K**, available in full at: http://www.sc-sl.org/LinkClick.aspx?fileticket=NRhDcbHrcSs%3d&tabid=176].

[21] The Management Committee is set up in accordance with Article 7 of the Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, dated 16 January 2002 ("**SCSL Establishment Agreement**"), stating that the Management Committee "shall consist of important contributors to the Special Court" and will "assist the [UN] Secretary-General in obtaining adequate funding, and provide advice and policy direction on all *non-judicial aspects* of the operation of the Court, including questions of efficiency..." (emphasis added).

[22] Exhibit D-404, p. 77, FN 3 (David Crane stated "...the dedicated and professional staff of the House International Relations Committee was very effective in sustaining political *and financial backing for the Office of the Prosecutor* throughout my tenure in Freetown") (emphasis added). See also, Defence Opening Statement, p. 24294.

[23] The Defence notes, for example, the Budget Summary of the OTP and its budgeted Operational Costs for 2009-2011, and queries whether money donated directly to it by the USG is included in such sums, or if this is purely representative of Registry funds distributed to the OTP. See, Seventh Annual Report of the President of the Special Court for Sierra Leone, for the period June 2009 to May 2010, "Completion Strategy and Completion Budget" [**Annex L**, available in full at: http://www.sc-sl.org/LinkClick.aspx?fileticket=33ryoRsKMjI%3d&tabid=176].

pressure.[24] Mr. Taylor subsequently testified that the USG had a vendetta against him and sought to remove him from power through various means, including by demonizing[25] and destabilizing his government,[26] giving military support to opposition LURD rebels[27] (a contention confirmed by prosecution witness and former Liberian Vice-President Moses Blah),[28] and working to install Ellen Johnson-Sirleaf as President.[29] Mr. Taylor also testified that the United States was attempting to oust him in furtherance of U.S. commercial interests in the sub-region.[30] Other accounts imply the USG targeted Mr. Taylor because of unsubstantiated evidence linking Liberia to Al Qaeda and the attacks on U.S. Embassies in Kenya and Tanzania in 1998.[31]

11. The published Cables provide further insight into this relationship between the OTP and the USG. They also disclose and give fresh insights into what appear to be equally close relationships between the USG and source(s) within Chambers and the Registry, with the clear implication being that the USG has successfully infiltrated all organs of the Court.

III. APPLICABLE LAW

Impartiality and Independence of the Tribunal

12. The notion that courts of law, including international criminal tribunals, must be impartial and independent is ensconced in principles of natural justice as well as international criminal law jurisprudence. The Accused has a fundamental right to be tried before an independent and impartial tribunal. Indeed, this is an integral component of his fair trial rights.[32]

13. United Nations Security Council Resolution 1315 (2000), which called for the creation of the Special Court, emphasized "the importance of ensuring the impartiality, independence and

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[24] See, Defence Opening Statement, p. 24290-94 and 24318-19 (likening the Indictment of Mr. Taylor to the U.S. foreign policy of "regime change"). See also, Exhibit D-407, a Los Angeles Times article, stating that the U.S. had pressed President Sirleaf to ask Nigeria to turn over Mr. Taylor, and that she did so in order to attract donor money [**Annex M**].
[25] *Prosecutor v. Taylor*, SCSL-03-01-T, **Testimony of Charles Taylor**, 27 August 2009, 27903-6.
[26] *Prosecutor v. Taylor*, SCSL-03-01-T, **Testimony of Charles Taylor**, 5 August 2009, p. 25991-2.
[27] See, ex, *Prosecutor v. Taylor*, SCSL-03-01-T, **Testimony of Charles Taylor**, 14 July 2009, p. 24342-3; 24346; and 24405. See also, Confidential Annexes B and I of the Defence Contempt Motion, which are affidavits from potential witnesses suggesting that the LURD was a *de facto* military wing of the SCSL's Office of the Prosecutor.
[28] *Prosecutor v. Taylor*, SCSL-03-01-T, **Testimony of Moses Blah**, 20 May 2008, p. 10332.
[29] *Prosecutor v. Taylor*, SCSL-03-01-T, **Testimony of Charles Taylor**, 27 August 2009, p. 27872.
[30] *Prosecutor v. Taylor*, SCSL-03-01-T, **Testimony of Charles Taylor**, 10 August 2009, p. 26300-1.
[31] See Exhibit D-392, an article written by Douglas Farah, a Washington Post investigative reporter [**Annex N**].
[32] *Prosecutor v. Furundzija*, IT-95-17/1-A, Judgement, 21 July 2000, para. 177 and *Ndahimana et al v. Prosecutor*, ICTR-99-52-A, Judgement, 28 November 2007, para. 28.

credibility of the process, in particular with regard to the status of the judges and the prosecutors". The Statute unequivocally states that the organs of the Court must act independently and impartially, and without instructions from any Government or other source. This prohibits, it is submitted, any member or organ of the Court from disseminating or sharing with outside third parties, any sensitive information which may undermine the integrity of the Court or its proceedings. The Registry, under Article 16 of the Statute, is the official channel of communication with respect to all information relating to the Court properly for public consumption. All officers of the Court are enjoined from conducting themselves in any manner that undermines the integrity of the Court.

14. Article 13(1) of the Statute states: "The judges shall be persons of high moral character, impartiality and integrity … They shall be independent in the performance of their functions, and shall not accept or seek instructions from any Government or any other source." By extention and subject to the necessary changes, this must also apply to legal officers and other employees who are in Chambers and enjoy the confidence of the judges.

15. Article 15(1) of the Statute states: "The Prosecutor shall act independently as a separate organ of the Special Court. He or she shall not seek or receive instructions from any Government or from any other source".[33] Trial Chamber I has opined that "Article 15(1) reinforces, in unambiguous terms, an internationally accepted norm governing the exercise of prosecutorial authority, in International Criminal Tribunals, namely autonomy and independence".[34] The duty to act independently, by necessary extention, must also apply to all members of the OTP, including support staff and investigators.[35]

16. On the one hand, the Defence appreciates that while the Special Court or any of its organs may not seek nor receive instructions from governments or other entities, it may seek assistance from the same.[36] On the other hand, the distinctions between the two – seeking

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[33] Similar language is found in Article 3(3) of the SCSL Establishment Agreement (stating "The Prosecutor and the Deputy Prosecutor shall be independent in the performance of their functions and shall not accept or seek instructions from any Government or any other source").

[34] *Prosecutor v. Sesay et al,* SCSL-04-15-T, Decision on Sesay – Motion Seeking Disclosure of the Relationship Between Governmental Agencies of the United States of America and the Office of the Prosecutor, 2 May 2005, para. 22.

[35] See, for instance, Article 28 of the Code of Professional Conduct for Counsel with the Right of Audience before the Special Court for Sierra Leone, as amended on 13 May 2006, which states that counsel shall be held responsible for the misconduct of other members of his team in certain circumstances.

[36] See, for e.g.,, Rule 8(C) which allows the Special Court to invite States to provide assistance on the basis of an *ad hoc* arrangement or any other appropriate basis. Also, Rule 39(iii) gives the Prosecutor the power to seek the

assistance versus the prohibition against receiving instructions – are clear and obvious and must be respected.

Disclosure and/or Investigation

17. The Trial Chamber has the inherent power and duty to ensure that proceedings are fair and impartial. Rule 26*bis* mandates that the Chamber "shall ensure that a trial is fair and expeditious and that proceedings before the Special Court are conducted in accordance with the Agreement, the Statute and the Rules, with full respect for the rights of the accused..." That Rule and others, such as Rule 54 (which vests the Trial Chamber with the power to "issue orders... as may be necessary for the purposes of an *investigation* or for the preparation or conduct of the trial"), confirm that inherent in the Rules is clear recognition that a Chamber has inherent powers to oversee and regulate the conduct of proceedings before it.

18. Accordingly, this Court has the inherent power to order the Prosecution and the Registry to disclose information which stands to undermine the integrity and impartiality of the proceedings, and/ or to order an investigation into the same. The same applies with equal force to the obligation of the Trial Chamber to investigate, in appropriate circumstances, any one or more of its members.[36]

IV. ARGUMENT

19. The Cables and the Apology clearly indicate, *inter alia*, two things: 1) the USG's desire to ensure that Mr. Taylor not return to Liberia;[37] and 2) proof that there is and have been contacts between the Trial Chamber, the OTP and the Registry, respectively, and agents of the USG outside the official lines of communication.[38] This, it is submitted, raises serious

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[36] Compare, for example, the Defence's instant request for the Trial Chamber to investigate the leak within its own quarters, to Defence requests at the ICTR for disclosure from a Judge of material or information in the possession of the Judge which is capable of demonstrating actual bias or the appearance of bias. *Karemera et al v Prosecutor*, ICTR-98-44-AR73.15, Decision on Joseph Nzirorera's Appeal Against a Decision of Trial Chamber III Denying the Disclosure of a Copy of the Presiding Judge's Written Assessment of a Member of the Prosecution Team, 5 May 2009, para. 11 (deeming such requests appropriate and not frivolous).

[37] March 2009 cable, paras. 11, 13 and 14.

[38] April 2009 cable: communication from a source in the Trial Chamber, para. 7 ("one Chamber contact believes that the Trial Chamber could have accelerated the Court's work by excluding extraneous material and arguments"); communications from sources in the Prosecution and Registry, para. 7 ("contacts in the Prosecution and Registry speculate that Justice Sebutinde may have a timing agenda. They think she, as the only African judge, wants to hold the gavel as presiding judge when the Trial Chamber announces the Taylor judgment. Reportedly, her next stint as presiding judge begins in January").

doubts about the independence and impartiality of the Special Court's prosecution of Charles Taylor. Viewed objectively and reasonably, evidence suggests that the indictment and trial of Mr. Taylor by the Special Court is no more than an extension of U.S. foreign policy interests in West Africa, with there being no connection to any alleged crimes in Sierra Leone.

20. This is even more so when the Cables are considered in the greater context of the operation of the Special Court, which was created and funded in large part by the American Government. As indicated earlier, American personnel have also held very important positions in the Prosecution. The OTP and its Investigations division has been led by five employees of the USG: David M. Crane and Alan White (U.S. Department of Defence), Stephen Rapp (U.S. Attorney and presently U.S. Ambassador at Large for War Crimes), Brenda J. Hollis (U.S. Air Force intelligence officer and judge advocate), and James C. Johnson (U.S. Army and special operations instructor).[39] Furthermore, and most disturbing in view of the USG's stated position that Mr. Taylor must be tried and kept away from West Africa for a long time, the OTP has received, directly and separate from the contributions by the USG to the Special Court as a whole, undisclosed and unaccounted for sums of money from the USG to support Prosecution operations. The Defence is at a loss as to what covert operations the Prosecution runs on such clandestine funding, suffice to say that this casts serious doubts on the independence of the prosecution of the Accused. Lead Defence Counsel has often called the trial political and Taylor's indictment selective, especially when considered against the decision not to indict similarly-situated Tejan Kabbah.[40] This confluence of factors leads to the possible conclusion that Mr. Taylor is a target of selective prosecution[41] and that the integrity of the trial process is irreparably tainted.

21. The only way to remove any doubt about the independence and impartiality of the tribunal is for the Trial Chamber to order the disclosure of and/or an investigation into the identity of the source(s) within the Trial Chamber, Prosecution and Registry and the full nature of their relationship with the USG. Specifically, this must include an explanation of the context and circumstances within which each of the comments recorded in the Cables were made to representatives of the USG. Furthermore, in the interests of justice, the Trial Chamber should

[39] See FN 14 above, and Annexes F-I.
[40] Defence Opening Statement, p. 24321.
[41] To demonstrate selective prosecution, the Defence must show: i) an improper or unlawful motive for prosecution and ii) that similarly situated persons were not prosecuted. *Prosecution v. Delalic et al,* IT-96-21-A, Judgement, 20 February 2001, para. 611.

order disclosure of any information tending to suggest that the Prosecution has sought or received instructions from the USG regarding any aspect of the Taylor trial, as well as an explanation and an accounting of the money provided by the USG to the Prosecution. If the parties are unwilling or unable to provide such information forthwith, then the Trial Chamber should order an investigation into the same.

V. CONCLUSION & RELIEF REQUESTED

22. Given the seemingly compromised impartiality and independence of the Special Court for Sierra Leone in light of its connection to the USG as alleged herein, the Trial Chamber must order disclosure and/or and investigation into the following:
    i. the identity of the source(s) within the Trial Chamber, Prosecution and Registry who provided the USG with the information in the Cables;
    ii. the full nature of the respective sources' relationship with the USG, specifically including an explanation of the context and circumstances in which each of the comments recorded in the Cables were made to representatives of the USG;
    iii. information tending to suggest that the Prosecution has sought or received instructions from the USG regarding any aspect of the Taylor trial; and
    iv. a full explanation of the money provided by the USG to the Prosecution, including the amounts of money given and when; the purpose of the funds; how the funds were used; and who the OTP was accountable to in the distribution and use of the funds.

23. The Defence further requests that the issue be considered on an expedited basis, given the advanced stage of the proceedings.

Respectfully Submitted,

Courtenay Griffiths, Q.C.
Lead Counsel for Charles G. Taylor
Dated this 10th Day of January 2011,
The Hague, The Netherlands

LIST OF AUTHORITIES

Prosecutor v. Taylor

Prosecutor v. Taylor, SCSL-03-01-T-1120, Order Scheduling Judicial Recess, 15 November 2010

Prosecutor v. Taylor, SCSL-03-01-T-1105, Order Setting a Date for the Closure of the Defence Case and Dates for Filing Final Trial Briefs and the Presentation of Closing Arguments, 22 October 2010

Prosecutor v. Taylor, SCSL-03-01-T-1090, Public with Confidential Annexes A-J and Public Annexes K-O Defence Motion Requesting an Investigation into Contempt of Court by the Office of the Prosecution and its Investigators, 27 September 2010

Prosecutor v. Taylor, SCSL-03-01-T-353, Confidential Decision on Prosecution Motion Requesting Special Measures for Disclosure of Rule 70 Material, 2 November 2007

Prosecutor v. Sesay et al.

Prosecutor v. Sesay et al, SCSL-04-15-T, Decision on Sesay – Motion Seeking Disclosure of the Relationship Between Governmental Agencies of the United States of America and the Office of the Prosecutor, 2 May 2005

ICTR

Karemera et al v. Prosecutor, ICTR-98-44-AR73.15, Decision on Joseph Nzirorera's Appeal Against a Decision of Trial Chamber III Denying the Disclosure of a Copy of the Presiding Judge's Written Assessment of a Member of the Prosecution Team, 5 May 2009
http://www.ictrcaselaw.org/docs/20090505-dco-9844-01-en.pdf

ICTY

Prosecutor v. Furundzija, IT-95-17/1-A, Judgement, 21 July 2000
http://www.icty.org/x/cases/furundzija/acjug/en/fur-aj000721e.pdf

Prosecution v. Delalic et al, IT-96-21-A, Judgement, 20 February 2001
http://www.icty.org/x/cases/mucic/acjug/en/cel-aj010220.pdf

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Annex A

guardian.co.uk

The US embassy cables:
The documents

US embassy cables: Rising concern about the Charles Taylor prosecution case

guardian.co.uk, Friday 17 December 2010 21.30 GMT

A larger | smaller

Tuesday, 10 March 2009, 12:51
C O N F I D E N T I A L SECTION 01 OF 02 MONROVIA 000188
SIPDIS
EO 12958 DECL: 03/10/2019
TAGS PREL, PGOV, UNSC, PHUM, KCRM, LI
SUBJECT: PRO-TAYLOR ELEMENTS STILL A FORCE TO BE RECKONED WITH
Classified By: Ambassador Linda Thomas-Greenfield for Reasons 1.4 (b) a nd (d).

Summary

A US ambassador warns that a cash shortfall could jeopardise the case against the former Sierra Leone president, stirring up old resentments in Sierra Leone and Liberia. Key passages highlighted in yellow.

1. (C) Summary: The recent remarks by Special Court for Sierra Leone prosecutor Stephen Rapp suggesting Charles Taylor may go free because of budgetary reasons caused alarm within the GOL and has emboldened Taylor supporters. Communication inside the Taylor camp remains intact, and those in leadership roles continue to be active and unrepentant. Should Taylor be acquitted in The Hague or given a light sentence, his return to Liberia could tip the balance in a fragile peace. *The international community must consider steps should Taylor not be sent to prison for a long time. We should look at the possibility of trying Taylor in the United States.* End Summary.

RAPP'S COMMENTS RAISE CONCERN WITHIN THE GOL

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2. (C) Chief Prosecutor Stephen Rapp's ill considered announcement in the press February 24 that Charles Taylor may walk free because of a supposed budget shortfall for the Special Court for Sierra Leone, where Taylor is presently on trial, made

headlines in the local press, and raised anxiety here about Taylor's imminent return. The GOL was alarmed enough that President Sirleaf called Ambassador on February 28 to raise her concerns. Sirleaf pointed out that Liberia's stability remains fragile, and such remarks reverberated throughout the country, as people are still traumatized by Taylor and the war.

3. (C) The press accounts out of The Hague have also emboldened the pro-Taylor factions here, including his extended family members, financiers and National Patriotic Party (NPP) loyalists, raising their hopes that Taylor might be acquitted soon. Despite their rhetoric about "moving on," they have thus far refused to appear before the Truth and Reconciliation Commission (TRC) to account for their activities, and those on the UN Sanctions lists continue to request delisting on the basis they have done nothing wrong rather than demonstrating what they have done to provide restitution for their activities.

GOL TREADING CAREFULLY WITH TAYLOR FACTIONS

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4. (C) The government itself is caught in the middle. There is quite little the GOL can do legally to arrest, prosecute or freeze assets of those who were close to Taylor, even if the political will were there, which remains an open question. The TRC has recommended a domestic war crimes court be set up, but under statute an Independent National Commission on Human Rights (INHCR) would implement the recommendation, and the Legislature (some of whom had close ties to Taylor) has thus far failed to establish the INCHR. The Legislature has also refused to pass any law that would allow the GOL to freeze assets of those on the UN sanctions list, and the Supreme Court has ruled that any confiscation of property can be done only after a trial.

5. (C) The Accra Comprehensive Peace Agreement (CPA) of August 2003 that ended the 14-year civil war, did not require the NPP to disband and in fact permitted the NPP to participate in the transitional government and in the 2005 elections. The NPP now holds seven seats in the Legislature (which may be one reason the legislation is being blocked). As well, none of Taylor's properties have been seized by the government and they remain in good shape and remarkably free of squatters, as no one dares to take the risk of retribution.

COMMUNICATIONS AMONG TAYLOR SUPPORTERS REMAIN STRONG

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6. (C) *The pro-Taylor forces still have the ability to organize themselves.* An NPP rally in December 2008 gathered a sizeable crowd, and Taylor supporters in June 2008 succeeded in preventing FBI investigators from entering Taylor's residence "White Flower" to obtain evidence for the Chucky Taylor trial in Florida. The most recent example was their effort on March 7 to disrupt the International Women's Colloquium. Taylor remains popular within many rural communities, especially in Bong, Lofa and Nimba counties, and is seen as someone who was able to unite Liberia's different ethnic groups. We also suspect there is some sympathy within the Americo-Liberian

population who saw him as their deliverance from their losses following the 1979 coup. While we do not suggest they would want Taylor to return, we are sure that they do no want too many rocks to be turned over.

7. (C) Although we do not have any direct evidence to support the belief that pro-Taylor factions are behind much of the

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armed robbery on the premise that crime will keep the government weak and the country unstable, the GOL is certainly convinced of this, and has taken steps to counteract the threat. The most recent act was to put Taylor-era head of police Paul Mulbah into the LNP as an "advisor" that some accuse (and the government denies) was in order to placate the Taylor people in advance of the March 7-8 International Women's Colloquium. That the Taylor crowd can still motivate such a reaction in the government is a testament to their influence.

8. (C) Lines of communications within Taylor's faction, the National Patriotic Front of Liberia (NPFL) remain intact. To be sure, the disarmament of the factions following the CPA has been extremely successful, and we have thus far been unable to confirm the existence of any large weapons caches, despite the persistent rumors. But the reintegration of the ex-combatants is far from complete. Former NPFL commanders Roland Duo (the only senior Taylor supporter to have testified before the TRC), Christopher "General Mosquito" Vambo and Melvin Sogbandi (none of whom are on the sanctions lists) remain in contact with the ex-combatants, and would have the capability to organize an uprising or even criminal activity.

9. (C) Certainly, the same is true for the other factions, the Liberians United for Reconciliation and Democracy (LURD) and the Movement for Democracy in Liberia (MODEL). While apparently unarmed and not active in Liberia, we continue to receive reports that LURD is recruiting ex-combatants for militias in Guinea and MODEL is doing the same for Cote d'Ivoire.

THREAT OF TAYLOR'S RETURN ADVANCES THEIR CAUSE

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10. (C) XXXXXXXXXXXX

11. (C) The threat of a return of Taylor strengthens their hand and for now they see no need to give in at all. However, if Taylor is put away for a long time, the government may feel a bit bolder in recovering assets and bringing Taylor backers who committed war crimes to justice.

12. (C) The international community has just a few tools to pressure the Taylor people into accepting the new reality. The UN sanctions appear to have the intended effect of keeping them somewhat marginalized and fearful of further attempts to strip them of their ill-gotten gains. However, we have regularly heard of travel outside Liberia of those on the travel ban list without prior approval.

NEXT STEPS FOR THE INTERNATIONAL COMMUNITY

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13. (C) However, the best we can do for Liberia is to see to it that Taylor is put away for a long time and we cannot delay for the results of the present trial to consider next steps. All legal options should be studied to ensure that Taylor cannot return to destabilize Liberia. Building a case in the United States against Taylor for financial crimes such as wire fraud would probably be the best route. There may be other options, such as applying the new law criminalizing the use of child soldiers or terrorism statutes.

14. (C) The peace in Liberia remains fragile, and its only guarantee is the robust and adaptable UNMIL presence. The GOL does not have the ability to quell violence, monitor its borders or operate independently to fight crime. A free Taylor could tip the balance in the wrong direction. THOMAS-GREENFIELD

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Annex B

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The US embassy cables:
The documents

US embassy cables: The protracted case against Charles Taylor

guardian.co.uk, Friday 17 December 2010 21.30 GMT

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Wednesday, 15 April 2009, 15:00
CONFIDENTIAL THE HAGUE 000247
DEPARTMENT FOR S/WCI - WILLIAMSON/DOHERTY, L - DONOGHUE,
L/UNA - BUCHWALD, L/AN - OHAHS
EO 12958 DECL: 04/15/2019
TAGS PREL, PGOV, KAWC
SUBJECT: SCSL'S TAYLOR TRIAL MEETS KEY MILESTONE, BUT SCSL
STILL FACES SERIOUS HURDLES
REF: A. REF: A) 2008 THE HAGUE 00021 B. B) 2008 THE HAGUE 00226
Classified By: Legal Counselor Denise G. Manning per reasons 1.5(b, d).

Summary
US officials wonder why a special court judge might be interested in slowing down the prosecution case against the former Sierra Leonean president. Key passages highlighted in yellow.

