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SCSL-03-01-T  
(36936-36999)

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**THE SPECIAL COURT FOR SIERRA LEONE**

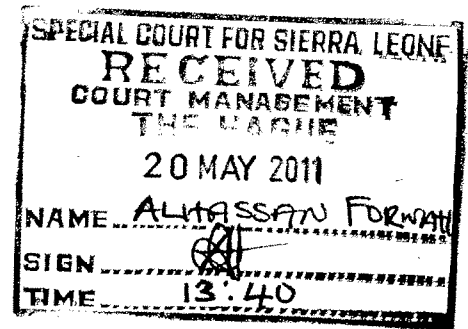
**Trial Chamber II**

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

**Registrar:** Ms. Binta Mansaray

**Date:** 20 May 2011

**Case No.:** SCSL-03-01-T



**THE PROSECUTOR**

-v-

**CHARLES GHANKAY TAYLOR**

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PUBLIC VERSION

**DEFENCE RESPONSE TO PROSECUTION FINAL TRIAL BRIEF**

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**Office of the Prosecutor:**

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Ms. Logan Hambrick

## I. INTRODUCTION & OVERVIEW

1. The Defence files this response to the Prosecution Final Trial Brief (“**PFB**” or “**Final Brief**”).<sup>1</sup> The Response is filed in accordance with the page limit as specified in the Scheduling Order of 22 October 2010,<sup>2</sup> and in accordance with the time and date as specified in the oral order of the Trial Chamber given on 7 March 2011.<sup>3</sup>
2. In short, the evidence before this Trial Chamber, and as argued by the Prosecution in its Final Brief, does not prove beyond a reasonable doubt that Charles Ghankay Taylor bears the greatest responsibility for atrocities committed in Sierra Leone, as alleged in the Indictment, pursuant to any mode of liability. The Prosecution has failed to discharge its burden of proof and consequently the charges against the accused should be dismissed in their entirety.
3. The Prosecution Final Brief is little more than a rehashed collection of theories regarding Taylor’s liability, ostensibly supported by vignettes of atrocities and linkage evidence as re-told by uncorroborated insider witnesses and those lacking first-hand knowledge of the events. The Prosecution has cherry-picked its evidence, conveniently choosing the account of one Prosecution witness over others, without addressing the discrepancies between and within their accounts. In most instances, the Prosecution discretely discards its witnesses which do not tow the correct line; the Prosecution was however forced to do this in public fashion when Naomi Campbell’s testimony did not strike gold (or diamonds for that matter) as anticipated. The Prosecution’s selective approach to its evidence highlights the fatal flaw of the Prosecution’s case: the Prosecution is unable to present a coherent and corroborated version of events that conclusively puts Mr. Taylor at the center (or otherwise) of the carnage in Sierra Leone.

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<sup>1</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-1189, Confidential Prosecution Final Trial Brief, 4 February 2011 (the revised and refined version as contained in the Confidential Annex thereto) (“**PFB**”). References made to the Defence Final Trial Brief (“**DFB**”) are to the corrected and amended version contained in the confidential annex to SCSL-03-01-T-1129, filed 9 March 2011.

<sup>2</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-1105, Order Setting a Date for Closure of the Defence Case and Dates for Filing Final Trial Briefs and the Presentation of Closing Arguments, 22 October 2010, p. 3 (“the length of any response to the final trial brief shall not exceed 100 pages”).

<sup>3</sup> *Prosecutor v. Taylor*, SCSL-03-01-T, Status Conference Transcript, 7 March 2011, p. 49336 (ordering that any written response by the Defence be filed by 16:00 on Thursday, 10 March 2011).

4. The simple fact that a Prosecution witness alleged something on the record (whether credible or not) was sufficient for the Prosecution case to survive the Rule 98 stage of proceedings. However at this stage of final deliberations, the Prosecution must present a case that can sustain the burden of proof beyond a reasonable doubt, in respect of individual findings of fact relied on for conviction, as well as that of ultimate criminal responsibility.<sup>4</sup> In this regard, the Prosecution has failed.
5. The structure of the Prosecution Final Brief makes it difficult to discern by which mode of liability the Prosecution seeks to prove that Mr. Taylor is responsible for specific atrocities. Rather, under Sections VII and VIII of the PFB, regarding the modes of liability, the Prosecution refers generically to its litany of atrocities and in-credible linkage evidence espoused in Sections II, V and VI of the PFB in order to assert that the evidence, in the conglomerate, must point toward the guilt of the accused. The *mens rea* of the accused is addressed entirely separately in Section IV of the PFB, again with no attempt by the Prosecution to merge Mr. Taylor's *mens rea* to the commission of specific crimes. The Defence submits that the Prosecution was forced to take this divorced approach to the facts and the law because it knew that if it attempted a careful matching of both, the Prosecution case could not sustain a conviction. Given this state of affairs, the Prosecution has been forced to ask the Trial Chamber to draw inferences from the totality of the evidence in order to find Mr. Taylor guilty. The Defence reminds the Trial Chamber of ICTR jurisprudence regarding the approach to take when asked to draw and inference from the evidence:

“In assessing whether circumstantial evidence proves a conclusion beyond reasonable doubt, it must be the only reasonable conclusion available. **If there is another conclusion reasonably open from the evidence, and which is consistent with the innocence of the accused, he must be acquitted.**”<sup>5</sup>

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<sup>4</sup> *Prosecutor v. Ntagerura et al*, ICTR-99-46-A, Judgement, 7 July 2006, para. 170; *Prosecutor v. Mrksic & Sljivancanin*, IT-95-13/1-A, Judgement, 5 May 2009, para. 325; see also para. 220.

<sup>5</sup> *Prosecutor v. Ntagerura et al*, ICTR-99-46-A, Judgement, 7 July 2006, para. 306; *Prosecutor v. Mpambara*, ICTR-01-65-T, Judgement, 12 September 2006, paras. 42, 121; *Prosecutor v. Nchamihigo*, ICTR-01-63-T, Judgement and Sentence, 12 November 2008, para. 13; *Prosecutor v. Ntakirutimana*, ICTR-96-