-- SUMMARY: SCSL MEETS A KEY MILESTONE, BUT FACES UNCERTAINTY IN TERMS OF TIMING, FINANCES, AND COMPLETION ISSUES --

1. (SBU) On February 27, 2009, the Special Court for Sierra Leone (SCSL or Court) took another step toward completing its work when the Prosecution rested its case against former Liberian President Charles Taylor -- the last SCSL case at the trial stage. The Court could potentially complete its work before the end of 2010. A number of open issues, however, may affect timing, including the start date and length of the Taylor Defense case. Timing may be particularly important given expected funding shortfalls and the possible loss of courtroom space this coming September. Additionally, the current Registrar, Herman von Hebel (Netherlands), has resigned effective June 1, and his successor will inherit a host of difficult issues and a complex transition during the final days of the Court,s operations.

--BACKGROUND: A SMALL COURT WITH SEVERAL FIRSTS --

2. (U) A Trailblazing Court. The hybrid SCSL, created in 2002 through an agreement between the United Nations and the Government of Sierra Leone (GOSL) and funded entirely by voluntary contributions, has jurisdiction over those who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in Sierra Leone after November 30, 1996. Although established almost ten years after the creation of the International Criminal Tribunals for the former Yugoslavia and Rwanda (ICTY and ICTR), the SCSL is poised to complete its work before these tribunals. The SCSL has also been the first internationalized criminal tribunal to: 1) issue an indictment for an African head of state (Liberian President Charles Taylor); 2) enter convictions for the crime of recruiting and using child soldiers; and 3) successfully prosecute forced marriage as a crime against humanity and intentional attacks on U.N. peacekeepers as a serious violation of international humanitarian law.

3. (U) Last Trial Standing. In 2003, the SCSL indicted Charles Taylor, the leader of the National Patriotic Front of Liberia from 1989 to 1997 and the President of Liberia from 1997 until the 2003 indictment. The indictment alleges Taylor,s deep involvement in the Sierra Leone conflict including his role in arming, training and acting in concert with the RUF and in trafficking the Sierra Leonean &blood diamonds8 that fueled and financed the fighting. The SCSL charged Taylor with eleven counts, including, inter alia, terrorizing the civilian population, unlawful killings, sexual violence, abductions and forced labor, and conscripting child soldiers.

))TIMING: TAYLOR TRIAL'S LINK TO CLOSING SCSL))

4. (SBU) Status of Trial. As the only ongoing SCSL trial, the Taylor trial is the linchpin to the SCSL completing its work. From April 6-9, 2009, the Court held the &judgment of acquittal8 hearing, with Defense arguing for acquittal on all of the charges. (Comment: In the &judgment of acquittal8 hearing, the Court considers whether Prosecution Qacquittal8 hearing, the Court considers whether Prosecution has presented any evidence that could sustain conviction on the charges, acquitting only if Prosecution has presented &no evidence8 to sustain the charge. End Comment.) In this hearing, Defense acknowledged that crimes had occurred in Sierra Leone but argued that the Prosecution had failed to 1) present evidence linking Taylor to those crimes and 2)establish that Taylor had been part of a joint criminal enterprise (JCE) because, if a JCE existed, it existed before November 30, 1996, the date at which the temporal jurisdiction of the SCSL begins. The Prosecution responded to these arguments by summarizing Taylor,s responsibility for the crimes and pointing to Taylor,s liability for JCE crimes committed after November 30, 1996, even if the planning of the JCE took place before that date. (Comment: The Court will most likely not issue its Rule 98 decision in April, especially since the Judges may recess through May. An acquittal does not seem likely. End Comment.)

5. (SBU) Next Up: Defense Case. A contact in the Registry has indicated that Defense will likely request three months to prepare for trial and four months to present its case. If the Court grants this request, the Defense case may start at the end of August. However, the same Registry source predicts that the Trial Chamber may order Defense

to begin its case as early as June, working through July and August with a possible recess in September. One wild-card factor, however, is the Defense,s pending interlocutory appeal arguing that the Prosecution failed to properly plead the JCE theory of liability. The Trial Chamber may not schedule the Defense case before the appeals decision so the Defense knows which mode(s) of liability it must defend against. (Comment: Currently, the Registry,s budget milestone document projects an October 31 trial termination date, a March 2010 judgment, sentencing in April 2010, and the conclusion of appeals in October 2010. If, however, the Defense case starts in August, the timeline could be pushed back by approximately two months. End Comment.)

6. (U) Spill-Over Timing Effects. A delay in the timing for the Taylor trial may create additional challenges. First, the International Criminal Court (ICC), the location of the Taylor trial, has informed the SCSL that it will need its second courtroom as of September 2009. (The ICC scheduled its second trial to start September 24th, and will likely need the courtroom prior to September 24th for pre-trial work). Back-up options explored by the Registry include finding other space or working during gaps in the ICC schedule. Second, according to Registry sources, each additional month of trial time costs approximately one million dollars.

))THE JUDICIAL FACTOR))

7. (C) *Judges Slowing Things Down? Further muddying timing predictions, Court employees have intimated that the Trial Chamber could work more expeditiously.* The Taylor Chamber consists of three judges who take turns presiding: Justice Richard Lussick (Samoa), Justice Teresa Doherty (Northern Ireland) and Justice Julia Sebutinde (Uganda), along with an alternate judge, Justice El Hadji Malick Sow (Senegal). A couple of Court employees have grumbled that when the last Prosecution witness testified on January 30, 2009, the Court still had 11 outstanding motions, some over a year old. Additionally, one Chamber contact believes that the Trial Chamber could have accelerated the Court,s work by excluding extraneous material and arguments. Moreover, *contacts in Prosecution and Registry speculate that Justice Sebutinde may have a timing agenda. They think she, as the only African judge, wants to hold the gavel as presiding judge when the Trial Chamber announces the Taylor judgment. Reportedly, her next stint as presiding judge begins in January.*

8. (SBU) Expedited Appeals? The Appeals Chamber, with one empty seat, consists of President Renate Winter (Austria); Vice President Jon Kamanda (Sierra Leone); Justice George Gelaga King (Sierra Leone); and Justice Emmanuel Ayoola (Nigeria). President Winter reportedly has indicated that the Appeals Chamber intends to expedite any Taylor trial Qthe Appeals Chamber intends to expedite any Taylor trial appeals. Up for election in May, Winter may not, however, preside over the Appeals Chamber for any Taylor trial appeals, reportedly she will step down after the RUF appeal if she is not re-elected President.

))DEFENSE STRATEGY: WHO ME?))

9. (SBU) Drama-Bound Defense Case. A British Queen,s Counsel, Courtenay Griffiths, heads Charles Taylor,s top-notch and quick-tongued defense team, which reportedly

finds itself in the midst of identifying and proofing witnesses. All signs indicate that Taylor himself will take the stand as their first witness possibly staying in the box for 6 to 8 weeks, and based on Defense,s actions to date, the Defense team will likely argue that although the crimes may have occurred, Taylor has no link to the crimes.

))AN IMMINENT BUDGET CRISIS))

10. (C) Funding Shortfall. The Registry fears that the Court will run out of money as early as next month, although an expected Canadian USD 6 million contribution would keep the Court financed until early July 2009. In a marathon campaign, Registrar Von Hebel attended 250 meetings in 15 months to drum up funds from potential donor countries, but with, according Von Hebel, little traction, due to donor fatigue, the difficult economic situation, and contributions going to other tribunals (e.g., the Special Tribunal for Lebanon (STL) or the Extraordinary Chambers in the Courts of Cambodia). Von Hebel wants to make another run at the Arab countries of Saudi Arabia, Qatar, Kuwait, and the United Arab Emirates. He also believes that a letter from U.N. Secretary General Ban Ki-Moon asking countries to contribute might help open wallets. According to Von Hebel, when Ban sent out a similar letter in 2007, a number of countries made first-time donations. In addition, a couple of traditional donor countries have advised him they may need a similar letter in order to donate this year.

11. (U) Cost-cutting Measures: Concerned about the looming financial crisis, the Registry has undertaken cost-saving measures, reducing staffing costs by downsizing, incorporating liquidation clauses in contracts, and encouraging The Hague staff to use leave during the break between prosecution and defense cases. The Registry also plans to hand over the Freetown facilities to the GOSL in July 2010, reserving some space for its own continued use. Finally, Registry may look to consolidate the Appeals Chamber and the Taylor trial operations in The Hague, after the Appeals Chamber finalizes the RUF appeal.

12. (SBU) Help from Washington. The Registry may also seek USG,s assistance on financial issues. First, it may press the USG not to reduce its FY2009 contribution by 2 million, but to stay at last year,s level of 9 million USD. (Comment: The extra sum would not solve the Court,s immediate financial problem, since the USG generally contributes in the fall. End Comment.) Second, the Registry may ask for USG political support in the form of demarches to Arab countries, impressing upon the targeted Arab countries the critical nature of the SCSL,s financial situation.

))COMPLETION HICCUPS AND ISSUES))

13. (SBU) Registrar Musical Chairs. On April 8, 2009, the Court announced Registrar von Hebel,s resignation, effective as of June 1, 2009. Von Hebel will assume the Deputy Registrar position at the newly established Hague-based STL. (According to Embassy contacts, STL offered Von Hebel the position at the insistence of and to placate the Dutch, who believe the Dutch ICTY Registrar had been treated unfairly when the ICTY President unexpectedly declined to renew his contract). Given that the STL Registrar Robin Vincent (U.K.) recently resigned, Von Hebel may eventually step into Vincent,s shoes. Von Hebel is also tying up as many SCSL loose ends as possible, including signing

a sentence-enforcement agreement with the Government of Rwanda. In terms of a successor Registrar, a Registry contact believes that the current Deputy Registrar Binta Mansaray (Sierra Leone) will surface as a strong candidate.

))COMMENT: RESIDUAL ISSUES))

14. (SBU) A Larger Role for The Hague? Although currently headquartered in Freetown, Sierra Leone, the Registry has toyed with the possibility of locating any Residual Mechanism Qtoyed with the possibility of locating any Residual Mechanism) or parts thereof) in The Hague. For instance, Von Hebel believes that the Court may need to move its archives out of Sierra Leone in order to properly maintain and secure them. The City of The Hague has indicated its willingness to provide archiving facilities in connection with the ICTY,s closure. Some have also suggested combining some or part of the SCSL,s residual functions with those of The Hague-based ICTY and the Arusha-based ICTR. A combined residual mechanism might prevent duplication, but it would also face significant hurdles, given SCSL,s structural differences, e.g. funding, oversight mechanism and applicable legal framework. Furthermore, GOSL desires will be key, since a joint GOSL-UN agreement created the Court.

GALLAGHER

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THE SPECIAL COURT FOR SIERRA LEONE

Trial Chamber II

Before:	Justice Julia Sebutinde, Presiding Justice Richard Lussick, Justice Teresa Doherty, Justice El Hadji Malick Sow, Alternate
Registrar:	Ms. Binta Mansaray
Date:	27 September 2010
Case No.:	SCSL-03-01-T

SPECIAL COURT FOR SIERRA LEONE
RECEIVED
COURT MANAGEMENT
27 SEP 2010
NAME Al Hassan Fofanah
SIGN
TIME 09:32

THE PROSECUTOR

–v–

CHARLES GHANKAY TAYLOR

PUBLIC,
WITH CONFIDENTIAL ANNEXES A-J AND PUBLIC ANNEXES K-O

CORRIGENDUM TO DEFENCE MOTION REQUESTING AN INVESTIGATION INTO CONTEMPT OF COURT BY THE OFFICE OF THE PROSECUTION AND ITS INVESTIGATORS

Office of the Prosecutor:
Ms. Brenda J. Hollis

Counsel for the Accused:
Mr. Courtenay Griffiths, Q.C.
Mr. Terry Munyard
Mr. Morris Anyah
Mr. Silas Chekera
Mr. James Supuwood

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would be arrested.[25] In Monrovia, the Prosecution passed on false intelligence[26] against a potential witness and got him arrested, only to then twist his arm into cooperating.[27] Furthermore, through an unnecessary show of force[28] they ransacked the Accused's residence in Monrovia. In the course of this search, Alan White of the Prosecution also made unnecessary threats to the caretaker and confiscated his personal items.[29] The next day the caretaker narrowly escaped a kidnap attempt by or involving the Prosecution.

18. The [then] Chief Prosecutor, David Crane also made direct verbal threats and intimidated a potential witness. Crane threatened to imprison DCT-102, like Issa Sesay, if he did not cooperate. [30] DCT-102 even has a souvenir from Crane to corroborate his account.[31] The Prosecution also made up a story that DCT-133's life was in danger from persons associated with Charles Taylor simply intimidate him into cooperating at the back of an offer for protective measures.[32]

Offers of Bribes and Other Inducements

19. Based on all of the affidavits and signed statements attached in Annexes B-J , the Defence submits that there are credible reasons to believe that the Prosecution is in contempt for offering and/or providing monetary bribes and/or other inducements, such as relocation, in exchange for cooperation and testimony. With respect to this question, the Defence takes no issue with any payments that were made to prosecution witnesses by the Witness and Victims Section ("WVS") of the Registry;[33] WVS payments apply to both prosecution and defence witnesses. Rather the Defence takes issue with the inducements that were offered and made by the Prosecution's Witness Management Unit ("WMU")[34]

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[25] Confidential Annex F: Affidavit of DCT-102.
[26] The Defence submits that this "intelligence" was based on information gathered from DCT-097, during the time in which DCT-097 was receiving over $40,000 from the Prosecution to, *inter alia,* provide information. See Confidential Annex J and Annex M.
[27] Confidential Annex D: Affidavit of DCT-133.
[28] Confidential Annex E: Affidavit of DCT-086, and copy of search warrant for White Flower.
[29] Confidential Annex E: Affidavit of DCT-086.
[30] Confidential Annex F: Affidavit of DCT-102.
[31] Confidential Annex F: Affidavit of DCT-102 and "Don Ray" calling card.
[32] Confidential Annex D: Affidavit of DCT-133, and copies of plane tickets to Accra, hotel invoices in Accra, pictures of DCT-133's gate and fence with razor wire, calling cards of various Prosecution investigators and a slip of paper with Brenda Hollis' name and phone number.
[33] The Defence assumes these payments were made in accordance with the "Practice Direction on Allowances for Witnesses and Expert Witnesses", issued by the Registrar on 16 July 2004. The Practice Direction properly provides for a wide range of allowances to be paid to witnesses testifying before the Special Court. These include an attendance allowance as compensation for earnings and time lost as a result of testifying, accommodation, meals, transport, medical treatment, childcare and other allowances.
[34] For some insight into the apparent mandate of the WMU, see attached at Annex L a 2007 Vacancy Announcement for the Chief of the Witness Management Unit.

directly to its witnesses, potential witnesses or sources in relation to expenses that squarely fall within the purview of WVS. The Defence submits that these payments, administered through the opaque Witness Management Unit, are contemptuous.

20. While in terms of Rule 39(ii), the Prosecution may "[t]ake all measures deemed necessary for the purpose of the investigation, including the taking of any *special measures* to provide for the safety, the support and assistance of *potential witnesses* and *sources*" [emphasis added] such discretion is limited in at least two ways. Firstly, by the wording of the Rules itself, and secondly by the limitations in the Statute, Rules and Code of Conduct, as considered above. In terms of Rule 39, any payment must be objectively "necessary" and must be for the safety, the support and assistance of potential witnesses and sources.[35]
21. The specific limitation of the remit to *potential witnesses* and *sources* was deliberate as Rule 39 was designed to cover the Prosecution's pre-trial investigative phase whereafter the welfare of the witnesses would be taken over by WVS, which is neutral and independent of the parties. Article 16(4) thus allows the Registrar, through the WVS, to provide "protective measures and security arrangements, counseling and other appropriate assistance for witnesses" and even sources. In terms of Article 2(B) of the Practice Direction,[36] which amplifies the functions of the WVS, the WVS shall "ensure the payment of all allowances". In terms of both provisions, although WVS may act in consultation with the parties, WVS, to the exclusion of both parties, retains sole jurisdiction for the management and payment of witnesses.
22. Even accepting, *arguendo*, that the WMU's and WVS's functions could overlap with respect to witness payments, it would still be impermissible for the Prosecution to, without justification, duplicate or supplement payments made by the WVS.
23. The Defence submits that in making certain payments to witnesses, potential witnesses or sources, the WMU usurped the role of the WVS, which unlike the Prosecution is an independent organ of the court and therefore less susceptible to abusing the process. Further, by continuing to pay witnesses throughout the life of the trial, the Prosecution is undermining any need for an independent witness section. The Defence submits that this conduct by the Prosecution is deliberate and was designed to influence the cooperation, and consequently, the evidence of potential witnesses, witnesses, suspects or sources.

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[35] The latter wording is, it is true, wider than that of the Rules of the ICTY or the ICTR, but it is not as wide as to permit an "unfettered discretion".
[36] Practice Direction on Allowances for Witnesses and Expert Witnesses Testifying in The Hague, 8 June 2007.

24. The Defence further submits that even some of the pre-trial payments to witnesses that were properly within the Prosecution's WMU purview were irregular as they went well beyond the proscribed rationale and were willfully and knowingly designed to interfere with the administration of justice. The exorbitant payments to DCT-097 at the time he was a Prosecution witness, recently disclosed,[37] are a ready example.
25. In Annex N is a list of many smaller but equally improper payments that were made by the Prosecution to witnesses who came and testified before this Court. As the Trial Chamber would observe, these were payments which, according to the witnesses' own evidence, were not justified by the explanations given by the Prosecution.
26. Aside from these, the Prosecution offered or made other payments or inducements to witnesses, potential witnesses or sources in order to elicit their assistance, cooperation or evidence. For instance, the Prosecution approached DCT-032[38] and DCT-133[39] with gifts of money before ever having a substantive conversation with them.
27. The most egregious examples are offers of relocation and/or security protection where none was requested or warranted, or worse yet, where the suggested security threat was actually created by the Prosecution. Abu Keita for instance testified openly before this Chamber at the back of earlier an agreement for relocation.[40] DCT-102 was told he could relocate to America and should open a bank account so the Prosecution could deposit $90,000, as his knowledge of RUF and diamonds was critical to the Prosecution case.[41]
28. Another of the Prosecution's stratagems was inducement by reference. Through this method, the Prosecution would, directly or indirectly try to induce potential witnesses by alluding to benefits or inducements they would have given to other persons known to the targeted witness. DCT-102, for instance, was told by a Prosecution investigator to consider how well off Gibril Massaquoi and Abu Keita were living on Prosecution largess. John Tarnue, listed as a Prosecution witness in this case,[42] called DCT-086 from America and tried to convince him to cooperate. In the case of DCT-032, one Kelvin of the Prosecution alluded to Vamuyan Sheriff's largess (a Prosecution-financed house in Kenema) and even called Sheriff for DCT-032 to confirm. Sheriff tried to persuade DCT-

[37] Confidential Annex J: Signed Statement of DCT-097 and Annex M: Prosecution disclosure of payments made to DCT-097.
[38] Confidential Annex G: Affidavit of DCT-032.
[39] Confidential Annex D: Affidavit of DCT-133.
[40] See Exhibit D-468, recently admitted per CMS 1082, dated 22 September 2010.
[41] Confidential Annex F: Affidavit of DCT-102
[42] Confidential Annex K: Prosecution disbursement records of TF1-139. Furthermore, TF1-139 was listed among the first ten Prosecution witnesses to testify, had the trial begun as scheduled in June 2007.

032 to cooperate with the Prosecution. It is common knowledge amongst RUF ex-combatants that TF1-362 testified and lied before the Special Court and in exchange made approximately $10,000.[43] It is also common knowledge that Foday Lansana and Isaac Mongor both witnesses in this case were released from prison at the behest of the Prosecution, and/or that the Prosecution could have done so.[44] Such displays of power and munificence by the Prosecution poisoned the pool of potential witnesses and further interfered with the administration of justice in that the credibility of such witnesses who came to testify was severely impacted.

IV. Conclusion and Relief Requested

29. The Defence submits that for any one or more of the foregoing reasons, and based on other examples abounding within the attached affidavits, numerous members of the Prosecution are in contempt of court. The instances highlighted above are sufficiently credible indicia of a reason to believe that contempt has occurred, warranting the appointment of an independent investigation. The issue at stake not only affects the integrity of the Prosecution, but the entire judicial process.

30. The Trial Chamber should, pursuant to Rule 77(C)(iii) and subject to the necessary protective measures in place and any other measures the Trial Chamber might deem fit, order an independent investigation into:

    i) The conduct of the Prosecution, including all its employees or agents, since the inception of the Court, in relation to witnesses and potential witnesses in this case, that is in breach of the Statute, Rules and Code of Conduct, including but not limited to the acts indicated in the attached affidavits and signed statements in Annexes B-J;

    ii) All payments and benefits, including ongoing payments and relocations, offered and/or paid by the Prosecution to witnesses, potential witnesses or sources in connection with this case. This investigation should explore the full mandate of the Prosecution's Witness Management Unit, the source of its funding, and all disbursements made by that Unit in relation to this case.

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[43] Confidential Annex F: Affidavit of DCT-102. See also **Testimony of Charles Taylor**, 16 September 2009, at p.29066 to 29077 and **Testimony of John Vincent**, 30 March 2010 at p. 38245 *et seq*.
[44] Confidential Annex F: Affidavit of DCT-102; Confidential Annex H: Affidavit of DCT-023. See also **Testimony of Foday Lansana**.

No.	Date	Purpose of Payment	Amount in US $	Receipt, Voucher, MoneyGram receipts
17.	21.12.2004	<u>INFORMATION</u> Payment made to source DCT-097 for providing information on background, activities and whereabouts of persons believed to be involved in activities which may undermine the security of the sub-region and of the SCSL, that is, on individuals believed to be planning to overthrow and kill the President of Guinea, Lansana Conte, the involvement of Charles Taylor and/or Charles Taylor subordinates. - Payment made via wire transfer - $1430.00 - Wire transfer fee - $70.00	$1500.00	MoneyGram receipt and signed receipt by DCT-097

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Table of Improper Prosecution Payments

TF1-	Transcript Reference	WMU Payment	Impropriety
015	9 Jan 2008, p. 786-9	Money for family welfare	No provision for assistance for family under Rule 39(ii)
406	14 Jan 2008, p. 1123	Money for expenses	Money exceeded legitimate expenses
406[1]	14 Jan 2008, p. 1124	Money for "reactivation of source development"	Witness cannot explain what the money was given for
275	26 Feb 2008, p. 4757-8	Money for meals and drinks and medicine	No interview record disclosed in relation to this meeting with Witness (on 6 Feb 2007) where Witness was given money for food and drink and medicine
275	26 Feb 2008, p. 4758-63	Money for school fees and uniforms for Witness' children	No provision for assistance for family under Rule 39(ii)548
548	13 Feb 2008, p. 3766-2810	Money for "assistance" without any specified purpose	For "assistance" to be legitimate, it must have a clearly stated purpose
362	3 Mar 2008, p. 5148 and 4 Mar 2008, p. 5157-61	Money for children's school fees or "child's care"	No provision for assistance for family under Rule 39(ii)
337	6 Mar 2008, p. 5499-501	Money for lodging and meals	Witness was interviewed for one day but provided lodging for five days
337	10 Mar 2008, p. 5596-8	Money for lost wages	Witness was dealing with a medical emergency, not undergoing interviews with the OTP, so no clear reason for why he was paid for lost wages by the OTP
337	10 Mar 2008, p. 5600	Money for medical assistance for wife	No provision for assistance for family under Rule 39(ii)
399	14 Mar 2008, p. 6138	Money for transportation	Money given ($400) was beyond that necessary to reimburse transportation cost ($130)
532	31 Mar 2008, p. 6264-66	Money for transport and lost wages	Witness did not understand that he was given money for lost earnings
532	1 Apr 2008, p. 6388	Money for lost wages	Money for lost wages paid on a Sunday, and Witness was not clear that he typically worked on a Sunday
532	7 Apr 2008, p. 6706-9	Money provided during "clarification" interviews	A clarification interview would suggest that the Witness is now a witness and not a potential witness and thus WVS, not WMU should be responsible for such expenses
516	11 Apr 2008, p. 7292	Money provided for "taking his time"	No legitimate reason for assistance

[1] The Defence notes that TF1-406 was used both as a Prosecution Witness in this trial and worked for the Prosecution as a source for finding other potential witnesses. See, ex., *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 14 January 2008, p. 1124-5 and p. 1152. Based on WMU payment records, it seems TF1-360 was also used both as a Prosecution witness and as a source. See, *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 7 February 2008, p. 3396-3402.

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THE SPECIAL COURT FOR SIERRA LEONE

Trial Chamber II

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

Registrar: Mr. Herman von Hebel

Date: 24 February 2009

Case No.: SCSL-2003-01-T

SPECIAL COURT FOR SIERRA LEONE
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24 FEB 2009
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THE PROSECUTOR

–v–

CHARLES GHANKAY TAYLOR

PUBLIC

DEFENCE REPLY TO PROSECUTION RESPONSE TO DEFENCE APPLICATION FOR JUDICIAL NOTICE OF ADJUDICATED FACTS FROM THE AFRC TRIAL JUDGEMENT PURSUANT TO RULE 94(B)

Office of the Prosecutor:
Ms. Brenda J. Hollis
Mr. Nicholas Koumjian
Ms. Nina Jorgensen
Mr. Christopher Santora

Counsel for Charles G. Taylor:
Mr. Courtenay Griffiths, Q.C.
Mr. Terry Munyard
Mr. Andrew Cayley
Mr. Morris Anyah

previous trial – some of whom were called to testify again in this trial – objectionable, even if the evidence in this trial is broader or more expansive. The Defence submits that there would be no harm to the Prosecution's case if the previous testimony of its witnesses, as adjudicated in the AFRC Judgement, were given a "presumption of accuracy" in this trial; unless of course, the Prosecution is now advancing a different account.

5. While admittedly, the Prosecution needs to tailor its case against a particular accused person before the court, one of the twin purposes of the doctrine of judicial notice is to create consistency of case law.[4] This and the other twin purpose – judicial economy – need only be balanced against the Accused's right to a fair trial.[5]

6. The Defence observes that none of the decisions cited by the Prosecution to support its argument on trial fairness and prejudice were made in the context of adjudicated facts.[6] Rather, the statements were made in relation to the admission of evidence during the Prosecution's own case, when the imperative that the Prosecution be treated fairly is of greater significance. In this instance, the Prosecution has had every opportunity to present evidence, both documentary and oral, and the admissibility of that evidence has been fairly determined. Thus, it is of no detriment to the Prosecution if the adjudicated facts are now admitted with a rebuttable presumption of accuracy.

7. At all times, the Prosecution must prove its case beyond a reasonable doubt. The standard of proof required to establish guilt beyond a reasonable doubt is obviously higher than the standard of proof required to challenge adjudicated facts that may be given a rebuttable presumption of accuracy.[7] The Prosecution concede that a certain volume of evidence has already been led in respect to the issues contained in the proposed adjudicated facts.[8] This evidence could be used to challenge any rebuttable presumption created. Therefore, the Prosecution is not prejudiced by the admission of these adjudicated facts even though it has essentially closed its case.

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[4] *Prosecutor v. Ntakirutimana*, ICTR-96-10-T and ICTR-96-17-T, Decision on the Prosecutor's Motion for Judicial Notice of Adjudicated Facts, 22 November 2001, para. 28 ("***Ntakirutimana* Decision**")
[5] Ibid.
[6] Response, para. 4.
[7] See Response, para. 12.
[8] Response, para. 13.

8. Furthermore, the admission of adjudicated facts at this stage does not require any mental somersault on the part of the Trial Chamber.[9] While the Prosecution has presented the bulk of its evidence, it is assumed that the Trial Chamber has not yet made a final determination on the accuracy, credibility, or reliability of the Prosecution evidence; the Defence case may impact its assessment in this regard. A presumption of accuracy for adjudicated facts is only one more factor to consider when weighing all the evidence at the conclusion of the case.
9. The Prosecution complains of the Defence "delay" in filing its application for adjudicated facts.[10] However, the Defence reiterates that Rule 94(B) imposes no restrictions as to which stage in the proceedings an adjudicated facts motion should be brought. To the degree that the stage in the proceedings is a discretionary factor against admission and some explanation is warranted, the Defence submits that these adjudicated facts will help form the basis of the Defence case; the Defence case has yet to begin. The Defence had initially hoped to wait and do a joint filing of adjudicated facts from the AFRC and RUF judgements, but as the RUF judgement and appeal filings were pushed further and further back, the Defence decided to go ahead with this application.
10. In regard to the stage of the proceedings, the Prosecution erroneously states that the *Hadzihasanovic* and *Ntakirutimana* cases do not assist the Defence.[11] In fact, in *Hadzihasanovic*, the Trial Chamber partially granted the Defence application and admitted 39 adjudicated facts, despite considering that both the Prosecution and Defence had finished presenting their cases (the rest of the facts were dismissed on other grounds).[12] Additionally, in *Ntakirutimana,* only one of seven proposed adjudicated facts was dismissed on the basis that taking judicial notice of the issue would not assist judicial economy.[13] Furthermore, in generally considering the issue the Trial Chamber decided that they were "not inclined to view judicial notice as significantly influencing judicial economy" because the case itself was short – only 27 trial days for the Prosecution case and one month scheduled for the Defence case.[14]

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[9] Response, para. 13.
[10] Response, para. 10.
[11] Response, para. 11.
[12] *Prosecutor v. Hadzihasanovic and Kubura,* IT-01-47-T, Decision on Judicial Notice of Adjudicated Facts Following the Motion Submitted by Counsel for the Accused Hadzihasanovic and Kubura on 20 January 2005, 14 April 2005.
[13] *Ntakirutimana* Decision, para. 52
[14] Ibid, para. 31.

11. Consequently, because the Prosecution is not prejudiced by the admission of adjudicated facts which would establish a rebuttable presumption of accuracy for findings based on testimony of its own witnesses in another proceeding before this Tribunal, and because the stage of the proceedings would still allow the Prosecution to call rebuttal evidence and/or cross-examine Defence witnesses on these facts, the Trial Chamber should exercise its discretion in favour of the Defence application.

The Prosecution's objections to centrality and relevance have no basis

12. The Prosecution argues both that the proposed adjudicated facts go to issues central to the present case[15] and that some of the proposed adjudicated facts lack relevance.[16] Obviously, the proposed facts cannot be both "central" and "remotely connected" at the same time.
13. In reply to the substance of the objections, the Defence submits that there is no prohibition on the admission of 'central facts' through judicial notice, save that, that is discretionary. With respect to the relevance argument, the Defence submits that all of the facts objected to by the Prosecution are relevant to the relationship between or command structure of the AFRC and/or the RUF (Facts 6, 10, 11 and12), and the supply of arms/ammunition (Fact 9).
14. The relationship between the AFRC and the RUF, and any relationship between either of those organizations and the Accused is certainly central to this case. That is precisely why it makes judicial economy to admit previously adjudicated facts that go to some aspects of this issue, so that it does not have to be addressed to a great extent in the Defence case. In that event, the evidence already led by the Prosecution on this issue[17] could either be used to rebut the presumption of accuracy of the adjudicated facts or to fill in additional and contextual details. Even so, none of the proposed adjudicated facts discuss the relationship between either of the organizations and the accused.
15. To the extent this Defence team stands by the Agreed Facts of the previous Defence team, Agreed Fact 31, which states "[o]n about 6 January 1999, *inter alia*, RUF and AFRC forces attacked Freetown", that does not tie the Defence to any grand conclusion.[18] The admission is simply a factual recognition that there may have been RUF elements that participated in

[15] Response, paras. 7-9.
[16] Response, paras. 17.
[17] Response, paras. 7 and 8.
[18] See Response, para. 7, footnote 15.

the AFRC attack on Freetown.[19] It says nothing about what the RUF may have done as a cohesive organization, or about whether or not the RUF sent reinforcements to Waterloo or the Freetown environs in the days after the 6 January invasion, etc. Thus the proposed adjudicated facts from the AFRC Judgement are not in contradiction with this Agreed Fact.

Reformulations or clarifications in light of Prosecution objections

16. The Prosecution complains that the proposed adjudicated facts as stated mix principal and accessory facts.[20] The Defence disagrees that the mixed nature of these adjudicated facts and the fact that they are written in paragraphs makes them inappropriate for purposes of judicial notice. The facts are sufficiently clear, and the paragraph format allows the principal facts to be understood in context.

17. In relation to Fact 7, which does arguably contain a vague phrase, "the remaining period covered by the indictment", the Defence would not be opposed to amending it to clarify the date of the remaining period of the AFRC Indictment, which was January 2000. However, based on Prosecution objections set out below, the Defence agree to take out the last sentence of Fact 7 completely.

18. The Prosecution further complains that Facts 1, 2, 3, 5, 7, and 8 are formulated in a way that is misleading and tenditious.[21] The Defence disagrees that the proposed adjudicated facts are purposefully misleading or tenditious, but in light of the Prosecution's objections would amend some of the facts as follows, if the Trial Chamber deems it necessary.

   a. Fact 1 – Amend to include the final line of paragraph 169 of the AFRC Judgement, which states: "On 18 June 1997, the RUF issued an official apology to the nation for its crimes and went on to praise Johnny Paul Koroma's government."

   b. Fact 2 – Do not amend. Of course, there is evidence on record to show that the AFRC and RUF cooperated, but to what degree and on what basis, the Defence intend to challenge in its Defence case. It is a fact, however, that the AFRC and RUF relations deteriorated over time, and the specifics contained in Fact 2 are evidence of this split.

   c. Fact 3 – Amend to include the word "closely". There is no need to include the phrase "the available evidence suggests", as of course the fact is based on the evidence before

[19] See also, eg., cross-examination of TF1-371.
[20] Response, para. 16 (specifically referencing Facts 1, 5, 6, and 8).
[21] Response, para. 18 and Annex A.

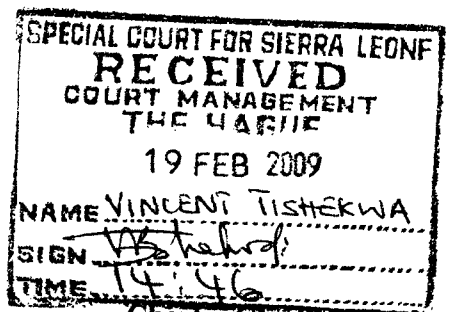
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SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR
Freetown – Sierra Leone

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

Registrar: Mr. Herman von Hebel

Date filed: 19 February 2009



THE PROSECUTOR **Against** **Charles Ghankay Taylor**

Case No. SCSL-03-01-T

PUBLIC WITH ANNEX A

PROSECUTION RESPONSE TO DEFENCE APPLICATION FOR JUDICIAL NOTICE OF ADJUDICATED FACTS FROM THE AFRC TRIAL JUDGEMENT PURSUANT TO RULE 94(B)

Office of the Prosecutor:
Ms. Brenda J. Hollis
Mr. Nicholas Koumjian
Ms. Nina Jørgensen
Mr. Christopher Santora

Counsel for the Accused:
Mr. Courtenay Griffiths
Mr. Terry Munyard
Mr. Andrew Cayley
Mr. Morris Anyah

joinder was allowed only for Accused within the AFRC and those within the RUF[13], the Prosecution properly focused primarily on the particular Accused in each of the two cases. The current trial brings the focus back to the relationship of the AFRC and RUF to the crimes committed in the course of the same transaction, the Accused's relationship to both groups, the concerted action of the AFRC, RUF and the Accused in connection to those crimes, and the participation of the AFRC, RUF and the Accused in a common plan, purpose or design.

6. The facts before the Trial Chamber in this case reflect that broader focus, and it is those facts which should be controlling. The Defence will have the opportunity to present evidence, to be considered in the same way the Prosecution evidence is considered. No interest of justice would be achieved by giving the proposed evidence of the Defence a presumption of accuracy and the Trial Chamber should base its findings on the evidence before it in the current case.

The proposed adjudicated facts go to issues central to the present case

7. Judicial notice of the proposed adjudicated facts would be inappropriate because, to the extent that they are relevant, they relate to central issues in this case,[14] namely the relationship between the AFRC and RUF, including the involvement of the AFRC and RUF in the operation/s culminating in the attack on Freetown in January 1999, and the relationship between the Accused and members of this alliance.[15] This Trial Chamber has heard extensive testimony on these issues, including the coordinated offensive of RUF and AFRC forces in late 1998 that led to the invading forces entering Freetown in January 1999[16]; provision of arms and ammunition from various sources to these invading

[13] *Prosecutor v. Sesay et al*, SCSL-2003-05-PT-096, "Decision and Order on Prosecution Motions for Joinder", 27 January 2004.
[14] *Sesay* Adjudicated Facts Decision, para. 21.
[15] These central issues are apparently in dispute, despite the following Agreed Facts from which this Defence team has never withdrawn:

30. Shortly after the AFRC seized power, the RUF joined with the AFRC in governing Sierra Leone.
31. On about 6 January 1999, inter alia, RUF and AFRC forces attacked Freetown.

Prosecutor v Taylor, SCSL-03-01-PT-227, "Joint Filing by the Prosecution & Defence Admitted Facts & Law", 26 April 2007.
[16] See e.g. Isaac Mongor.

forces[17]; the relationship and communications between Sam Bockarie and Alex Tamba Brima following the death of SAJ Musa, including that Brima was subordinate to and taking orders from Bockarie[18]; Bockarie's orders to burn and commit other crimes[19]; communications by RUF radio operators to radio operators in Freetown warning the forces in Freetown about ECOMOG jet raids; the presence of RUF and Liberian fighters sent by Charles Taylor among the invading forces[20]; the arrival and attacks in the peninsula of forces under Boston Flomo (aka RUF Rambo) and Dennis Mingo in an attempt to relieve or reinforce the forces within the city[21]; the willing engagement by Flomo's fighter's against the ECOMOG contingent at Jui in order to provide troop support to fighters in Freetown; the successful provision of a contingent of fighters under "Rambo Red Goat" to forces within Freetown[22]; the role of these and other commanders in organizing a fighting withdrawal from Freetown after the initial force was driven out of the State House area by ECOMOG and the eventual regrouping of forces at Waterloo and subsequent attempt to re-attack Freetown[23]. While some of these were not central issues in the AFRC trial, they are all clearly central to the charges against the Accused.[24]

8. Several other examples further illustrate the central issues to which the requested facts relate. *Fact 3*, concerning the command structure within and between the RUF and AFRC during the Junta, relates to a key issue and the evidence, including that of the radio operators, is more detailed in this case.[25] *Fact 7* also deals with this relationship, in particular in regard to Johnny Paul Koroma and the RUF leadership. The more detailed evidence in this case comes from a variety of perspectives and paints a more complete and nuanced picture. For example, in contrast to the requested fact that when Johnny Paul Koroma arrived in Kailahun "he encountered a hostile RUF leadership", the evidence in this case is that Johnny Paul Koroma encountered a welcoming RUF leadership and that

[17] See e.g. Alice Pyne.
[18] See e.g. Dauda Fornie.
[19] See e.g. Alice Pyne.
[20] See e.g. AB Sesay.
[21] See e.g. P149 which states that fighters arrived in Waterloo "Displaced and Refugee Camp" on January 6; see also Alice Pyne who testified to fighters under Superman arriving at Yam's Farm on January 8, 1999.
[22] See e.g. Perry Kamara and A.B. Sesay.
[23] See e.g. A.B. Sesay.
[24] This evidence relating to the central issues in this case negates the propriety of taking judicial notice of any of the adjudicated facts, in particular Facts 1, 8, 9, 12, 13, 14 and 15.
[25] See e.g. Perry Kamara and Foday Lansana.

THE SPECIAL COURT FOR SIERRA LEONE

In Trial Chamber II

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

Registrar: Mr. Herman von Hebel

Date: 9 February 2009

Case No.: SCSL-2003-01-T

SPECIAL COURT FOR SIERRA LEONE
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THE PROSECUTOR

–v–

CHARLES GHANKAY TAYLOR

PUBLIC

DEFENCE APPLICATION FOR JUDICIAL NOTICE OF ADJUDICATED FACTS FROM THE AFRC TRIAL JUDGEMENT PURSUANT TO RULE 94(B)

Office of the Prosecutor:
Ms. Brenda J. Hollis

Counsel for Charles G. Taylor:
Mr. Courtenay Griffiths, Q.C.
Mr. Terry Munyard
Mr. Andrew Cayley
Mr. Morris Anyah

significantly from the way the fact was expressed when adjudicated in the previous proceedings, it must not have been abstracted from the context of the original judgement in an unclear or misleading manner, and it must not be unclear or misleading in the context in which it is placed in the Application.[8]

III. Submissions

The Facts Promote Fairness and Judicial Economy

8. The Special Court is an *ad hoc* court of limited temporal and geographic jurisdiction, and the cases before the Special Court necessarily overlap in terms of their factual background. As such, the Trial Chamber could promote fairness and judicial economy if it were to accept the proposed facts in Annex A and consequently narrow the factual issues that are in dispute.[9] The Defence does not wish to delay proceedings by bringing witnesses to testify to facts that have already been tested and adjudicated and thus do not need to be re-litigated.[10]

9. Rule 94(B) does not specify at which stage in the proceedings an application for judicial notice must be brought. Instead, if testimony has already been heard on a particular proposed fact, the Chamber should determine if taking judicial notice will advance the objective of expediency without compromising the rights of the accused. In this instance, the rights of the accused will be upheld by ensuring that the trial is not unnecessarily long.

10. The Prosecution would not be disadvantaged if this Chamber decided to judicially note these adjudicated facts. The Prosecution may have already led evidence to challenge the rebuttable presumption that would be established if the Trial Chamber judicially notes these facts. Alternatively, the Prosecution could in the future, arguably move this Chamber to call witnesses to challenge any rebuttable presumption that would be created. (In this regard, it

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[8] Sesay Adjudicated Facts Decision, para. 19.
[9] *Prosecutor v. Dusko Sikirica, Damir Dosen, Dragan Kolundzijc,* IT-95-8, Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, 27 September 2000 ("**Sikirica Adjudicated Facts Decision**").
[10] See *Prosecutor v. Dragomir Milosevic,* IT-98-29/1-T, Trial Chamber Decision on Prosecution's Motion for Judicial Notice of adjudicated facts and Prosecution's catalogue of agreed facts with Dissenting Opinion of Judge Harhoff, 10 April 2007 ("**Dragomir Milosevic Adjudicated Facts Decision**"), para. 28; *Prosecutor v. Željko Mejakić*, IT-02-65-PT, Decision on Prosecution Motion for Judicial Notice Pursuant to Rule 94(B), 1 April 2004, p. 5; *Prosecutor v. Momčilo Krajišnik,* IT-00-39-T, Decision on Third and Fourth Prosecution Motion for Judicial Notice of Adjudicated Facts, 24 March 2005, para. 12; *Prosecutor v. Ntakirutimana et al.,* ICTR-96-10-T & ICTR-96-17-T, Decision on the Prosecutor's Motion for Judicial Notice of Adjudicated Facts, 22 September 2001, para. 28; Sikirica Adjudicated Facts Decision, p. 4.

is noteworthy that a Trial Chamber of the ICTR took judicial notice of certain facts even after the Defence had presented most of its evidence.)[11]

The Facts are Distinct, Concrete and Identifiable

11. The Defence submits that the proposed facts in the Annex are distinct, concrete, and identifiable. The facts do not contain ambiguities or vague references.

The Facts are Relevant to Issues in the Current Case

12. Rule 94 is not a mechanism that may be employed to circumvent the ordinary requirement of relevance and thereby "clutter" the record with matters that would not otherwise be admitted.[12] All of the fifteen adjudicated facts are relevant to the relationship between the leaders of the AFRC and RUF and/or the command structure of the two. Specifically, the facts relate to the relationship between the AFRC and RUF as it pertains to the Freetown invasion in January 1999. As the case against Mr. Taylor is dependent on the actions of members of the AFRC and/or RUF, the relationship between the two is obviously a relevant issue.

The Facts are Not Legal Characterisations or Conclusions

13. Factual findings may have legal aspects to them; therefore, each proposed adjudicated fact must be considered individually to determine whether it contains findings or characterisations which are essentially legal in nature.[13] The Defence submits that the relevant facts in the Annex are not of a legal character as they deal solely with the factual analysis of the relationship between the AFRC and the RUF and the fact that the RUF did not come into Freetown as a cohesive organization between about 21 December 1998 and 28 February 1999.

The Facts are Not Taken Out of Context and Were Not Altered on Appeal

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[11] *Prosecutor v. Bizimungu et al*, ICTR-99-50-T, Decision on Prosecutor's Motion for Judicial Notice, 22 September 2006, para. 10.
[12] *Prosecutor v. Semanza*, ICTR-97-20-A, Judgement, 20 May 2005, para. 189.
[13] Sesay Adjudicated Facts Decision, para. 26; Dragomir Milosevic Adjudicated Facts Decision, para 22.

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SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR
Freetown – Sierra Leone

Before: Hon. Justice Julia Sebutinde, Presiding
Hon. Justice Richard Lussick
Hon. Justice Teresa Doherty

Acting Registrar: Mr. Herman von Hebel

Date filed: 26 April 2007

SPECIAL COURT FOR SIERRA LEONE
RECEIVED
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NAME Adepa Nsiima K.
SIGN Nsiima K.
TIME 11:10

THE PROSECUTOR **Against** **Charles Taylor**

Case No. SCSL-03-01-PT

PUBLIC
JOINT FILING BY THE PROSECUTION & DEFENCE
ADMITTED FACTS & LAW

Office of the Prosecutor:
Ms. Brenda J. Hollis
Ms. Wendy van Tongeren
Ms. Leigh Lawrie

Defense Counsel
Mr. Karim A. A. Khan
Mr. Roger Sahota

Attack on Freetown & Western Area 1998/1999

31. On about 6 January 1999, *inter alia*, RUF and AFRC forces attacked Freetown.

Lomé Peace Treaty July 1999

32. On 7 July 1999, the Government of Sierra Leone signed a peace agreement with the RUF in Lomé, Togo (*Lomé Peace Agreement*).[8]

Post- Lomé Peace Agreement

33. Under the Security Council's authorization set out in S/RES/1270 (1999), UNAMSIL was charged, *inter alia*, with overseeing the disarmament and demobilisation of combatants from all armed factions throughout Sierra Leone.

34. Some time after the *Lomé Peace Agreement* and SANKOH'S arrest and detention, ISSA SESAY was appointed as the Interim Leader of the RUF.

35. On about 18 January 2002, PRESIDENT KABBAH, announced an end to hostilities.

UNAMSIL Abductions

36. In May 2000, RUF abducted UNAMSIL peacekeepers in Sierra Leone.

[8] Fact judicially noticed in *Prosecutor v. Brima, Kamara, Kanu,* SCSL-04-10-T, "Decision on the Prosecution Motion for Judicial Notice and Admission of Evidence", 25 October 2005.

D. Other

D.

1. Legal Commentaries and *Amicus* Briefs

The Burgh House Principles On The Independence Of The International Judiciary

The Study Group of the International Law Association on the Practice and Procedure of International Courts and Tribunals, in association with the Project on International Courts and Tribunals:

Recognising the need for guidelines of general application to contribute to the independence and impartiality of the international judiciary, with a view to ensuring the legitimacy and effectiveness of the international judicial process;

Having regard to the United Nations Basic Principles on the Independence of the Judiciary (1985) and other international rules and standards relating to judicial independence and the right to a fair trial;

Mindful of the special challenges facing the international judiciary in view of the non-national context in which they operate;

Noting in particular that each court or tribunal has its own characteristics and functions and that in certain instances judges serve on a part-time basis or as *ad hoc* or *ad litem* judges;

Considering the following principles of international law to be of general application:

- to ensure the independence of the judiciary, judges must enjoy independence from the parties to cases before them, their own states of nationality or residence, the host countries in which they serve, and the international organisations under the auspices of which the court or tribunal is established;
- judges must be free from undue influence from any source;
- judges shall decide cases impartially, on the basis of the facts of the case and the applicable law;
- judges shall avoid any conflict of interest, as well as being placed in a situation which might reasonably be perceived as giving rise to any conflict of interests;
- judges shall refrain from impropriety in their judicial and related activities;

Proposes the following Principles which shall apply primarily to standing international courts and tribunals (hereafter "courts") and to full-time judges. The Principles should also be applied as appropriate to judges *ad hoc*, judges *ad litem* and part-time judges, to international arbitral proceedings and to other exercises of international judicial power.

1. Independence and freedom from interference

1.1 The court and the judges shall exercise their functions free from direct or indirect interference or influence by any person or entity.

1.2 Where a court is established as an organ or under the auspices of an international organisation, the court and judges shall exercise their judicial functions free from interference from other organs or authorities of that organisation. This freedom shall apply both to the judicial process in pending cases, including the assignment of cases to particular judges, and to the operation of the court and its registry.

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1.3 The court shall be free to determine the conditions for its internal administration, including staff recruitment policy, information systems and allocation of budgetary expenditure.

1.4 Deliberations of the court shall remain confidential.

2. Nomination, election and appointment

2.1 In accordance with the governing instruments, judges shall be chosen from among persons of high moral character, integrity and conscientiousness who possess the appropriate professional qualifications, competence and experience required for the court concerned.

2.2 While procedures for nomination, election and appointment should consider fair representation of different geographic regions and the principal legal systems, as appropriate, as well as of female and male judges, appropriate personal and professional qualifications must be the overriding consideration in the nomination, election and appointment of judges.

2.3 Procedures for the nomination, election and appointment of judges should be transparent and provide appropriate safeguards against nominations, elections and appointments motivated by improper considerations.

2.4 Information regarding the nomination, election and appointment process and information about candidates for judicial office should be made public, in due time and in an effective manner, by the international organisation or other body responsible for the nomination, election and appointment process.

2.5 Where the governing instruments of the court concerned permits the re-election of judges, the principles and criteria set out above for the nomination, election and appointment of judges shall apply *mutatis mutandis* to their re-election.

3. Security of tenure

3.1 Judges shall have security of tenure in relation to their term of office. They may only be removed from office upon specified grounds and in accordance with appropriate procedures specified in advance.

3.2 The governing instruments of each court should provide for judges to be appointed for a minimum term to enable them to exercise their judicial functions in an independent manner.

4. Service and remuneration

4.1 Judges' essential conditions of service shall be enumerated in legally binding instruments.

4.2 No adverse changes shall be introduced with regard to judges' remuneration and other essential conditions of service during their terms of office.

4.3 Judges should receive adequate remuneration which should be periodically adjusted in line with any increases in the cost of living at the seat of the court.

4.4 Conditions of service should include adequate pension arrangements.

5. Privileges and immunities

5.1 Judges shall enjoy immunities equivalent to full diplomatic immunities, and in particular shall enjoy immunities from all claims arising from the exercise of their judicial function.

5.2 The court alone shall be competent to waive the immunity of judges; it should waive immunity in any case where, in its opinion, the immunity would impede the course of justice and can be waived without prejudice to the exercise of the judicial function.

5.3 Documents and papers of the court, judges and registry, in so far as they relate to the business of the court, shall be inviolable.

5.4 The state in which an international court has its seat shall take the necessary measures to protect the security of the judges and their families, and to protect them from adverse measures related to the exercise of their judicial function.

6. Budget

States parties and international organisations shall provide adequate resources, including facilities and levels of staffing, to enable courts and the judges to perform their functions effectively.

7. Freedom of expression and association

7.1 Judges shall enjoy freedom of expression and association while in office. These freedoms must be exercised in a manner that is compatible with the judicial function and that may not affect or reasonably appear to affect judicial independence or impartiality.

7.2 Judges shall maintain the confidentiality of deliberations, and shall not comment extrajudicially upon pending cases.

7.3 Judges shall exercise appropriate restraint in commenting extrajudicially upon judgments and procedures of their own and other courts and upon any legislation, drafts, proposals or subject-matter likely to come before their court.

8. Extra-judicial activity

8.1 Judges shall not engage in any extra-judicial activity that is incompatible with their judicial function or the efficient and timely functioning of the court of which they are members, or that may affect or may reasonably appear to affect their independence or impartiality.

8.2 Judges shall not exercise any political function.

8.3 Each court should establish an appropriate mechanism to give guidance to judges in relation to extra-judicial activities, and to ensure that appropriate means exist for parties to proceedings to raise any concerns.

9. Past links to a case

9.1 Judges shall not serve in a case in which they have previously served as agent, counsel, adviser, advocate, expert or in any other capacity for one of the parties, or as a member of a

national or international court or other dispute settlement body which has considered the subject matter of the dispute.

9.2 Judges shall not serve in a case with the subject-matter of which they have had any other form of association that may affect or may reasonably appear to affect their independence or impartiality.

10. Past links to a party

Judges shall not sit in any case involving a party for whom they have served as agent, counsel, adviser, advocate or expert within the previous three years or such other period as the court may establish within its rules; or with whom they have had any other significant professional or personal link within the previous three years or such other period as the court may establish within its rules.

11. Interest in the outcome of a case

11.1 Judges shall not sit in any case in the outcome of which they hold any material personal, professional or financial interest.

11.2 Judges shall not sit in any case in the outcome of which other persons or entities closely related to them hold a material personal, professional or financial interest.

11.3 Judges must not accept any undisclosed payment from a party to the proceedings or any payment whatsoever on account of the judge's participation in the proceedings.

12. Contacts with a party

12.1 Judges shall exercise appropriate caution in their personal contacts with parties, agents, counsel, advocates, advisers and other persons and entities associated with a pending case. Any such contacts should be conducted in a manner that is compatible with their judicial function and that may not affect or reasonably appear to affect their independence and impartiality.

12.2 Judges shall discourage *ex parte* communications from parties, and except as provided by the rules of the court such communications shall be disclosed to the court and the other party.

13. Post-service limitations

13.1 Judges shall not seek or accept, while they are in office, any future employment, appointment or benefit, from a party to a case on which they sat or from any entity related to such a party, that may affect or may reasonably appear to affect their independence or impartiality.

13.2 Former judges shall not, except as permitted by rules of the court, act in any capacity in relation to any case on which they sat while serving on the court.

13.3 Former judges shall not act as agent, counsel, adviser or advocate in any proceedings before the court on which they previously served for a period of three years after they have left office or such other period as the court may establish and publish.

13.4 Former judges should exercise appropriate caution as regards the acceptance of any employment, appointment or benefit, in particular from a party to a case on which they sat or from any entity related to such a party

14. Disclosure

14.1 Judges shall disclose to the court and, as appropriate, to the parties to the proceedings any circumstances which come to their notice at any time by virtue of which any of Principles 7 to 13 apply.

14.2 Each court shall establish appropriate procedures to enable judges to disclose to the court and, as appropriate, to the parties to the proceedings matters that may affect or may reasonably appear to affect their independence or impartiality in relation to any particular case.

15. Waiver

Notwithstanding Principles 7 to 13, judges shall not be prevented from sitting in a case where they have made appropriate disclosure of any facts bringing any of those Principles into operation, and where the court expresses no objections and the parties give their express and informed consent to the judge acting.

16. Withdrawal or disqualification

Each court shall establish rules of procedure to enable the determination whether judges are prevented from sitting in a particular case as a result of the application of these Principles or for reasons of incapacity. Such procedures shall be available to a judge, the court, or any party to the proceedings.

17. Misconduct

17.1 Each court shall establish rules of procedure to address a specific complaint of misconduct or breach of duty on the part of a judge that may affect independence or impartiality.

17.2 Such a complaint may, if clearly unfounded, be resolved on a summary basis. In any case where the court determines that fuller investigation is required, the rules shall establish adequate safeguards to protect the judges' rights and interests and to ensure appropriate confidentiality of the proceedings.

17.3 The governing instruments of the court shall provide for appropriate measures, including the removal from office of a judge.

17.4 The outcome of any complaint shall be communicated to the complainant.

International Law Association Study Group
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[1] The Burgh House Principles are issued on the authority of the Co-Chairs and members of the Study Group. They reflect the discussions that took place in the Study Group as a whole, and have been the subject of extensive review, consultation and comment. The members participated in the Study Group in their personal capacity. Additionally, the Study Group has benefited from input from advisers, also acting in their personal capacity. The content of the Principles should not be attributed to any individual member of the Study Group or be taken as representing the view of any institution to which anyone associated with the Study Group's work may be affiliated.

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DOCUMENTS ON THE LAWS OF WAR

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but rather a basis for national legislation. None the less, the provisions of both the 1874 Brussels Declaration and the 1880 Oxford Manual formed the basis of the 1899 and 1907 Hague Conventions on land war and their annexed Regulations.

The immediate precursor of 1907 Hague Convention IV was 1899 Hague Convention II Respecting the Laws and Customs of War on Land. This had been adopted at the First Hague Peace Conference and had entered into force on 4 September 1900. The 1899 Convention was of particular importance in the development of the laws of war in that it represented the first successful effort of the international community to codify a relatively comprehensive regime governing the laws of land warfare. The provisions of 1907 Hague Convention IV represent a slight revision of those embodied in 1899 Hague Convention II. Most articles of the Regulations annexed to the Conventions are identical, and only a few contain substantial changes. The texts of both conventions are usefully juxtaposed in columns in J. B. Scott (ed.), *The Hague Conventions and Declarations of 1899 and 1907* (which contains the US official translations used here), and also in A. Pearce Higgins, *The Hague Peace Conferences* (which contains the British official translations).

Two points should be noted about the applicability of 1907 Hague Convention IV. (1) It was intended to replace 1899 Hague Convention II as between states parties to both agreements. However, of the forty-six states which had become parties to the 1899 Convention, eighteen did not become parties to the 1907 Convention (Argentina, Bulgaria, Chile, Colombia, Ecuador, Greece, Honduras, Italy, Korea, Montenegro, Paraguay, Persia, Peru, Serbia, Spain, Turkey, Uruguay, Venezuela). They or their successor states (e.g. Yugoslavia) remained formally bound by the 1899 Convention. (2) The application of each convention was made more complex by the inclusion of a 'general participation clause' (Article 2). However, to the extent that aspects of the Conventions are considered customary international law, those aspects are binding on all states. The International Military Tribunal at Nuremberg in 1946, and a report of the UN Secretary-General to the Security Council in May 1993 concerning the establishment of the International Criminal Tribunal for the former Yugoslavia, expressly recognized 1907 Hague Convention IV as declaratory of customary international law.

While representing a relatively comprehensive agreement on the law of land warfare, 1907 Hague Convention IV (like 1899 Hague Convention II) was not regarded as a complete code of the applicable law. What has come to be known as the Martens Clause, appearing in the Convention's Preamble, declares that cases not included in the Regulations annexed to the Convention remain governed by customary international law relating to the conduct of warfare.

The provisions of 1907 Hague Convention IV and annexed Regulations have been complemented and supplemented in certain subsequent agreements, including 1949 Geneva Convention III (see Article 135), 1949 Geneva Convention IV (see Article 154), 1977 Geneva Protocol I, and the 1980 Convention on certain conventional weapons.

The statutes of the international criminal tribunals for Yugoslavia and Rwanda, and the Rome Statute of the International Criminal Court (not yet in force), all contain definitions of war crimes which echo the language of 1907 Hague Convention IV and annexed Regulations.

Date of signature:	18 October 1907
Entry into force:	26 January 1910
Depositary:	Netherlands
Authentic language:	French

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The International Court of Justice, in its 1996 Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons (paragraphs 88 and 89), referred to the continuing applicability of the principle of neutrality, subject to the relevant provisions of the UN Charter.

Date of signature:	18 October 1907
Entry into force:	26 January 1910
Depositary:	Netherlands
Authentic language:	French
Text reprinted from:	J. B. Scott (ed.), *The Hague Conventions and Declarations of 1899 and 1907*, Oxford University Press, New York, 3rd edn., 1918, pp. 135–40. (English translation by US Department of State, with minor corrections by J. B. Scott.)
Also published in:	3 *Martens NRG. 3ème sér.* (1862–1910) 504–22 (Fr. Ger.); 100 *BFSP* (1906–1907) 359–64 (Fr.); 2 *AJIL* (1908) Supplement 117–27 (Eng. Fr.); 205 *CTS* (1907) 299–304 (Fr.)

Convention (V) Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land

His Majesty the German Emperor, King of Prussia; [etc.]:

With a view to laying down more clearly the rights and duties of neutral Powers in case of war on land and regulating the position of the belligerents who have taken refuge in neutral territory;

Being likewise desirous of defining the meaning of the term 'neutral', pending the possibility of settling, in its entirety, the position of neutral individuals in their relations with the belligerents;

Have resolved to conclude a Convention to this effect, and have, in consequence, appointed the following as their plenipotentiaries:

[Here follow the names of the plenipotentiaries.]

Who, after having deposited their full powers, found in good and due form, have agreed upon the following provisions:

CHAPTER I — *The Rights and Duties of Neutral Powers*

Article 1

The territory of neutral Powers is inviolable.

Article 2

Belligerents are forbidden to move troops or convoys of either munitions of war or supplies across the territory of a neutral Power.

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CHAPTER II — *Belligerents Interned and Wounded Tended in Neutral Territory*

Article 11

A neutral Power which receives on its territory troops belonging to the belligerent armies shall intern them, as far as possible, at a distance from the theatre of war.

It may keep them in camps and even confine them in fortresses or in places set apart for this purpose.

It shall decide whether officers can be left at liberty on giving their parole not to leave the neutral territory without permission.

Article 12

In the absence of a special convention to the contrary, the neutral Power shall supply the interned with the food, clothing, and relief required by humanity.

At the conclusion of peace the expenses caused by the internment shall be made good.

Article 13

A neutral Power which receives escaped prisoners of war shall leave them at liberty. If it allows them to remain in its territory it may assign them a place of residence.

The same rule applies to prisoners of war brought by troops taking refuge in the territory of a neutral Power.

Article 14

A neutral Power may authorize the passage over its territory of the sick and wounded belonging to the belligerent armies, on condition that the trains bringing them shall carry neither personnel nor war material. In such a case, the neutral Power is bound to take whatever measures of safety and control are necessary for the purpose.

The sick or wounded brought under these conditions into neutral territory by one of the belligerents, and belonging to the hostile party, must be guarded by the neutral Power so as to ensure their not taking part again in the military operations. The same duty shall devolve on the neutral State with regard to wounded or sick of the other army who may be committed to its care.

Article 15

The Geneva Convention applies to sick and wounded interned in neutral territory.

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Commentary

on the Additional Protocols

of 8 June 1977

to the Geneva Conventions
of 12 August 1949

International Committee of the Red Cross

Paragraph 2

1938 The first sentence gives substance to the principle of general immunity formulated in the preceding paragraph by explicitly prohibiting attacks directed against the civilian population as such, as well as against individual civilians. By using the words "directed" and "as such" it emphasizes that the population must never be used as a target or as a tactical objective.

1939 It should be noted that "attacks" are defined in Article 49 (*Definition of attacks and scope of application*), paragraph 1.

1940 In the second sentence the Conference wished to indicate that the prohibition covers acts intended to spread terror; there is no doubt that acts of violence related to a state of war almost always give rise to some degree of terror among the population and sometimes also among the armed forces. It also happens that attacks on armed forces are purposely conducted brutally in order to intimidate the enemy soldiers and persuade them to surrender. This is not the sort of terror envisaged here.[12] This provision is intended to prohibit acts of violence the primary purpose of which is to spread terror among the civilian population without offering substantial military advantage. It is interesting to note that threats of such acts are also prohibited. This calls to mind some of the proclamations made in the past threatening the annihilation of civilian populations.

1941 Finally, it is worthy of note that Article 85 (*Repression of breaches of this Protocol*), paragraph 3(*a*), defines the act of making the civilian population or individual civilians the object of attack as a grave breach, when it results in death or serious injury to body or health.

Paragraph 3

1942 The immunity afforded individual civilians is subject to an overriding condition, namely, on their abstaining from all hostile acts. Hostile acts should be understood to be acts which by their nature and purpose are intended to cause actual harm to the personnel and equipment of the armed forces. Thus a civilian who takes part in armed combat, either individually or as part of a group, thereby becomes a legitimate target, though only for as long as he takes part in hostilities. If the civilian is captured while he is committing hostile acts, the rules governing his fate are laid down in Article 45 (*Protection of persons who have taken part in hostilities*).

1943 During the course of the discussions several delegations indicated that the expression "hostilities" used in this article included preparations for combat and the return from combat.[13] Similar problems arose in Article 44 (*Combatants and prisoners of war*) with regard to the expression "military deployment preceding the launching of an attack". It seems that the word "hostilities" covers not only the time that the civilian actually makes use of a weapon, but also, for example,

[12] *O.R.* XV, p. 274, CDDH/215/Rev.1, para. 51.
[13] *Ibid.*, p. 330, CDDH/III/224.

the time that he is carrying it, as well as situations in which he undertakes hostile acts without using a weapon. If a civilian is captured or arrested in such circumstances, he may have recourse to paragraph 1 of Article 45 (*Protection of persons who have taken part in hostilities*) and claim prisoner-of-war status; he must be treated as such pending determination of his status by a competent tribunal.

1944 What is the exact meaning of the term "*direct*" in the expression "take a direct part in hostilities" ? A similar expression is already used in paragraph 2 of Article 43 (*Armed forces*). In general the immunity afforded civilians is subject to a very stringent condition: that they do not participate directly in hostilities, i.e., that they do not become combatants, on pain of losing their protection. Thus "direct" participation means acts of war which by their nature or purpose are likely to cause actual harm to the personnel and equipment of the enemy armed forces. It is only during such participation that a civilian loses his immunity and becomes a legitimate target. Once he ceases to participate, the civilian regains his right to the protection under this Section, i.e., against the effects of hostilities, and he may no longer be attacked. However, there is nothing to prevent the authorities, capturing him in the act or arresting him at a later stage, from taking repressive or punitive security measures with regard to him in accordance with the provisions of Article 45 (*Protection of persons who have taken part in hostilities*) or on the basis of the provisions of the Fourth Convention (assigned residence, internment etc.) if his civilian status is recognized. Further it may be noted that members of the armed forces feigning civilian non-combatant status are guilty of perfidy under Article 37 (*Prohibition of perfidy*), paragraph 1(*c*).

1945 There should be a clear distinction between direct participation in hostilities and participation in the war effort. The latter is often required from the population as a whole to various degrees. Without such a distinction the efforts made to reaffirm and develop international humanitarian law could become meaningless. In fact, in modern conflicts, many activities of the nation contribute to the conduct of hostilities, directly or indirectly; even the morale of the population plays a role in this context.

Paragraph 4

1946 This provision is very important; it confirms the unlawful character of certain regrettable practices during the Second World War and subsequent armed conflicts. Far too often the purpose of attacks was to destroy all life in a particular area or to raze a town to the ground without this resulting, in most cases, in any substantial military advantages.

1947 On this subject the general rule was formulated in Article 48 (*Basic rule*): belligerents may direct their operations only against military objectives. The first specification is added in paragraph 2 of the present Article 51: attacks against the civilian population as such and against individual civilians are prohibited.

1948 Up to now the matter is fairly clear in theory, but it is less so in practice. In fact, civilians may be inside or in the immediate proximity of military objectives, whether these consist of persons or objects; moreover, purely civilian objects may in combat conditions become military objectives, thereby endangering the

No. 10-1491

In The Supreme Court of the United States

ESTHER KIOBEL, individually and on behalf of her late husband, DR. BARINEM KIOBEL, et al.,

Petitioners,

v.

ROYAL DUTCH PETROLEUM CO., et al.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

SUPPLEMENTAL BRIEF OF AMBASSADOR DAVID J. SCHEFFER, NORTHWESTERN UNIVERSITY SCHOOL OF LAW, AS *AMICUS CURIAE* IN SUPPORT OF THE PETITIONERS

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June 13, 2012

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origins and consistently and explicitly applied in their judgments for almost two decades.

As the lead U.S. negotiator for the war crimes tribunals, I worked under the daily assumption that customary international law dictated the agenda. In contrast, the negotiations for the Rome Statute of the International Criminal Court were conducted as a complex mixture of customary legal principles and heavily negotiated compromises unique to the Rome Statute. Aiding and abetting liability fell into the latter category.

Customary international law applies the knowledge standard for aiding and abetting as a mode of participation. This standard has been confirmed repeatedly by the war crimes tribunals. Indeed, within recent months, the knowledge standard has been upheld by the Trial Chamber of the Special Court for Sierra Leone in its judgment against former Liberian President Charles Taylor, *Prosecutor v. Taylor*, Case No. SCSL-03-01-T, Judgement, ¶¶ 486-87 (May 18, 2012), and by the Trial Chamber of the Extraordinary Chambers in the Courts of Cambodia (the "Cambodia Tribunal") in its final judgment, affirmed by the Supreme Court Chamber (Appeals Chamber), against Kaing Guek Eav (*alias* Duch), the former warden of Tuol Sleng Prison in Phnom Penh during the Pol Pot regime. Case No. 001/18-07-2007/ECCC/TC, Judgment, ¶ 535 (Extraordinary Chambers in the Courts of Cambodia July 26, 2010), *aff'd*, 001/18-07-2007-ECCC/SC (Feb. 3, 2012).

No. 09-1262

APR 30 2010

IN THE

Supreme Court of the United States

PRESBYTERIAN CHURCH OF SUDAN, ET AL.,

Petitioners,

v.

TALISMAN ENERGY, INC.,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

BRIEF OF *AMICI CURIAE* INTERNATIONAL LAW SCHOLARS WILLIAM ACEVES, PHILIP ALSTON, M. CHERIF BASSIOUNI, DOUGLASS CASSEL, ROGER S. CLARK, DAVID M. CRANE, JOHN DUGARD, RICHARD GOLDSTONE, VED NANDA, SHERI ROSENBERG, LEILA NADYA SADAT, PATRICIA VISEUR SELLERS, DINAH SHELTON, BETH STEPHENS, BETH VAN SCHAACK, AND DAVID WEISSBRODT IN SUPPORT OF PETITIONERS

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id. at 622, the NMT held that the act of loan-making was insufficient to impose criminal liability under international law.[6] Like "one who sells supplies or raw materials to a builder building a house," a bank, in making a loan, "does not become a partner in enterprise." *Id.* Thus, Rasche's acquittal resulted from inadequate evidence to establish the *actus reus*, not a *mens rea* of purpose.[7]

---

[6] The NMT held:

> Loans or sale of commodities to be used in an unlawful enterprise may well be condemned from a moral standpoint and reflect no credit on the part of the lender or seller in either case, *but the transaction can hardly be said to be a crime.* Our duty is to try and punish those guilty of violating international law, and *we are not prepared to state that such loans constitute a violation of that law*, nor has our attention been drawn to any ruling to the contrary.

Ministries at 622 (emphasis added). *See also id.* at 784, 854 (twice reiterating that Rasche's *loan-making* did not constitute criminal conduct).

[7] After concluding that Rasche had knowledge of the loans' use, the Tribunal stated that the "[t]he real question is, is it a crime to make a loan, knowing or having good reason to believe that the borrower will us[e] the funds in financing enterprises which are employed in using labor in violation of either national or international law?" *Ministries* at 622. The question is conjunctive, containing both an *actus reus* component (making a loan) and a *mens rea* component (with knowledge that the loan will be used to finance an illicit purpose). Because the Tribunal ultimately acquitted Rasche on this count (answering the conjunctive question in the negative), the Second Circuit concluded that a *mens rea* of knowledge was insufficient. It should be apparent, however, that this is not a necessary conclusion, as the acquittal was based on an insufficient *actus reus*.

determinative in an analysis of the proper *mens rea* standard for aiding and abetting liability.

B. The Rome Statute's *mens rea* for aiding and abetting liability remains ambiguous and could reasonably be interpreted by the ICC to reflect a knowledge standard consistent with customary international law

The *mens rea* standard for aiding and abetting liability in the Rome Statute has "yet to be construed by the [ICC]," so "[the Statute's] precise contours and the extent to which it may differ from customary international law thus remain somewhat uncertain." *Khulumani*, 504 F.3d at 275-76 (Katzmann, J., concurring). The court below implicitly relied on Article 25(3)(c) to determine that the Rome Statute requires a purpose standard, yet the meaning of this article remains ambiguous. The Statute never defines "purpose" and the legislative history provides no guidance to interpret this provision.[11] The drafters

[11] The Rome Statute certainly does not require specific intent for aiding and abetting liability. Where the Statute requires specific intent, it is explicitly enumerated as an element of the offense. *See, e.g.*, art. 6 ("with intent to destroy"); *see also* Donald K. Piragoff and Darryl Robinson, *Article 30: Mental Element, in Commentary on the Rome Statute of the International Criminal Court: Observers' Notes, Article by Article* 857-58 (Otto Triffterer ed., 2008). Nevertheless, some courts have relied on the Statute and the Second Circuit's decision to impose a specific intent requirement for aiding and abetting allegations in ATS cases. *See, e.g., Doe v. Drummond Co., Inc.*, No. 08-01041-cv, slip op. at

(Continued on following page)

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Otto Triffterer

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-- Observers' Notes, Article by Article --

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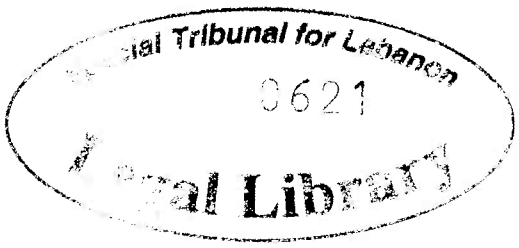
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II. Paragraphs 2 and 3[14]

7 It is impossible to discuss one of these paragraphs separately from the other. They are distinct, but only to the extent of the *nuance* which flows from the power of assignment given to the Presidency by article 35 para. 3 (c).

By virtue of the latter provision, some of the judges may be assigned to full-time duty at the seat of the Court whilst the others remain available on call: hence the distinction between paragraphs 2 and 3 of article 40.

8 Paragraph 2 applies to all judges of the Court irrespective of their full- or part-time mandate. This paragraph embodies the basic principles governing their independence. It is in this paragraph that judicial independence, at the level of the international criminal court, is properly rooted. But the statement is made in a somewhat reverse way: what the judges should *not* do, of which activities they should *not* partake, so that their independence be held beyond doubt.

That is a matter which must be individually decided, when the occasion arises; and the circumstances may be infinite, as human affairs go. A classic example, however, oftentimes arises and each time leads to animated discussions; here is how it was settled in the Preparatory Committee[15].

> "The view was expressed that judges should not engage in any activities that would prejudice their judicial functions. In this connection, activities such as part-time teaching and writing for publication were considered compatible with such functions".

Unlike paragraph 3 of this article, paragraph 2 does not prohibit all occupations of a professional nature. This means that judges who have not yet been required to serve on a full-time basis remain free to continue to exercise other professional occupations, unless the occupation of itself would "interfere with their judicial functions". Thus, for instance, for a period following their elections to the Court, certain judges continued for a period to remain, and to perform the duties of, a judge of the ICTY and ICTR.

9 After having enshrined the principle for all judges in paragraph 2 of article 40, the Statute goes on to deal, in paragraph 3, with those judges – whose number is left to the discretion of the Presidency – who are called upon "to serve on a full-time basis at the seat of the Court". Their obligation is put at a higher level than that of their colleagues who, though members of the same Court, are not serving full-time and are given some freedom in the use of their time away from the Court. Paragraph 3 of article 40 forbids full-time judges to "engage in any other occupation of a professional nature".

10 "Any other" broadly encompasses the whole field under consideration, *i.e.* "occupations of a professional nature". The pivotal word is "professional". In the context of the ICC, what does "professional" mean?

Of course, it might refer to any profession as the term is generally understood in the Western world. In that case, the provision would appear to prohibit a full-time judge to carry concurrently the activities of an engineer, or a medical doctor, or an agronomist, to give only three illustrations which already show how the suggested construction offends sheer logic. So understood, the prohibition goes without saying and does not need an explicit provision to impress it upon the judges.

Then the word "professional" might be construed in a somewhat more pointed fashion, referring specifically to the legal profession. This approach is not devoid of internal logic: the Statute is dealing exclusively with a legal institution and is interested in the well-being of that institution and of its composing members. A full-time judge should not therefore, at the same time as he is bound and expected to devote his complete energies to his judicial duties, be allowed to practice law for his own account, be it by giving opinions to private clients, or acting

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[14] See also the provisions of the Code of Judicial Ethics (ICC-BD/02-01-05), adopted by the Judges of the Court on 9 Mar 2005 pursuant to Regulation 126.

[15] 1996 Preparatory Committee I, p. 13.

THE STATUTE OF THE INTERNATIONAL COURT OF JUSTICE

A COMMENTARY

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The Statute of the International Court of Justice

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In its Res. 50/216 of 23 December 1995, the General Assembly confined itself, in general terms, to '[taking] note of the report of the Secretary-General'[81] and to requesting him 'to address the issues raised by the [ACABQ] concerning the conditions of service of members of the International Court',[82] with a view to discussing them again at the fifty-third session of the General Assembly.

In its Annual Report to the Assembly for the period 1 August 1995 to 31 July 1996, the Court stated: 27

> In its report of 12 December 1995 (A/50/7/Add.11), the Advisory Committee on Administrative and Budgetary Questions raised questions about the practice of the Court in permitting its members to engage in occasional activities outside of the Court that may be remunerated: acting as arbitrators in inter-State and private international arbitrations, serving in administrative tribunals or quasi-judicial organs of specialized agencies, lecturing, writing. That occasional practice goes back to the origins of the Permanent Court of International Justice. Not only is it in conformity with the Statute of the Court; the repeated endorsement by the international organs and by the States that have appointed members of the Court as arbitrators shows their awareness of the contribution that the members of the Court may, by this function, make to the development of international law, and of the benefits deriving therefrom for all institutions concerned. The practice, which involves a very limited number of judges for very limited periods, has no adverse effect on the pace of the work of the Court or the total precedence given to that work by its members. The Court has recently considered the questions respecting that practice which the Advisory Committee has raised, and has adopted new guidelines governing the matter.[83]

Those guidelines confirm the great importance of consultation with the President whenever a judge is asked from time to time to engage in an outside activity and they underscore the *de facto* consequences of the very heavy workload now borne by the Court.[84]

The following comments should be made on the Court's Memorandum on incompatibilities. In respect of occasional participation by judges in other forms of pacific settlement of disputes, it will first be recalled that the Court is no ordinary judicial institution, but the principal judicial organ of the United Nations[85] and, as such, an important part of the peacekeeping machinery established by the Charter. Thus, there is nothing unusual in the Court contributing, by various means including some not specified in its Statute, to the achievement of this vital goal of the United Nations,[86] provided of course that, in so doing, it does not overstep the bounds laid down by the Statute.[87] It is a fact that there have always been very few individuals capable of settling an international dispute by arbitration. That is why—and each case must be looked at on its own—members of the Court took part in most of the major inter-State arbitrations in the latter half of the twentieth century: *Beagle Channel* (Argentina/Chile) (Award of 18 February 1977),[88] the *Anglo-French Continental Shelf case* (Awards of 30 June 1977 and 14 March 1978),[89] *Delimitation of the Maritime Boundary between Guinea and Guinea* 28

[81] GA Res. 50/216, UN GAOR, 50th Sess., Suppl. 49, pp. 300, 301, Point IV, 1.
[82] *Ibid.*, Point IV, 3. [83] UN GAOR, 51st Sess., Suppl. 4, p. 199.
[84] *Cf.* the text of those guidelines in Guillaume, pp. 475, 480. [85] *Cf.* Art. 92 UN Charter.
[86] *Cf.* in particular the wording adopted for Art. 1, para. 1, of the Charter: '[t]o maintain international peace and security, and to that end: . . . to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace'. [87] *Cf.* Gowlland-Debbas on Art. 1 MN 1, 20 *et seq.*
[88] *ILM* 17 (1978), pp. 632 *et seq.*
[89] *Arbitration between the United Kingdom of Great Britain and Northern Ireland and the French Republic on the Delimitation of the Continental Shelf*, *ILM* 18 (1979), pp. 397 *et seq.*

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Bissau (Award of 14 February 1985),[90] *Delimitation of the Maritime Boundary between Guinea Bissau and Senegal* (Award of 31 July 1989),[91] *Eritrea/Yemen—Question of Territorial Sovereignty over a Group of Islands in the Red Sea* (Awards of 9 October 1998 and 17 December 1999),[92] and *1976 Convention on the Protection of the Rhine against Pollution by Chlorides* (Netherlands/France).[93] This participation has indubitably bestowed particular authority on these arbitration proceedings and the settlement of the disputes was thereby facilitated; moreover, the prestige of the Court itself has undoubtedly been better served by these arbitrations than it would have been by a policy of flat refusal.[94]

The same considerations apply *mutatis mutandis* to participation by members of the Court in international conciliation commissions or commissions of inquiry,[95] provided that the occasional exercise of these duties is in no way political.

29 Members of the Court have in the past also sat on transnational arbitral tribunals, in arbitration proceedings conducted under the auspices of the International Olympic Committee, on *ad hoc* tribunals within the system of the United Nations and affiliated organisations (World Bank Administrative Tribunal and International Monetary Fund Administrative Tribunal) and even, for limited periods, on the European Court of Human Rights and the European Commission of Human Rights at a time when those organs operated on a part-time basis and the ICJ was much less busy. Finally, the Court has in the past also allowed its members to play a quasi-judicial role by participating in the work of certain ILO organs, such as the Committee of Experts on the Application of Conventions and Recommendations, and the Committee on Freedom of Association. While the concurrent exercise of these various functions has always been held compatible *de jure* with the function of member of the Court (as well as with the function of member of other national and international tribunals, incidentally), it is now much more often incompatible *de facto*, given the greater workload of the Court.

30 In respect of scholarly activities, it has also been traditionally seen as eminently desirable for members of the Court to participate, when time permits, in the work of learned societies and to give lectures on the Court and other subjects of international legal interest in various parts of the world, while, of course, exercising the requisite caution.[96] These activities promote an understanding of the functions of the Court and of its work and may contribute to expanding its role.

31 Finally, it should be pointed out, to the extent that there is any need to do so, that the prohibition applicable to political and administrative functions in the broad sense (including, since the revision of the PCIJ Statute in 1929, parliamentary and judicial

[90] *ILM* 25 (1986), pp. 252 *et seq.*
[91] *RGDIP* 94 (1990), pp. 204 *et seq.*
[92] *ILM* 40 (2001), pp. 900 *et seq.*
[93] *Cf.* http://www.pca-cpa.org.
[94] That was already the case with, *inter alia*, the awards rendered by President Huber in the *British Property in Spanish Morocco cases* of 1925, RIAA I, pp. 615 *et seq.*, and in the *Island of Palmas case* of 1928, RIAA I, pp. 829 *et seq.* *Cf.* the list of arbitrations in which members of the PCIJ took part in Rosenne, *Law and Practice*, vol. I, pp. 413–414, fn. 95. It is in the same spirit that judges have always been allowed to be members of the PCA; it was also believed that judges were particularly well placed to determine the requisite qualifications for candidates for seats on the Court.
[95] This is the basis on which judges have been allowed to agree to nomination by their governments for inclusion on the list of fact-finding experts which the UN Secretary-General was asked to establish by the General Assembly in its Res. 2329 (XXII), UN GAOR, 22nd Sess., Suppl. 16, p. 84.
[96] *Cf.* also Aznar Gómez on Art. 2 MN 15.

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functions and permanent academic duties) concerns only the *exercise* of those functions, which would place the individual in a position of direct or indirect dependency *vis-à-vis* a government. A member of the Court is thus entitled to retain vested rights acquired in the course of national public service (different forms of 'leave' exist for this purpose). Likewise, while judges must refrain from participating in any way actively or directly in national political life (including by publicly expressing political opinions), it has always been clear that they are entitled to exercise their rights as citizens in their home countries (in particular, to vote and even, subject to the foregoing, to hold membership of a political party).

As was observed above,[97] Art. 16 of the Statute has not applied to judges *ad hoc* ever 32
since the revision of the Statute of the PCIJ. The 1929 Committee of Jurists concluded that judges *ad hoc* could not be barred from engaging in political or administrative activities or other professional occupations; the Committee did, however, establish an exception for those specific times when judges *ad hoc* were performing their duties.

It might be thought that *de facto* incompatibilities exist whenevet judges *ad hoc* must be at the disposal of the Court. *De jure*, the practice varies. It has happened that judges *ad hoc* were at the same time ambassadors or legal advisers of their countries and, in some cases, they held the exercise of those duties in abeyance. Moreover, it is increasingly frequent for judges *ad hoc*, before accepting new duties, to consult the Court, and if those duties bear any relationship to the case in which they are sitting, to refuse them.

Finally, it will be noted that disagreement has on occasion arisen as to the meaning of 33
Art. 16, para. 2: does the doubt referred to therein have to be raised by the judge in question or can it be expressed by any member of the Court? As evidenced by the practice, it is usually the judge in question who initially expresses any doubts he may have to the President. The President generally informs the Court of any question of incompatibility raised by a judge; he consults the Court whenever he deems necessary; where the President and the judge disagree, the question is submitted to the Court for decision. Naturally, once the Court is made aware of that question, doubts may be expressed by other members and may require a decision on its part.

C. Evaluation

All in all, except during the first years of the PCIJ—when the basic characteristics of its 34
functions were being gradually defined—the general regime of incompatibilities applicable to members of the Court has remained remarkably consistent. The nuances imposed by each specific context apart, it appears that since 1929 only two types of outside activities have in general been considered compatible *in law* with the function of judge: occasional contributions to the peaceful resolution of disputes by other legal means (arbitration in particular) and intermittent academic activities (specifically, participating in the work of learned societies, lecturing and producing written works promoting the activity of the Court or the development of international law).

These activities are compatible *in fact* with status as a member of the Court only to the extent that they do not interfere in any way with the Court's work, that in all cases they

[97] *Cf. supra*, MN 13.

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D.

2. UN Documents

Requests the Secretary-General to provide such assistance as the Committee may require for its work.

Fifty-fifth plenary meeting,
11 December 1946.

* * *

At the same plenary meeting, the General Assembly, on the recommendation of the President, appointed the following States to serve on the Committee:

Argentina, Australia, Brazil, China, Colombia, Egypt, France, India, Netherlands, Panama, Poland, Sweden, Union of Soviet Socialist Republics, United Kingdom, United States of America, Venezuela, Yugoslavia.

95 (I). Affirmation of the Principles of International Law recognized by the Charter of the Nürnberg Tribunal

The General Assembly,

Recognizes the obligation laid upon it by Article 13, paragraph 1, sub-paragraph a, of the Charter, to initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification;

Takes note of the Agreement for the establishment of an International Military Tribunal for the prosecution and punishment of the major war criminals of the European Axis signed in London on 8 August 1945, and of the Charter annexed thereto, and of the fact that similar principles have been adopted in the Charter of the International Military Tribunal for the trial of the major war criminals in the Far East, proclaimed at Tokyo on 19 January 1946;

Therefore,

Affirms the principles of international law recognized by the Charter of the Nürnberg Tribunal and the judgment of the Tribunal;

Directs the Committee on the codification of international law established by the resolution of the General Assembly of 11 December 1946,[1] to treat as a matter of primary importance plans for the formulation, in the context of a general codification of offences against the peace and security of mankind, or of an International Criminal Code, of the principles recognized in the Charter of the Nürnberg Tribunal and in the judgment of the Tribunal.

Invite le Secrétaire général à fournir à la Commission toute l'aide dont elle pourrait avoir besoin pour l'accomplissement de ses travaux.

Cinquante-cinquième séance plénière,
le 11 décembre 1946.

* * *

A la même séance plénière, l'Assemblée générale, sur la recommandation de son Président, décida de nommer membres de cette Commission les Etats suivants:

Argentine, Australie, Brésil, Chine, Colombie, Egypte, France, Inde, Pays-Bas, Panama, Pologne, Suède, Union des Républiques socialistes soviétiques, Royaume-Uni, Etats-Unis d'Amérique, Venezuela, Yougoslavie.

95 (I). Confirmation des principes de droit international reconnus par le statut de la Cour de Nuremberg

L'Assemblée générale,

Reconnaît l'obligation qui lui incombe aux termes de l'Article 13, paragraphe 1, alinéa a, de la Charte, de provoquer des études et de faire des recommandations en vue d'encourager le développement progressif et la codification du droit international;

Prend acte de l'Accord relatif à la création d'une Cour militaire internationale chargée de poursuivre et de châtier les grands criminels de guerre de l'Axe européen, Accord signé à Londres le 8 août 1945, ainsi que du statut joint en annexe; prend acte également du fait que des principes analogues ont été adoptés dans le statut de la Cour militaire internationale chargée de juger les grands criminels de guerre en Extrême-Orient, statut promulgué à Tokyo, le 19 janvier 1946;

En conséquence,

Confirme les principes de droit international reconnus par le statut de la Cour de Nuremberg, et par l'arrêt de cette Cour;

Invite la Commission chargée de la codification du droit international, créée par la résolution de l'Assemblée générale en date du 11 décembre 1946,[2] à considérer comme une question d'importance capitale les projets visant à formuler, dans le cadre d'une codification générale des crimes commis contre la paix et la sécurité de l'humanité ou dans le cadre d'un Code de droit criminel international, les principes reconnus dans le statut de la Cour de Nuremberg et dans l'arrêt de cette Cour.

The Working Group on Arbitrary Detention - Members

Mr. Malick Sow (Senegal) appointed 2008



Mr. Malick Sow (Chair-Rapporteur), has experience as a judge in Senegal for more than 30 years and is currently a judge of the Supreme Court of Senegal. He is also President of the National Commission on trafficking of persons in particular women and children in Senegal. He was the coordinator of the Senegalese Committee of Human Rights (the national human rights institution of Senegal) and chaired the Francophone Association of National Human Rights Commissions as its President between 2002 and 2007. Mr. Sow is also a member of the Follow-up Committee on the Implementation of the Robben Island Guidelines. He joined the Working Group on 1 May 2008.

Ms. Shaheen Ali (Pakistan) appointed 2008.



Ms. Shaheen Ali (Vice-Chair), who became a member of the Working Group on 1 August 2008, is Professor of law at the University of Warwick in the United Kingdom and Professor II at the University of Oslo, Norway. Former responsibilities of Ms. Ali in Pakistan include Professor of law at the University of Peshawar, whose Women's Study Centre she headed as Director; Cabinet Minister in the North West Frontier Province; Chair of the National Commission on the Status of Women in Pakistan; Member of the Prime Minister's National Consultative Committee for Women; and Member of the Senate Committee on the Status of Women. She has received a number of awards including the Asian Women of Achievement Award 2005 (Public Sector) of the United Kingdom in May 2005, and the British Muslims Annual Honours achievement plaque in the House of Lords in May 2002. Ms. Ali has published extensively in the area of Islamic law, human rights, women and children's rights.

Mr. Vladimir Tochilovsky (Ukraine) appointed in 2010.



Mr. Vladimir Tochilovsky, was appointed as the newest member of the Working Group on Arbitrary Detention on 1 May 2010. He is a former professor at Mechnikov National University in Odessa, Ukraine and has authored over 30 professional publications on various subjects including human rights. His latest publication is titled "Jurisprudence of the International Criminal Courts and the European Court of Human Rights: Procedure and Evidence." Mr Tochilovsky was an advisor for the Preparatory Committee for the International Criminal Court and was an attorney for the International Criminal Tribunal for the former Yugoslavia. His main area of interest is in human rights and criminal justice with a particular focus on persons deprived of their liberty.

Mr. Roberto Garretón (Chile) appointed in 2008.



Mr. Roberto Garretón, is a Chilean lawyer and has been a human rights defender since the dictatorship of General Pinochet. He was the Ambassador of the first government after the dictatorship with the international organizations of human rights (UN, OAS) (1990-1994). Mr. Garreton was a founding member of the Working Group on Arbitrary Detention (1991-2000). His past experiences

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Mr. Mads Andenas (Norway) appointed in 2009.



Mr. Mads Andenas is a Professor of Law at the University of Oslo and has senior academic appointments in the United Kingdom that include being Director of the British Institute of International and Comparative Law and Director of the Centre of European Law at King's College in London. He is a Fellow of the Institute of European and Comparative Law, University of Oxford and at the Institute of Advanced Legal Studies, School of Advanced Studies, University of London. He was also a visiting Professor in various universities including University of Paris I (Sorbonne) and the University of Rome La Sapienza. He became a member of the Working Group on Arbitrary Detention on 1 August 2009.

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Country Visits - Working Group on Arbitrary Detention

Visits to countries (also called field-missions) constitute an opportunity for the Working Group, through a direct dialogue with the Government concerned and representatives of civil society, to understand better the situation prevailing in that country, as well as the underlying reasons for instances of arbitrary deprivation of liberty or best practices preventing arbitrary detention from occurring. Discussions conducted during such visits with the representatives of the executive, judicial and legislative branches of government and other officials concerned, as well as with detainees, enable the Working Group members to enhance their understanding of the evolution, state application and implementation of national legislation from the perspective of international human rights norms, taking into account the social, political and historical context of each country. Such visits take place on the basis of an invitation from the Government concerned. The Working Group submits a report of the visit to the Human Rights Council, presenting its findings, conclusions and recommendations.

Country visit	Document symbol
Mission to Georgia 15 to 24 June 2011	A/HRC/19/57/Add.2
WGAD Report to Germany 26 September to 5 October 2011	A/HRC/19/57/Add.3
Mission to Armenia (6 to 15 September 2010)	A/HRC/16/47/Add.3
Mission to Malaysia (7 to 17 June 2010)	A/HRC/16/47/Add.2
Mission to Senegal (5 to 15 September 2009)	A/HRC/13/30/Add.3
Mission to Malta ((19 to 23 January 2009)	A/HRC/13/30/Add.2
Mission to Italy (3 to 14 November 2008)	A/HRC/10/21/Add.5
Mission to Ukraine (22 October to 5 November 2008)	A/HRC/10/21/Add.4
Mission to Colombia (1 to 10 October 2008)	A/HRC/10/21/Add.3
Mission to Mauritania (19 February to 3 March 2008)	A/HRC/10/21/Add.2
Angola (17 to 27 September 2007)	A/HRC/7/4/Add.4
Equatorial Guinea (8 to 13 July 2007)	A/HRC/7/4/Add.3
Norway (22 April to 2 May 2007)	A/HRC/7/4/Add.2
Turkey (9 to 20 October 2006)	A/HRC/4/40/Add.5
Honduras (23 to 31 May 2006)	A/HRC/4/40/Add.4
Nicaragua (15 to 23 May 2006)	A/HRC/4/40/Add.3
Ecuador (12 to 22 February 2006)	A/HRC/4/40/Add.2
South Africa (September 2005)	E/CN.4/2006/7/Add.3
Canada (June 2005)	E/CN.4/2006/7/Add.2
China (People's Republic of) (September 2004). Follow-up visit	E/CN.4/2005/6/Add.4
Belarus (August 2004)	E/CN.4/2005/6/Add.3
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Argentina (September 2003)	E/CN.4/2004/3/Add.3

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Follow-up visit to Bhutan (April 1996)	E/CN.4/1997/4/Add.3
China (preparatory mission July 1996)	E/CN.4/1997/4 (paras.23-35)
Nepal (April 1996)	E/CN.4/1997/4/Add.2
Vietnam (October 1994)	E/CN.4/1995/31/Add.4
Bhutan (October 1994)	E/CN.4/1995/31/Add.3

Visits undertaken in 2011

Georgia: 15 to 24 June 2011
Germany: 26 September to 5 October 2011

Requests for Visits

Algeria
Argentina (follow-up visit)
Egypt
Ethiopia
Guinea-Bissau
India
Japan
Morocco
Nauru
Nicaragua (follow-up visit to Bluefields)
Papua New Guinea
Russian Federation
Saudi Arabia
Sierra Leone
Thailand
Turkmenistan
Uzbekistan

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Country Visits - Working Group on Arbitrary Detention

Visits to countries (also called field-missions) constitute an opportunity for the Working Group, through a direct dialogue with the Government concerned and representatives of civil society, to understand better the situation prevailing in that country, as well as the underlying reasons for instances of arbitrary deprivation of liberty or best practices preventing arbitrary detention from occurring. Discussions conducted during such visits with the representatives of the executive, judicial and legislative branches of government and other officials concerned, as well as with detainees, enable the Working Group members to enhance their understanding of the evolution, state application and implementation of national legislation from the perspective of international human rights norms, taking into account the social, political and historical context of each country. Such visits take place on the basis of an invitation from the Government concerned. The Working Group submits a report of the visit to the Human Rights Council, presenting its findings, conclusions and recommendations.

Country visit	Document symbol
Mission to Georgia 15 to 24 June 2011	A/HRC/19/57/Add.2
WGAD Report to Germany 26 September to 5 October 2011	A/HRC/19/57/Add.3
Mission to Armenia (6 to 15 September 2010)	A/HRC/16/47/Add.3
Mission to Malaysia (7 to 17 June 2010)	A/HRC/16/47/Add.2
Mission to Senegal (5 to 15 September 2009)	A/HRC/13/30/Add.3
Mission to Malta ((19 to 23 January 2009)	A/HRC/13/30/Add.2
Mission to Italy (3 to 14 November 2008)	A/HRC/10/21/Add.5
Mission to Ukraine (22 October to 5 November 2008)	A/HRC/10/21/Add.4
Mission to Colombia (1 to 10 October 2008)	A/HRC/10/21/Add.3
Mission to Mauritania (19 February to 3 March 2008)	A/HRC/10/21/Add.2
Angola (17 to 27 September 2007)	A/HRC/7/4/Add.4
Equatorial Guinea (8 to 13 July 2007)	A/HRC/7/4/Add.3
Norway (22 April to 2 May 2007)	A/HRC/7/4/Add.2
Turkey (9 to 20 October 2006)	A/HRC/4/40/Add.5
Honduras (23 to 31 May 2006)	A/HRC/4/40/Add.4
Nicaragua (15 to 23 May 2006)	A/HRC/4/40/Add.3
Ecuador (12 to 22 February 2006)	A/HRC/4/40/Add.2
South Africa (September 2005)	E/CN.4/2006/7/Add.3
Canada (June 2005)	E/CN.4/2006/7/Add.2
China (People's Republic of) (September 2004). Follow-up visit	E/CN.4/2005/6/Add.4
Belarus (August 2004)	E/CN.4/2005/6/Add.3
Latvia (February 2004)	E/CN.4/2005/6/Add.2
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Database of the Working Group on Arbitrary Detention

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Mexico (November 2002)	E/CN.4/2003/8/Add.3
Australia (June 2002)	E/CN.4/2003/8/Add.2
Bahrain (October 2001)	E/CN.4/2002/77/Add.2
Indonesia (February 1999)	E/CN.4/2000/4/Add.2
Romania (October 1998)	E/CN.4/1999/63/Add.4
United Kingdom (September 1988)	E/CN.4/1999/63/Add.3
Peru (February 1998)	E/CN.4/1999/63/Add.2
China (October 1997)	E/CN.4/1998/44/Add.2
Follow-up visit to Bhutan (April 1996)	E/CN.4/1997/4/Add.3
China (preparatory mission July 1996)	E/CN.4/1997/4 (paras.23-35)
Nepal (April 1996)	E/CN.4/1997/4/Add.2
Vietnam (October 1994)	E/CN.4/1995/31/Add.4
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A/51/4

United Nations

Report of the International Court of Justice

1 August 1995 - 31 July 1996

General Assembly

Official Records · Fifty-first Session
Supplement No. 4 (A/51/4)

2112

Institute for Training and Research (UNITAR) in celebration of the fiftieth anniversary of the Court in April 1996. The theme chosen by the Court for its Colloquium evidenced its appreciation of the position: "Increasing the Effectiveness of the International Court of Justice". The Colloquium was attended by the Legal Advisers of the Foreign Ministries of some 45 States, by leading counsel in the Court and by scholars, as well as all judges of the Court and the Registrar and his colleagues.

197. The Court's internal procedures, devised when the Court had few cases on its List, currently are the subject of reconsideration by the Court's Rules Committee. While on the one hand they ensure scrupulous consideration of the plenitude of issues raised by a case by every Member of the Court and enable every Member to influence the content and drafting of the Court's decisions - great advantages in a court of universal composition and mission - on the other hand they take a great deal of time. The Rules Committee is reconsidering their utility in the light of these competing considerations.

198. In 1996, the Court has taken steps to avoid gaps in its work occasioned by the settlement of cases, by forward planning of oral hearings. Hearings are scheduled in Oil Platforms (Islamic Republic of Iran v. United States of America) for September 1996, and in the case concerning the Gabčíkovo-Nagymaros Project (Hungary/Slovakia) for February 1997. It is to be hoped that, with the practice of forward planning in place, States parties will be in a position in future to accelerate their appearance in Court at the Court's request when an earlier scheduled set of hearings is cancelled by reason of settlement of the prior case.

199. In its report of 12 December 1995 (A/50/7/Add.11), the Advisory Committee on Administrative and Budgetary Questions raised questions about the practice of the Court in permitting its Members to engage in occasional activities outside of the Court that may be remunerated: acting as arbitrators in inter-State and private international arbitrations, serving in administrative tribunals or quasi-judicial organs of specialized agencies, lecturing, writing. That occasional practice goes back to the origins of the Permanent Court of International Justice. Not only is it in conformity with the Statute of the Court; the repeated endorsement by the international organs and by the States that have appointed Members of the Court as arbitrators shows their awareness of the contribution that the Members of the Court may, by this function, make to the development of international law, and of the benefits deriving therefrom for all institutions concerned. The practice, which involves a very limited number of judges for very limited periods, has no adverse effect on the pace of the work of the Court or the total precedence given to that work by its Members. The Court has recently considered the questions respecting that practice which the Advisory Committee has raised, and has adopted new guidelines governing the matter.

UNITED NATIONS

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Security Council

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S/25704
3 May 1993

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REPORT OF THE SECRETARY-GENERAL PURSUANT TO PARAGRAPH 2 OF SECURITY COUNCIL RESOLUTION 808 (1993)

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II. COMPETENCE OF THE INTERNATIONAL TRIBUNAL

31. The competence of the International Tribunal derives from the mandate set out in paragraph 1 of resolution 808 (1993). This part of the report will examine and make proposals regarding these fundamental elements of its competence: ratione materiae (subject-matter jurisdiction), ratione personae (personal jurisdiction), ratione loci (territorial jurisdiction) and ratione temporis (temporal jurisdiction), as well as the question of the concurrent jurisdiction of the International Tribunal and national courts.

32. The statute should begin with a general article on the competence of the International Tribunal which would read as follows:

Article 1

Competence of the International Tribunal

> The International Tribunal shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991 in accordance with the provisions of the present Statute.

A. Competence ratione materiae (subject-matter jurisdiction)

33. According to paragraph 1 of resolution 808 (1993), the international tribunal shall prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991. This body of law exists in the form of both conventional law and customary law. While there is international customary law which is not laid down in conventions, some of the major conventional humanitarian law has become part of customary international law.

34. In the view of the Secretary-General, the application of the principle nullum crimen sine lege requires that the international tribunal should apply rules of international humanitarian law which are beyond any doubt part of customary law so that the problem of adherence of some but not all States to specific conventions does not arise. This would appear to be particularly important in the context of an international tribunal prosecuting persons responsible for serious violations of international humanitarian law.

35. The part of conventional international humanitarian law which has beyond doubt become part of international customary law is the law applicable in armed conflict as embodied in: the Geneva Conventions of 12 August 1949 for the Protection of War Victims; 3/ the Hague Convention (IV) Respecting the Laws and Customs of War on Land and the Regulations annexed thereto of 18 October 1907; 4/ the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948; 5/ and the Charter of the International Military Tribunal of 8 August 1945. 6/

36. Suggestions have been made that the international tribunal should apply domestic law in so far as it incorporates customary international humanitarian

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Fiftieth session
FIFTH COMMITTEE
Agenda item 116

PROPOSED PROGRAMME BUDGET FOR THE BIENNIUM 1996-1997

Conditions of service and compensation for officials other than Secretariat officials

Members of the International Court of Justice

Report of the Secretary-General

I. INTRODUCTION

1. The General Assembly, in paragraph 6 of resolution 48/252 A of 26 May 1994, decided that the emoluments and other conditions of service for the members of the International Court of Justice (ICJ) should next be reviewed at its fiftieth session in the light of the recommendations contained in the report of the Secretary-General (A/C.5/48/66). It further decided that the periodicity of review should be determined at the fiftieth session (ibid., para. 7).

2. In order to facilitate consideration of the various issues regarding the compensation and conditions of service of members of the Court, the present report is divided into the following sections: remuneration, including adjustment for currency fluctuation and cost of living; other conditions of service; pensions; analysis of the practice of the Court with respect to Article 16, paragraph 1, of the Statute of ICJ; financial implications; and the next comprehensive review.

II. REMUNERATION

3. Article 32 of the Statute of ICJ provides, inter alia, that each member of the Court shall receive an annual salary (para. 1), that these salaries and allowances "shall be fixed by the General Assembly" and that "they may not be decreased during the term of office" (para. 5).

the practice of the Court with respect to Article 16 of the Statute of ICJ. That Article provides as follows:

> "1. No member of the Court may exercise any political or administrative function, or engage in any other occupation of a professional nature.
>
> "2. Any doubt on this point shall be settled by the decision of the Court."

30. In keeping with Article 16, paragraph 2, of its Statute, the Secretary-General requested the Court to provide clarification on the matters raised by the Advisory Committee. The Court interprets the provisions of the Article as prohibiting the Judges of the Court from exercising or maintaining any political or administrative function, whether international, national or local, whether commercial or otherwise; engaging in any other occupation of a professional nature, inter alia, holding a position in a commercial concern, engaging in the practice of law, maintaining membership in a law firm or rendering legal or expert opinions; or holding a permanent teaching or administrative position in a university or faculty of law.

31. Under the authority vested in the Court under Article 16, paragraph 2, of its Statute, ICJ has, in view of the judicial character of the activities involved, interpreted the bar to the members of the Court engaging in other occupations of a professional nature as not debarring a limited participation of Judges in other judicial or quasi-judicial activities of an occasional nature, as well as scholarly pursuits in the sphere of international law as members of learned societies or as occasional lecturers. The Judges accepting such occasional activities give the fullest precedence to their supervening duties as members of the Court. Based on a long-standing tradition of the Permanent Court of International Justice founded in 1922, as well as the recorded intention of the United Nations Conference on International Organization that adopted the text of Article 16 of the Statute, the Court further interpreted Article 16 as permitting the members to accept occasional appointments as arbitrators. In doing so, the Court referred to a similar practice existing in the courts of a number of Member States, such as Australia, Canada, Denmark, France, Germany, India, the Libyan Arab Jamahiriya, the Netherlands, Norway, Sweden and Tunisia, as well as some states of the United States of America.

32. The Court has consistently taken the position that contributions by its members to third-party settlement of disputes by legal processes in other forums, as by occasional service as arbitrators, are compatible with the Judges' functions as members of the Court. These activities are subject, however, to two conditions: the first is that the Judges must give absolute precedence to their obligations as members of the Court; and the second is that they should not accept appointment in an arbitral case, which, in another phase, is subject to being submitted to the Court.

33. The Court will continue to keep under review any questions that may arise of the compatibility of the functions of judges with the Statute of ICJ and with their supervening obligations.

United Nations

A/RES/36/103

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A/RES/36/103
91st plenary meeting
9 December 1981

36/103. Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States

The General Assembly,

Recalling its resolution 2734 (XXV) of 16 December 1970, containing the Declaration on the Strengthening of International Security, and its resolution 2131 (XX) of 21 December 1965, containing the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty,

Recalling further its resolution 2625 (XXV) of 24 October 1970, containing the Declaration of Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, and its resolution 3314 (XXIX) of 14 December 1974, containing the Definition of Aggression,

Recalling also its resolutions 31/91 of 14 December 1976, 32/153 of 19 December 1977, 33/74 of 15 December 1978, 34/101 of 14 December 1979 and 35/159 of 12 December 1980 on non-interference in the internal affairs of States,

Deeply concerned at the gravity of the international situation and the increasing threat to international peace and security owing to frequent recourse to the threat or use of force, aggression, intimidation, military intervention and occupation, escalation of military presence and all other forms of intervention or

interference, direct or indirect, overt or covert, threatening the sovereignty and political independence of other States, with the aim of overthrowing their Governments,

Conscious of the fact that such policies endanger the political independence of States, freedom of peoples and permanent sovereignty over their natural resources, adversely affecting thereby the maintenance of international peace and security,

Conscious of the imperative need for all foreign forces engaged in military occupation, intervention or interference to be completely withdrawn to their own territories, so that people under colonial domination, foreign occupation or racist regimes may freely and fully exercise their right to self-determination, so as to enable people of all States to administer their own affairs and determine their own political, economic and social system without external interference or control,

Conscious also of the imperative need for any threat of aggression, any recruitment, any use of armed bands, in particular mercenaries, against sovereign States to be completely ended, so as to enable the peoples of all States to determine their own political, economic and social systems without external interference or control,

Recognizing that full observance of the principles of non-intervention and non-interference in the internal and external affairs of sovereign States and peoples, either directly or indirectly, overtly or covertly, is essential to the fulfilment of the purposes and principles of the Charter of the United Nations,

1. Approves the Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States, the text of which is annexed to the present resolution;

2. Requests the Secretary-General to ensure the widest disseminaion of this Declaration to States, the specialized agencies and other organizations in associaton with the United Nations, and other appropriate bodies.

ANNEX

Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States

The General Assembly,

Reaffirming, in accordance with the Charter of the United Nations, that no State has the right to intervent directly or indirectly for any reason whatsoever in the internal or external affairs of any other State,

Reaffirming further the fundamental principle of the Charter of the United Nations that all States have the duty not to threaten or use force against the sovereignty, political independence or territorial integrity of other States,

Bearing in mind that the establishment, maintenance and strengthening of international peace and security are founded upon freedom, equality, self-determination and independence, respect for the sovereignty of States, as well as permanent sovereignty of States over their natural resources, irrespective of their political, economic or social systems or the levels of their development,

Considering that full observance of the principle of non-intervention and non-interference in the internal and external affairs of States is of the greatest importance for the maintenance of international peace and security and for the fulfilment of the purposes and principles of the Charter of the United Nations,

Reaffirming in accordance with the Charter the right to self-determination and independence of people under colonial domination, foreign occupation or racist regimes,

Stressing that the purposes of the United Nations can be achieved only under conditions where peoples enjoy freedom and States enjoy sovereign equality and comply fully with the requirements of these principles in their international relations,

Considering that any violation of the principle of non-intervention and non-interference in the internal and external affairs of States poses a threat to the freedom of peoples, the sovereignty, political independence, territorial integrity of States to their political, economic, social and cultural development, and also endangers international peace and security,

Considering that a declaration on the inadmissibility of intervention and interference in the internal affairs of States will contribute towards the fulfilment of the purposes and principles of the Charter of the United Nations,

Considering the provisions of the Charter as a whole and taking into account the resolutions adopted by the United Nations relating to the contents of this principle, in particular those containing the Declaration on the Strengthening of International Security, the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty, the Declaration of Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations and the Definition of Aggression,

Solemnly declares that:

1. No State or group of States has the right to intervene or interfere in any form or for any reason whatsoever in the internal and external affairs of other States.

2. The principle of non-intervention and non-interference in the internal and external affairs of States comprehends the following rights and duties:

I

(a) Sovereignty, political independence, territorial integrity, national unity and security of all States, as well as national indentity and cultural heritage of their peoples;

(b) The sovereign and inalienable right of a State freely to determine its own political, economic, cultural and social system, to develop its international relations and to exercise permanent sovereignty over its natural resources, in accordance with the will of its people, without outside intervention, interference, subversion, coercion or threat in any form whatsoever;

(c) The right of States and peoples to have free access to information and to develop fully, without interference, their system of information and mass media and to use their information media in order to promote their political, social, economic and cultural interests and aspirations, based, inter alia, on the relevant articles of the Universal Declaration of

Human Rights and the principles of the new international information order;

II

(a) The duty of States to refrain in their international relations from the threat or use of force in any form whatsoever to violate the existing internationally recognized boundaries of another State, to disrupt the political, social or economic order of other States, to overthrow or change the political system of another State or its Government, to cause tension between or among States or to deprive peoples of their national identity and cultural heritage;

(b) The duty of a State to ensure that its territory is not used in any manner which would violate the sovereignty, political independence, territorial integrity and national unity or disrupt the political, economic and social stability of another State; this obligaion applies also to States entrusted with responsibility for territories yet to attain self-determination and national independence;

(c) The duty of a State to refrain from armed intervention, subversion, military occupation or any other form of intervention and interference, overt or covert, directed at another State or group of States, or any act of military, political or economic interference in the internal affairs of another State, including acts of reprisal involving the use of force;

(d) The duty of a State to refrain from any forcible action which deprives peoples under colonial domination or foreign occupation of their right to self-determination, freedom and independence;

(e) The duty of a State to refrain from any action or attempt in whatever form or under whatever pretext to destabilize or to undermine the stability of another State or of any of its institutions;

(f) The duty of a State to refrain from the promotion, encouragement or support, direct or indirect, of rebellious or secessionist activities within other States, under any

pretext whatsoever, or any action which seeks to disrupt the unity or to undermine or subvert the political order of other States;

(g) The duty of a State to prevent on its territory the training, financing and recruitment of mercenaries, or the sending of such mercenaries into the territory of another State and to deny facilities, including financing, for the equipping and transit of mercenaries;

(h) The duty of a State to refrain from concluding agreements with other States designed to intervene or interfere in the internal and external affairs of third States;

(i) The duty of States to refrain from any measure which would lead to the strengthening of existing military blocs or the creation or strengthening of new military alliances, interlocking arrangements, the deployment of interventionist forces or military bases and other related military installations conceived in the context of great-Power confrontation;

(j) The duty of a State to abstain from any defamatory campaign, villification or hostile propaganda for the purpose of intervening or interfering in the internal affairs of other States;

(k) The duty of a State, in the conduct of its international relations in the economic, social, technical and trade fields, to refrain from measures which would constitute interference or intervention in the internal or external affairs of another State, thus preventing it from determining freely its political, economic and social development; this includes, inter alia, the duty of a State not to use its external economic assistance programme or adopt any multilateral or unilateral economic reprisal or blockade and to prevent the use of transnational and multinational corporations under its jurisdiction and control as instruments of political pressure or coercion against another State, in violation of the Charter of the United Nations;

exploitation

(l) The duty of a State to refrain from the and the distortion of human rights issues as a means of interference in the internal affairs of States, of

exerting

pressure on other States or creating distrust and disorder within and among States or groups of States;

terrorist

(m) The duty of a State to refrain from using practices as state policy against another State or against peoples under colonial domination, foreign occupation or

racist

regimes and to prevent any assistance to or use of or

tolerance

of terrorist groups, saboteurs or subversive agents

against

third States;

(n) The duty of a State to refrain from organizing, training, financing and arming political and ethnic groups

on

their territories or the territories of other States for

the

purpose of creating subversion, disorder or unrest in

other

countries;

economic,

(o) The duty of a State to refrain from any political or military activity in the territory of another State without its consent;

III

the

(a) The right of States to participate actively on basis of equality in solving outstanding international

issues,

thus contributing to the removal of causes of conflicts

and

interference;

the

(b) The right and duty of States fully to support right to self-determination, freedom and independence of peoples under colonial domination, foreign occupation or

racist

regimes, as well as the right of these peoples to wage

both

political and armed struggle to that end, in accordance

with

the purposes and principles of the Charter of the United Nations;

promote and

(c) The right and duty of States to observe, defend all human rights and fundamental freedoms within

their

own national territories and to work or the elimination of massive and flagrant violations of the rights of nations

and

peoples, and in particular, for the elimination of apartheid and all forms of racism and racial discrimination;

(d) The right and duty of States to combat, within their constitutional prerogatives, the dissemination of false or distorted news which can be interpreted as interference in the internal affairs of other States or as being harmful to the promotion of peace, co-operation and friendly relations among States and nations;

(e) The right and duty of States not to recognize situations brought about by the threat or use of force or acts undertaken in contravention of the principle of non-intervention and non-interference.

3. The right and duties set out in this Declaration are interrelated and are in accordance with the Charter of the United Nations.

4. Nothing in this Declaration shall prejudice in any manner the right to self-determination, freedom and independence of peoples under colonial domination, foreign occupation or racist regimes, and the right to seek and receive support in accordance with the purposes and principles of the Charter of the United Nations.

5. Nothing in this Declaration shall prejudice in any manner the provisions of the Charter of the United Nations.

6. Nothing in this Declaration shall prejudice action taken by the United Nations under Chapters VI and VII of the Charter of the United Nations.

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LAW REPORTS OF TRIALS OF WAR CRIMINALS

Selected and prepared by the

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English Edition

VOLUME I

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1947
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2126

and any sentence which the Court had jurisdiction to pass, if confirmed, are valid, notwithstanding any deviation from the Regulations or the Rules of Procedure or any defect or objection, technical or other. An exception exists only in the case where it appears that a substantial miscarriage of justice has actually occurred.

No action has yet been taken before British civil courts similar to that taken in the United States in the *Quirin*, *Yamashita* and *Homma* cases, where the proceedings of United States Military Commissions were made the subject of judicial review (see para. I *supra* and Annex II, pp. 111, 112-13 and 121).

XIII. THE AUTHORITY OF DECISIONS OF MILITARY COURTS

The Military Courts are not superior courts and their decisions are therefore not endowed with that special binding authority which Anglo-American law attaches to judicial decisions as precedents. Their relevance for the development of International Law may rather be compared with the relevance of judicial decisions in countries whose legal systems are not based on the Anglo-American doctrine of the binding character of precedents. Although the findings and sentences of British Military Courts trying war criminals do not lay down rules of law in an authoritative way, they are declaratory of the state of the law and illustrative of actual State practice.

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WITHDRAWN

LAW REPORTS OF TRIALS OF WAR CRIMINALS

INTERNATIONAL AFFAIRS

Selected and prepared by

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Further forms of complicity are illustrated in other French trials concerning illegal arrests. In one of the trials previously referred to, the accused, Ferrarese,(1) was convicted not for having personally arrested and detained innocent French inhabitants, but for having *caused* their arrest and detention. Ferrarese, an Italian national, came to France in 1934 from Brazil. He settled down, married a French woman, and lived in Marseilles. During the war he became a secret agent of the Gestapo. Being a Catholic, he gained the confidence of a French Catholic priest, Paul Ardouin, who was a member of the French resistance movement and distributed resistance leaflets and pamphlets among his compatriots. Ferrarese denounced him to the Gestapo, which arrested the priest and deported him to Germany. The accused carried out this activity throughout the war and denounced a large number of French Catholic priests and other French citizens involved in the resistance movement. They were all arrested and tortured, and some were deported. The accused was condemned to death under Article 341 of the Penal Code, for having " caused the arrest, detention " and torture of the victims.

In another trial, also previously mentioned, the accused, Pitz, (2) a Nazi party administrator in Sierck, French Lorraine, was found guilty of having " aided or assisted " in the arrest and deportation of numerous French inhabitants in the area, by drawing up lists and submitting them to the authorities which made the arrests. He tried to induce French youths to enlist in the German army, which they refused to join. Upon his reporting to this effect they were arrested, interned and forcibly drafted in the Wehrmacht, and their families were deported to Germany. In July, 1942, he asked the French population to state openly whether they wanted to become Germans. Those unwilling had to report their names for transfer to other parts of France. Most of the latter were deported to Germany upon lists prepared by the accused. He was convicted to five years' imprisonment.

Special attention should be drawn to the case of complicity committed by means of denunciation. The question as to whether and to what extent denunciation is a crime in itself, was studied by the United Nations War Crimes Commission in connection with specific cases brought by member governments. A decision was made to the effect that denunciation did not in itself, constitute a war crime. The offence is committed only if, by giving information, the informer becomes a party to, or accomplice in, a war crime recognized as such in international law. This condition is fulfilled if circumstances constituting complicity are present, e.g., if the informer knew that his action would lead to the commission of a war crime and either intended to bring about this consequence or was recklessly indifferent with regard to it. This decision was applied by the War Crimes Commission in numerous instances.

It thus appears that, according to the above decision, denunciation is not punishable in itself, but only if it has resulted in a war crime and taken the shape of complicity in the traditional sense. This condition was present in the circumstances of the trial referred to above, the individuals denounced

(1) Judgment of the Permanent Military Tribunal at Marseilles, 6th November, 1947.
(2) Judgment of the Permanent Military Tribunal at Metz, 8th October, 1947.

9409

Ref. K 15
War Crimes

LAW REPORTS OF TRIALS OF WAR CRIMINALS

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criminals for breach of the rules of war has been recognised by the practice of nations and is part of the traditional law. For that, I may again refer to the decisions of the Supreme Court of the United States. The responsibility of fixing responsibility on particular agents is very noticeable.

Of course, I need not observe that that principle runs right through the series of trials which are reported in these volumes. I was, in fact, merely countering the conceivable though gratuitous and unfounded objection that, at least up to the time of the first World War, no such personal or individual responsibility was ever recognised in these matters ; it was recognised for instance in the Commission of Responsibilities, and also in the cases mentioned by the Supreme Court of the United States in the Yamashita case which has already been referred to in this Foreward, in particular may be noted cases where the offence was not a common law crime—as most of the war offences are—according to the normal rule of civilised people, but was only a crime in the particular area of military law, for instance the case of spying.

As was made clear at the outset, the trials reported in these volumes have been a selection of those of which records are in the possession of the United Nations War Crimes Commission. Only those of legal interest have been so selected for reporting, though most of those selected have also often been of importance in the history of the war. I may mention here some of the relevant figures relating to this process of selection :

Number of Trial Records Received	*Number of Trials Reported Upon*
809 United States	28
524 British	27
256 Australian	5
254 French	11
30 Netherlands	7
24 Polish	4
9 Norwegian	5
4 Canadian	1
1 Chinese	1

In addition, further trials which were not reported have been cited in either Volumes I–XIV, or in the present volume :

United States : 29
British : 17
Australian : 19
French : 17
Netherlands : 5
Norwegian : 2
Polish : 1
Canadian : 1
Greek : 1

D.

3. Other Documents

9412

Draft Code of Crimes against the Peace and Security of Mankind

1996

Text adopted by the International Law Commission at its forty-eighth session, in 1996, and submitted to the General Assembly as a part of the Commission's report covering the work of that session (at para. 50). The report, which also contains commentaries on the draft articles, appears in *Yearbook of the International Law Commission, 1996*, vol. II (Part Two).



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2005

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Draft Code of Crimes against the Peace and Security of Mankind (1996)

PART ONE
GENERAL PROVISIONS

Article 1
Scope and application of the present Code

1. The present Code applies to the crimes against the peace and security of mankind set out in part two.

2. Crimes against the peace and security of mankind are crimes under international law and punishable as such, whether or not they are punishable under national law.

Article 2
Individual responsibility

1. A crime against the peace and security of mankind entails individual responsibility.

2. An individual shall be responsible for the crime of aggression in accordance with article 16.

3. An individual shall be responsible for a crime set out in article 17, 18, 19 or 20 if that individual:

(*a*) intentionally commits such a crime;

(*b*) orders the commission of such a crime which in fact occurs or is attempted;

(*c*) fails to prevent or repress the commission of such a crime in the circumstances set out in article 6;

(*d*) knowingly aids, abets or otherwise assists, directly and substantially, in the commission of such a crime, including providing the means for its commission;

(*e*) directly participates in planning or conspiring to commit such a crime which in fact occurs;

(*f*) directly and publicly incites another individual to commit such a crime which in fact occurs;

(*g*) attempts to commit such a crime by taking action commencing the execution of a crime which does not in fact occur because of circumstances independent of his intentions.

Article 3
Punishment

An individual who is responsible for a crime against the peace and security of mankind shall be liable to punishment. The punishment shall be commensurate with the character and gravity of the crime.

INTERNATIONAL COURT OF JUSTICE

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Press Release
Unofficial

No. 2012/12
8 March 2012

Swearing-in of Mr. Gaja and Ms Sebutinde, new Members of the Court

The Court will hold a public sitting on Monday 12 March 2012 at 10 a.m. before the public hearings in the case concerning Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)

THE HAGUE, 8 March 2012. The International Court of Justice (ICJ) will hold a public sitting on Monday 12 March 2012 at 10 a.m., during which Mr. Giorgio Gaja and Ms Julia Sebutinde, new Members of the Court, will make the solemn declaration provided for in Article 20 of the Statute of the Court.

Article 20 stipulates that "[e]very Member of the Court shall, before taking up his duties, make a solemn declaration in open court that he will exercise his powers impartially and conscientiously".

Mr. Gaja (Italy) and Ms Sebutinde (Uganda) were elected Members of the Court by the General Assembly and the Security Council of the United Nations on 10 November 2011 and 13 December 2011 respectively. The biographical note and official photograph of each Member of the Court can be found on the Court's website (www.icj-cij.org) under the heading "The Court/Members of the Court/Current Members".

After the sitting, the Court will retire briefly. It will return to the Great Hall of Justice shortly afterwards to begin the public hearings in the case concerning Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal).

It should be noted that the Court is currently composed of only 14 Members, following the resignation of Mr. Awn Shawkat Al-Khasawneh (Jordan), former judge and Vice-President of the Court. It is recalled (see also Press Release No. 2012/1) that the United Nations Security Council has fixed Friday 27 April 2012 as the date for the election, by the Security Council and the General Assembly, of a successor to Mr. Al-Khasawneh.

The International Court of Justice (ICJ) is the principal judicial organ of the United Nations. It was established by the United Nations Charter in June 1945 and began its activities in April 1946. The seat of the Court is at the Peace Palace in The Hague (Netherlands). Of the six principal organs of the United Nations, it is the only one not located in New York. The Court has a

twofold role: first, to settle, in accordance with international law, legal disputes submitted to it by States (its judgments have binding force and are without appeal for the parties concerned); and, second, to give advisory opinions on legal questions referred to it by duly authorized United Nations organs and agencies of the system. The Court is composed of 15 judges elected for a nine-year term by the General Assembly and the Security Council of the United Nations. It is assisted by a Registry, its international secretariat, whose activities are both judicial and diplomatic, as well as administrative. The official languages of the Court are French and English.

The ICJ, a court open only to States for contentious proceedings, and to certain organs and institutions of the United Nations system for advisory proceedings, should not be confused with the other — mostly criminal — judicial institutions based in The Hague and adjacent areas, such as the International Criminal Tribunal for the former Yugoslavia (ICTY, an ad hoc court created by the Security Council), the International Criminal Court (ICC, the first permanent international criminal court established by treaty, which does not belong to the United Nations system), the Special Tribunal for Lebanon (STL, an independent judicial body composed of Lebanese and international judges, which is not a United Nations tribunal and does not form part of the Lebanese judicial system), or the Permanent Court of Arbitration (PCA, an institution founded in 1899, which is independent of the United Nations).

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Note: The Court's press releases do not constitute official documents.

Mt. Scopus Approved Revised International Standards of Judicial Independence

Approved March 19, 2008

Preamble

These Revised standards are approved in recognition of the need for the revision of the guidelines of general application to contribute to the independence and impartiality of the judiciary, with a view to ensuring the legitimacy and effectiveness of the judicial process;

In formulating these standards due regard has been given to the IBA Minimum Standards on Judicial independence 1982 and the UN Basic Principles of Judicial Independence 1985 and the long series of sets of other international rules and standards relating to judicial independence and the right to a fair trial; and *The Burgh House Principles of Judicial Independence in International Law* (for the international judiciary). Inspiration has also been drawn from the *Tokyo Law Asia Principles*; the *Montréal Universal Declaration on the Independence of Justice*; *Council of Europe Staetements on judicial independence* particularly Recommendation of the Committee of Ministers to Member States on the independence, efficiency and role of judges. Council of Europe *1998*[1] ,*The Bangalore Principles of Judicial Conduct* November 2002,[2] and the *American Bar Association*'s revision of its ethical standards for judges

The Standards were drafted bearing in mind the special challenges facing the judiciary in view of the challenges and problems in both the national and international spheres.

An updated comprehensive revision of minimum standards for judicial independence is called for in order to give appropriate response to the developments and challenges regarding the position of courts and judges in contemporary society. This revision is important to enable the judiciary to play a role in the adequate protection of human rights and in the operation of an efficient and fair market economy with a human face in the era of globalisation.

The standards give due consideration particularly to the fact that that each jurisdiction and legal tradition has own characteristics that must be recognised .It is also recognized that in the international judiciary each court or tribunal has its unique features and functions and that in certain instances judges serve on a part-time basis or as *ad hoc* or *ad litem* judges.

A. NATIONAL JUDGES

1. THE SIGNIFICANCE OF THE INDEPENDENCE OF THE JUDICIARY

1.1. An independent and impartial[3] judiciary is an institution of the highest value in every society[4] and an essential pillar of liberty[5] and the rule of law.

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[1] http://www.coe.int

[2] adopted by *Judicial Group on Strengthening Judicial Integrity*, AJA, http://www.ajs.org

[3] Stating this in the body of the standards themselves in addition to the preamble helps stress the section's importance and ensures that it is more easily referred to.

→This is preferred to the first version as it describes exactly what elements are required in the Judiciary

→Tokyo Law Asia Principles. Stating this in the body of the standards themselves rather than in a preamble helps stress the section's importance and ensures that it is more easily referred to.

1.2. The objectives and functions of the judiciary shall include:

1.2.1.1. To resolve disputes and to administer the law impartially between persons and between persons and public authorities;

1.2.1.2. To promote, within the proper limits of the judicial function, the observance and the attainment of human rights; and

1.2.1.3. To ensure that all people are able to live securely under the rule of law.[6]

2. THE JUDICIARY[7] AND THE EXECUTIVE

2.1. The Judiciary as a whole shall be independent.

2.2. Each judge shall enjoy both personal independence and substantive independence:[8]

2.2.1. Personal independence means that the terms and conditions of judicial service are adequately secured by law[9] so as to ensure that individual judges are not subject to executive control; and

2.2.2. Substantive independence means that in the discharge of his judicial function, a judge is subject to nothing but the law and the commands of his conscience.

2.3. The Judiciary as a whole shall[10] enjoy collective independence and autonomy vis-à-vis the Executive.

2.4. Judicial appointments and promotions by the Executive are not inconsistent with judicial independence as long as they are in accordance with Principles 4.

2.5. No executive decree shall reverse specific court decisions, or change the composition of the court in order to affect its decision-making.[11]

2.6. The Executive may only participate in the discipline of judges by referring complaints against judges, or by the initiation of disciplinary proceedings, but not by the adjudication of such matters.

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[5] Preamble, Montréal Declaration.

[6] Montréal Declaration.

→Recall competing values of judicial independence and judicial accountability: "As phrased by a Canadian judge, Mr. Justice Riddell, commenting on an arrangement of divisions of labour among the judges, 'Judges are the servants, not the masters of the people.' Servants are accountable, so are judges." From Shetreet, *Judicial Independence: The Contemporary Debate*, at 593, referring to *Davis Acetylene Gas Co. v. Morrison*, (1915) 34 O.L.R. 155, 23 D.L.R. 871 (C.A.).

[7] The focus is really on the relationship with the judiciary as a whole, rather than with individual judges.

[8] Although substantive independence warrants wide protection, it is not without boundaries. Judges must exercise their powers subject to the general limit of mutual respect between the various branches of the government and accepted lines of demarcation of their respective responsibilities. The mutual respect is expressed in judge-made rules, including the rule that courts will not engage in the adjudication of unjusticiable issues, such as political questions: Shetreet, Judicial Independence :New Conceptual Dimensions and Contemporary Challenges , in Shetreet and Descenes *Judicial Independence: The Contemporary Debate* at 635.(1985)

[9] To clarify that these important conditions must be legally entrenched.

[10] Adds mandatory language.

[11] Montréal Declaration section 2.08.

2.7. The power to discipline or remove a judge must be vested in an institution which is independent of the Executive.

2.8. The power of removal of a judge shall preferably be vested in a judicial tribunal.

2.9. The Executive shall not have control over judicial functions.

2.10. Rules of procedure and practice shall be made by legislation or by the Judiciary in cooperation with the legal profession, subject to parliamentary approval.

2.11. The state shall have a duty to provide for the execution of judgments of the Court. The Judiciary shall exercise supervision over the execution process.

2.12. Judicial matters are exclusively within the responsibility of the Judiciary, both in central judicial administration and in court level judicial administration.

2.13. The central responsibility for judicial administration shall preferably be vested in the Judiciary or jointly in the Judiciary and the Executive.

2.14. The principle of democratic accountability should be respected and therefore it is legitimate for the legislature to play a role in judicial appointments and central administration of justice provided that due consideration is given to the principle of judicial independence.

2.15. The process and standards of judicial selection shall give due consideration to the principle of fair reflection by the judiciary of the society in all its aspects.[12]

2.15.1. Taking into consideration the principle of fair reflection by the judiciary of the society in all its aspects, in the selection of judges, there shall be no discrimination on the grounds of race, colour, gender, language, religion, national or social origin, property, birth or status, subject however to citizenship requirements.[13].

2.16. Candidates for judicial office shall be individuals of integrity[14] and ability, well- trained in the law. They shall have equality of access to judicial office.[15]

2.17. It is the duty of the state to provide adequate financial resources to allow for the due administration of justice.

2.18. Division of work among judges should ordinarily be done under a predetermined plan, which can be changed in certain clearly defined circumstances.

2.18.1. In countries where the power of division of judicial work is vested in the chief justice, it is not considered inconsistent with judicial independence to accord to

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[12] Montréal Declaration section 2.13. See also Shetreet, *Judicial Independence: The Contemporary Debate*, at 401.

[13] Montréal Declaration

→"Political opinion" is also taken from PH Lane, *Fragile Bastion: Constitutional Aspects of Judicial Independence* (judicial independence is composed of at least five aspects: (1) non-political appointments to a court; (2) guaranteed tenure and salary; (3) executive and legislative interference with court proceedings or office holders; (4) budgetary autonomy; (5) administrative autonomy.

[14] Montréal Declaration section 2.11.

[15] Exact wording of the Montréal Declaration, section 2.11.

the chief justice the power to change the predetermined plan for sound reasons, preferably in consultation with the senior judges when practicable.

2.18.2. Subject to 2.18.1, the exclusive responsibility for case assignment should be vested in a responsible judge, preferably the President of the Court.

2.19. The power to transfer a judge from one court to another shall be vested in a judicial authority according to grounds provided by law and preferably shall be subject to the judge's consent, such consent not to be unreasonably withheld.

2.20. Judicial salaries and pensions shall be adequate at all times, fixed by law, and should be periodically reviewed independently of Executive control

2.21. The position of the judges, their independence, their security of tenure, and their adequate remuneration shall be entrenched constitutionally[16] or secured by law.

2.22. Judicial salaries, pensions, and benefits[17] cannot be decreased during judges' service except as a coherent part of an overall public economic measure.

2.23. The Ministers of the government shall not exercise any form of pressure on judges, whether overt or covert, and shall not make statements which adversely affect the independence of individual judges, or of the Judiciary as a whole.

2.24. The power of pardon shall be exercised cautiously so as to avoid its use as an interference with judicial decision.

2.25. The Executive shall refrain from any act or omission which pre-empts the judicial resolution of a dispute, or frustrates the proper execution of a court judgment.

2.26. The Executive shall not have the power to close down, or suspend, or delay, the operation of the court system at any level.

3. THE JUDICIARY[18] AND THE LEGISLATURE

3.1. The Legislature shall not pass legislation which reverses specific court decisions.

3.2. Legislation introducing changes in the terms and conditions of judicial service shall not be applied to judges holding office at the time of passing the legislation unless the changes improve the terms of service and are generally applied.[19]

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[16] UN Basic Principles.

→Change suggested in order to provide additional flexibility, and also to stress how this is an important enough issue to be constitutionally entrenched.

[17] In the interests of completeness

[18] The focus is really on the relationship with the judiciary as a whole, rather than with individual judges.

[19] In order to prevent "rewarding" specific judges.

→The US Constitution's Compensation Clause guarantees federal judges a "Compensation, which shall not be diminished during their Continuance in Office." *U.S. Const.*, Art. III, §1.

→See *US v. Hatter* (99-1978) 532 U.S. 557 (2001) 203 F.3d 795: Congress is prohibited from singling out judges for specially unfavourable taxation treatment, although it is permitted to impose a "non-discriminatory tax laid generally" upon judges and other citizens.

3.3. In case of legislation reorganising or abolishing courts, judges serving in these courts shall not be affected, except for their transfer to another court of the same or materially comparable[20] status.

3.4. Everyone shall have the right to be tried expeditiously by the established ordinary courts or judicial tribunals under law, subject to review by the courts.[21]

3.5. Part-time judges should be appointed only with proper safeguards secured by law.

3.6. The Legislature may be vested with the powers of removal of judges, upon a recommendation of a judicial commission or pursuant to constitutional provisions or validly enacted legislation.[22]

4. TERMS AND NATURE OF JUDICIAL APPOINTMENTS

4.1. The method of judicial selection shall safeguard against judicial appointments for improper motives[23] and shall not threaten judicial independence.

4.2. a) The principle of democratic accountability should be respected and therefore it is legitimate for the Executive and the Legislature to play a role in judicial appointments provided that due consideration is given to the principle of Judicial Independence.

b) The recent trend of establishing judicial selection boards or commissions in which members or representatives of the Legislature ,the Executive ,the Judiciary and the legal profession take part ,should be viewed favourably, provided that a proper balance is maintained in the composition of such boards or commissions of each of the branches of government

4.3. Judicial appointments should generally be for life, subject to removal for cause and compulsory retirement at an age fixed by law at the date of appointment.

4.3.1. Retirement age shall not be reduced for existing judges.[24]

→See *United States v. Will*, 449 U.S. 200, 220-21 (1980): though Congress may not rescind a salary increase for judges once it has gone into effect - that would be a diminishment of compensation - Congress is under no constitutional obligation to grant salary increases.

→See *Evans v. Gore*, 253 U.S. 245, 253 (1920): The imposition of a new federal tax that has the effect of reducing the judicial compensation of judges already in office is unconstitutional.

→But see *O'Malley v. Woodrough*, 307 U.S. 277 (1939): an income tax levied against the judicial salary of judges who took office after the levy is in effect is constitutional, when the taxing measure is of general, non-discriminatory application to all earners of income.

[20] To provide for situations such as those that occurred in Ontario when the entire court structure was reorganized.

[21] For a discussion of this issue, see Shetreet, *Judicial Independence: The Contemporary Debate*, at 616.

[22] In order to try to prevent situations such as those that occurred in Ecuador in April 2007 when Congress removed all nine judges of the Constitutional Court in a retaliatory measure, contrary to the Ecuadorian constitution which provides that judges of the Constitutional Court can only be removed by impeachment: Human Rights Watch, *Ecuador: Removal of Judges Undermines Judicial Independence* (May 11, 2007).

[23] Montréal Declaration.

[24] See Shetreet, Judicial Independence :New Conceptual Dimensions and Contemporary Challenges , in Shetreet and Descenes *Judicial Independence: The Contemporary Debate*, at 607 (1985) reporting that in Bangladesh, in 1977 an ordinance was passed bringing down the retirement age from 65 to 62 years with immediate effect. This resulted in

4.4. Promotion of judges shall[25] be based on objective factors, in particular merit,[26] integrity and experience.[27]

4.5. Judicial appointments and promotions shall be based on transparency of the procedures and standards and shall be based on professional qualifications, integrity, ability and efficiency.

4.6. Judges should not be appointed for probationary periods except in legal systems in which appointments of judges do not depend on having practical experience in the profession as a condition of appointment, and provided that permanent appointment will be granted on merit.[28]

4.7. The institution of temporary judges should be avoided as far as possible except where there exists a long historic democratic tradition.

4.8. Part-time judges should be appointed only with proper safeguards secured by law.

4.9. The number of the members of the highest court should be fixed, with the exception of courts modeled after the courts of cassion, and in the case of all courts, should not be altered for improper motives.

5. JUDICIAL REMOVAL AND DISCIPLINE

5.1. The proceedings for discipline and removal of judges[29] shall be processed expeditiously and fairly[30] and shall ensure fairness to the judge including adequate opportunity for hearing.

5.2. With the exception of proceedings before the Legislature[31], the procedure for discipline should be held *in camera*. The judge may however request that the hearing be held in public[32] and such request should be respected, subject to expeditious, final and reasoned disposition of this request by the disciplinary tribunal. Judgments in disciplinary proceedings, whether held in camera or in public, may be published.[33]

5.3. All of the grounds for the discipline, suspension and removal of judges shall be entrenched constitutionally or fixed by law and shall be clearly defined.

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the retirement of two distinguished judges. This was in fact a legislative removal of these two judges though it was in theory a general statute.

[25] In order to make this mandatory.

[26] "Merit" is broader than "ability".

[27] UN Basic Principles.

→Montréal Declaration provides: "Promotion of a judge shall be based on an objective assessment of the candidate's integrity and independence of judgment, professional competence, experience, humanity and commitment to uphold the rule of law."

[28] Scottish temporary judges cases Starrs and Chalmers v .D. F. Linlithgow 2000 S. L. 2 ; Clancy v. Caird 2000 Scottish Law Times ,The Bailiff Judicial Appointments (Scotland) Act 2000

[29] The UN Basic Principles adds "in his/her judicial and professional capacity." This wording was not added here to prevent personal suits being lodged against judges as a back-door method of interfering with their independence.

[30] UN Basic Principles.

[31] Montréal Declaration section 2.36.

[32] Montréal Declaration section 2.36.

[33] Montréal Declaration section 2.36.

5.4. All disciplinary, suspension and removal[34] actions shall be based upon established standards of judicial conduct.[35]

5.5. A judge shall not be subject to removal, unless by reason of a criminal act or through gross or repeated neglect or serious infringements of disciplinary rules or physical or mental incapacity he has shown himself manifestly unfit to hold the position of judge. The grounds for removal shall be limited to reasons of medical incapacity or behaviour that renders the judge unfit to discharge their duties.[36]

5.6. In systems where the power to discipline and remove judges is vested in an institution other than the Legislature, the tribunal for discipline and removal of judges shall be permanent, and be composed predominantly of members of the Judiciary.

5.7. The head of the court may legitimately have supervisory powers to control judges on administrative matters.

6. THE MEDIA AND THE JUDICIARY

6.1. It should be recognized that judicial independence does not render judges free from public accountability, however, the media and other institutions should show respect for judicial independence and exercise restrain in criticism of judicial decisions.[37]

6.2. While recognising the general right of freedom of expression of all citizens, a judge should not interview directly with the general media. If a judge needs to respond to the media in regard to a media report or inquiry, it shall be done via a spokesperson assigned by the court or a judge specifically assigned by the court for this purpose. In exceptional circumstances a judge may respond directly to the media if that judge's direct response will prevent an irreparable damage.

6.3. The media should show responsibility and restraint in publications on pending cases where such publication may influence the outcome of the case.

6.4. A judge shall not knowingly, while a proceeding is, or could come before the judge, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process. Nor shall the judge make any comment in public or otherwise that might affect the fair trial of any person or issue. [38]

7. STANDARDS OF CONDUCT[39]

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[34] Inclusive.

[35] Montréal Declaration section 2.34. Broad.

[36] UN Basic Principles.

[37] See discussion by Julie Debeljak, *Judicial Conference of Australia, Uluru, April 2001: Judicial Independence: A Collection of Material for the Judicial Conference of Australia* regarding the consequences of inappropriate public criticism (it leaves judges having to choose between being silent leading to a potential decrease in public confidence in the judiciary, or else inappropriately being drawn into public criticism).

[38] Bangalore Principles

[39] Human Rights Watch, *Rigging the Rule of Law: Judicial Independence Under Siege in Venezuela*, Volume 16, No. 3(B) (June 2004) reporting some of allegations of judicial bias in Venezuela. For instance, Attorney General Isaías Rodríguez in May 2004 allegedly described how the country's top administrative court in the past established set fees for resolving different kinds of cases.

7.1. Judges may not serve in Executive or Legislative functions, including as:

7.1.1. Ministers of the government; or as

7.1.2. Members of the Legislature or of municipal councils.

7.2. Judges shall not hold positions in political parties.

7.3. A judge, other than a temporary or part-time judge, may not practice law.

7.4. A judge should refrain from business activities and should avoid from engaging in other remunerative activity,[40] that can affect the exercise of judicial functions or the image of the judge, except in respect of that judge's personal investments, ownership of property, the business activities or ownership of property of family members[41], or that judge's teaching at a university or a college.

7.5. A judge should always behave in such a manner as to preserve the dignity of the office and the impartiality, integrity and independence of the Judiciary.

7.6. Judges may be organized in associations designed for judges, for furthering their rights and interests as judges.

7.7. Judges may take appropriate action to protect their judicial independence.[42]

7.8. A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially.

7.9. Such proceedings include, but are not limited to, instances where

a) the judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;

b) the judge previously served as a lawyer or was a material witness in the matter in controversy; or

c) the judge, or a member of the judge's family, has an economic interest in the outcome of the matter in controversy:

Provided that disqualification of a judge shall not be required if no other tribunal can be constituted to deal with the case or, because of urgent circumstances, failure to act could lead to a serious miscarriage of justice [43]

7.10. A case should not be withdrawn from a particular judge without valid reasons, such as cases of serious illness or conflict of interest. Any such reasons and the procedures for such withdrawal should be provided for by law and may not be influenced by any interest of the government or administration. A decision to withdraw a case from a

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[40] ABA Model Code of Judicial Conduct (February 2007), Canon 4, Article D(2).
[41] ABA Model Code of Judicial Conduct (February 2007), Canon 4, Article D(2) discusses family.
[42] This is how the section appears in the Montréal Declaration, section 2.09.
[43] Bangalore Principles

judge should be taken by an authority which enjoys the same judicial independence as judges.[44]

7.11. Judges shall discourage *ex parte* communications from parties and except as provided by the rules of the court such communications shall be disclosed to the court and to the other party.

8. SECURING IMPARTIALITY AND INDEPENDENCE[45]

8.1. A judge[46]shall enjoy immunity from legal actions in the exercise of ~~his~~ official functions.[47]

8.2. A judge shall not sit in a case where there is a reasonable suspicion of bias or potential bias.[48]

8.3. A judge shall avoid any course of conduct which might give rise to an appearance of partiality.

8.4. The state shall ensure that in the decision-making process, judges should be independent and be able to act without any restriction, improper influence, inducements, pressures, threats[49] or interferences, direct or indirect, from any quarter or for any reason. The law should provide for sanctions against persons seeking to influence judges in any such manner. Judges should have unfettered freedom to decide cases impartially, in accordance with their conscience and their interpretation of the facts, and in pursuance of the prevailing rules of the law. Judges should not be obliged to report on the merits of their cases to anyone outside the judiciary [50]

9. THE INTERNAL INDEPENDENCE OF THE JUDICIARY

9.1 In the decision-making process, a judge must be independent vis-à-vis his judicial colleagues and superiors.

9.2 Any hierarchical organization of the judiciary and any difference in grade or rank shall in no way interfere with the right of judges to pronounce their judgments freely.[51]

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[44] Recommendation No.R(94)12). of the committee of Ministers of the Council of Europe to Memner States

[45] See Cyrus Das and K. Chandra, Editors, *Judges and Judicial Accountability*, Universal Law Publishing Company Ltd., Delhi.

[46] This does not exclude the possibility that the state may be liable for the gross negligence of a judicial officer.

[47] Consider a 1988 Italian law which was designed to, within certain limit, render judges accountable for damages caused by serious fault in the exercise of their functions: see Giovanni E. Longo, "The Human Right to an Independent Judiciary: International Norms and Denied application before a Domestic Jurisdiction," *St. John's Law Review* (Winter 1996).

[48] "It is most important that the judiciary be independent and be so perceived by the public. The judges must not have cause to fear that they will be prejudiced by their decisions or that the public would reasonably apprehend this to be the case": Howland, CJ, *R. v. Valente* 2 C.C.C. (3d) 417, at 423 (1983).

[49] Including physical threats to injure or to kill .

[50] Recommendation No.R(94)12 of the committee of Ministers of the Council of Europe to Memner States

[51] Montréal Declaration section 2.03.

B. INTERNATIONAL JUDGES

The following text on minimum standards for the independence of the international judiciary is based, with minor amendments, on the Burgh House Principles on the Independence of the International Judiciary which were formulated by the Study Group of the International Law Association on the Practice and Procedure of International Courts and Tribunals

10. INDEPENDENCE

10.1 The international courts and the judges shall exercise their functions free from direct or indirect interference or influence by any person or entity.

10.2 This freedom of the judges and courts shall apply both to the judicial process in pending cases, including the assignment of cases to particular judges, and to the operation of the court and its registry.

10.3 The court shall be free to determine the conditions for its international administration, including staff recruitment policy, information systems and allocation of budgetary expenditure.

10.4 Deliberations of the court shall remain confidential.

10.5 All Judges of international courts and tribunals shall adhere to the principle that a judges who are nationals of a member state of the organisation establishing the court or tribunal when exercising judicial discretion and function shall engage in fair and independent adjudication of the case and by no means in representation of the member state.

11 NOMINATION, ELECTION AND APPOINTMENT

11.1 In accordance with the governing instruments, judges shall be chosen from among persons of high moral character, integrity and conscientiousness who possess the appropriate professional qualifications, competence and experience required for the court concerned.

11.2 While procedures for nomination, election and appointment should consider fair representation of different geographic regions and the principal legal systems, as appropriate, as well as of female and male judges, appropriate personal and professional qualifications must be the overriding consideration in the nomination, election and appointment of judges.

11.3 Procedures for the nomination, election, and appointment of judges should be transparent and provide appropriate safeguards against nominations, elections and appointments motivated by improper considerations.

11.4 Information regarding the nomination, election and appointment process and information about candidates for judicial office should be made public, in due time and in an effective manner, by the international organisation or other body responsible for the nomination, election and appointment process.

11.5 For the promotion of the independence of judges it is preferable that appointment of judges to the international courts and tribunals shall be for one long term and shall not be open for re-election.

12 SECURITY OF TENURE

12.1 Judges shall have security of tenure in relations to their term of office. They may only be removed from office upon specified grounds and in accordance with appropriate procedures specified in advance.

12.2 The governing instruments of each court should provide for judges to be appointed for a minimum term to enable them to exercise their judicial functions in an independent manner.

13 SERVICE AND REMUNERATION

13.1 Judges' essential conditions of service shall be enumerated in legally binding instruments.

13.2 No adverse changes shall be introduced with regard to judges' remuneration and other essential conditions of service during their terms of office.

13.3 Judges should receive adequate remuneration which should be periodically adjusted in line with any increases in the cost of living at the seat of the court.

13.4 Conditions of service should include adequate pension arrangements.

14 PRIVILEGES AND IMMUNITIES

14.1 Judges shall enjoy immunities equivalent to full diplomatic immunities, and in particular shall enjoy immunities from all claims arising from the exercise of their judicial functions.

14.2 The court alone shall be competent to waive the immunity of judges; it should waive immunity in any case where, in its opinion, the immunity would impede the course of justice and can be waived without prejudice to the exercise of the judicial function.

14.3 Documents and papers of the courts, judges and registry, in so far as they relate to the business of the court, shall be inviolable.

14.4 The state in which an international court has its seat shall take the necessary measures to protect the security of the judges and their families, and to protect them from adverse measures related to the exercise of their judicial function.

15 BUDGET

15.1 States, parties and international organisations shall provide adequate resources, including facilities and levels of staffing, to enable courts and the judges to perform their functions effectively.

16 FREEDOM OF EXPRESSION AND ASSOCIATION

16.1 Judges shall enjoy freedom of expression and association. These freedoms must be exercised in a manner that is compatible with the judicial function and that may not affect or reasonably appear to affect judicial independence or impartiality.

16.2 Judges shall maintain the confidentiality of deliberations, and shall not comment extra-judicially upon pending cases.

16.3 Judges shall exercise appropriate restrain in commenting extra-judicially upon judgements and procedures of their own and other courts and may upon any legislation, drafts, proposals or subject-matter likely to come before their court.

17 EXTRA-JUDICIAL ACTIVITY

17.1 Judges shall not engage in any extra-judicial activity that is incompatible with their judicial function or the efficient and timely functioning of the court of which they are members, or that may affect or may reasonably appear to affect their independence or impartiality.

17.2 Judges shall not exercise any political function.

17.3 Each court should establish an appropriate mechanism to give guidance to judges in relation to extra-judicial activities, and to ensure that appropriate means exist for parties to proceedings to raise any concerns.

18 PAST LINKS TO A CASE

18.1 Judges shall not serve in a case in which they have previously served as agent, counsel, advisor, advocate, expert or in any other capacity for one of the parties, or as a member of a national or international court or other dispute settlement body which has considered the subject matter of the dispute or in a case where they had previously commented or expressed an opinion concerning the subject matter in a manner that is likely to affect or may reasonably appear to affect their independence or impartiality.

18.2 Judges shall not serve in a case with the subject matter of which they had other forms of association that may affect or may reasonably appear to affect their independence or impartiality.

19 PAST LINKS TO A PARTY

19.1 Judges shall not sit in any case involving a party for whom they have served as agent, counsel, advisor, advocate or expert within the previous three years or such other period as the court may establish within its rules; or with whom they have had any other significant professional or personal link within the previous three years or such other period as the court may establish within its rules.

20 INTEREST IN THE OUTCOME OF A CASE

20.1 Judges shall not sit in any case in the outcome of which they hold any material personal, professional or financial interest.

20.2 Judges shall not sit in any case in the outcome of which other persons or entities closely related to them hold a material, personal, professional or financial interest.

20.3 Judges must not accept any undisclosed payment from a party to the proceedings or any payment whatsoever on account of a judge's participation in the proceedings.

21 CONTACT WITH A PARTY

21.1 Judges shall exercise appropriate caution in their personal contacts with parties, agents, counsel, advocates, advisors, and other persons and entities associated with a pending case. Any such contacts should be conducted in a manner that is compatible with the judicial function and that may not affect or reasonably appear to affect the judge's independence and impartiality.

21.2 Judges shall discourage *ex parte* communications from parties and except as provided by the rules of the court such communications shall be disclosed to the court and to the other party.

22 POST-SERVICE LIMITATIONS

22.1 Judges shall not serve in a case with the subject-matter of which they have had any other form of association that may affect or may reasonably appear to affect their independence or impartiality.

22.2 Judges shall not seek or accept, while they are in office, any future employment, appointment or benefit, from a party to a case on which they sat or from any entity related to such a party that may affect or may reasonably appear to affect their independence or impartiality.

22.3 Former judges shall not, except as permitted by rules of the court, act in any capacity in relations to any case on which they sat during their judicial term of office.

22.4 Former judges shall not act as agent, counsel, advisor or advocate in any proceedings before the court on which they previously served for a period of three years after they have left office or such other period as the court may establish and publish.

22.5 Former judges should exercise appropriate caution as regards the acceptance of any employment, appointment or benefit, in particular from a party to a case on which they sat or from any entity related to such a party.

23 DISCLOSURE

23.1 Judges shall disclose to the court and, as appropriate, to the parties of the proceedings any circumstances which come to their notice at any time by virtue of which any of Principles 16 to 22 apply.

23.2 Each court shall establish appropriate procedures to enable judges to disclose to the court and, as appropriate, to the parties to the proceedings matters that may affect or may reasonably appear to affect their independence or impartiality in relations to any particular case.

24 WAIVER

24.1 Notwithstanding Principles 16 to 22, judges shall not be prevented from sitting in a case where they have made appropriate disclosure of any facts bringing any of those Principles into operation, where the court expresses no objections and the parties give their express and informed consent to the judge acting.

25 WITHDRAWAL OR DISQUALIFICATION

25.1 Each court shall establish rules of procedure to enable the determination whether judges are prevented from sitting in a particular case as a result of the application of these Principles or for reasons of incapacity. Such procedures shall be available to a judge, the court, or any party to the proceedings.

26 MISCONDUCT

26.1 Each court shall establish rules of procedure to address a specific complaint of misconduct or breach of duty on the party of a judge that may affect independence or impartiality.

26.2 Such a complaint may, if clearly unfounded, be resolved on a summary basis. IN any case where the court determines that more detailed investigation is required, the rules shall establish adequate safeguards to protect the judges' rights and interests and to ensure appropriate confidentiality of the proceedings.

26.3 The governing instruments of the court shall provide for appropriate measures, including the removal from office of a judge.

26.4 The outcome of any complaint shall be communicated to the complainant.

27 AD HOC JUDGES

27.1 An *ad hoc* judge in an international court or tribunal must act conscientiously and independently in the adjudication of the case to which that judge was assigned to sit.

27.2 The restrictions and provisions applicable to full-time international judges regarding past links, extra-judicial activities, post-service limitations, and security of tenure shall not apply to *ad hoc* judges.

Appendix 1

Officers and Conferences of the International project on judicial independence

I General Coordinator, International Project on Judicial Independence

Professor Shimon Shetreet ,Director, Sacher Institute of Comparative Law , and Greenblatt Professor of Public and International Law , Hebrew University of Jerusalem,

II Co Chairs of the international conference on Judicial Independence in International Law Jerusalem 26-27 June 2007

Professor Shimon Shetreet , Director, Sacher Institute of Comparative Law , and Greenblatt Professor of Public and International Law , Hebrew University of Jerusalem,
Professor James R. Crawford , Faculty of Law, University of Cambridge

III Officers of the international conference on Judicial Independence for the Drafting of the International Standards of Judicial Independence Zurich Area Conference 30 November -1st of December 2007

Professor Shimon Shetreet , Co Chair of the Conference .Director, Sacher Institute of Comparative Law , and Greenblatt Professor of Public and International Law , Hebrew University of Jerusalem,
Professor Christopher F Forsyth, Co Chair of the Conference Director Centre of Public Law, Faculty of Law, University of Cambridge
Professor Marcel Storme , Emeritus Professor , Ghent University, Past President of the World Association of Procedural Law , Leader of the Discussions
HE Markus Buechel ,Chair of the Local Organising Committee

IV Co Chairs of the international conference on Judicial Independence and the Constitutional Position of the Judiciary Jerusalem 18-20 2008

Professor Shimon Shetreet , Co Chair of the Conference .Director, Sacher Institute of Comparative Law , and Greenblatt Professor of Public and International Law , Hebrew University of Jerusalem,
Professor Christopher F Forsyth, Co Chair of the Conference Director Centre of Public Law, Faculty of Law
University of Cambridge

V. Co Chairs of the international conference on Judicial Independence and the Constitutional Position of the Judiciary Krakow November 2008

Professor Shimon Shetreet , Co Chair of the Conference .Director, Sacher Institute of Comparative Law , and Greenblatt Professor of Public and International Law , Hebrew University of Jerusalem,
Prof. Dr. Fryderyk Zoll, Faculty of Law ,Jagelonian University ,Krakow

VI. Co Chairs of the international conference on the Challenges of the Standards of Judicial Independence , Switzerland August 2009

Professor Shimon Shetreet , Co Chair of the Conference .Director, Sacher Institute of Comparative Law , and Greenblatt Professor of Public and International Law , Hebrew University of Jerusalem,
Professor Bernhard Ehrenzeller , Co Chair of the Conference ,Universität St.Gallen,
Professor Daniel Thurer, Co Chair of the Conference ,Universität Zürich

VII. Members of the Consultation Group of the International Project of Judicial Independence

Dr Cyrus Das, Former President of the Bar of Malaysia
Dr. Anat Scolnicov, Deputy Director, Centere of Public Law, University of Cambridge
Prof. Dr. Fryderyk Zoll, Faculty of Law ,Jagelonian University ,Krakow
Prof. Yuval Shany, Faculty of Law, Hebrew University of Jerusalem
H.E. Advocate Markus Buechel, Senior Lawyer, Liechtenstein
Justice Tassaduq Hussain Jillani, Judge of the Supreme Court of Pakistan
Prof. Yitzhak Hadari, Tel Aviv University, Natanya College Law
Professor Maimon Schwarzschild, Faculty of Law, University of San Diego
Professor Ada Pellegrini Grinover, Brazil
Professor Albert Chen, Professor of Law ,Hong Kong University
Professor Andreyj J. Zoll, Former President of Constitutional Court of Poland
Professor Anton Cooray, The School of Law, City University of Hong Kong
Professor Bernhard Ehrenzeller , Universität St.Gallen
Professor Bryant G. Garth, American Bar Foundation
Professor Chandra R De Silva, Dean, College of Arts and Letters at Old Dominion University
Professor Christopher F Forsyth, Director Centre of Public Law, Faculty of Law University of Cambridge
Professor Daniel Thurer, Universität Zürich
Professor David Feldman, Chairman of the Faculty Board of Law, Faculty of Law University of Cambridge
Professor Asher Maoz, Tel-Aviv University, Faculty of Law
Professor Dr. Burkhardt Hess , University of Heidelberg
Prof Yoav Dotan , Dean Faculty of Law Hebrew University
Dr. Tomer Braude, Faculty of Law Hebrew University
Professor Dr. Francisco Ramos Mendez , Univ of Barcelona
Professor Dr. Paul Oberhammer , Universität Zürich
Professor Dr. Winfried Brugger , Universitat Heidelberg
Professor Frank Bates, School of Law, University of Newcastle Australia
Paul Morris, Barrister York UK
Prof. Sir Louis Blom Cooper, UK
Professor Federico Carpi , President of the World -Association of Procedural Law
Professor Garry D. Watson, Osgoode Hall Law School, York University
Professor Gary J Simson, Dean, Case Western Reserve University
Prof Joseph Weiler , New York University
Professor Walter Habscheid, Prof Emeritus, University of Zurich
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Professor Hiram Chodosh, Dean, S.J. College of Law, the University of Utah
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Professor Walther J. Habscheid ,Emeritus Professor ,University of Geneva and University of Zurich
Professor Yasuhei Taniguchi Tokyo Japan
Professor Yoav Dotan, Dean Faculty of Law Hebrew University of Jerusalem
Professor Zhivko Stalev, Bulgaria

Appendix 2

International Law Association Study Group on the Practice and Procedure of International Courts and Tribunals on the Independence of International Judges

Co-Chairs

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■**Response**
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Name of Officer:

Samuel J. Fornah

Signed: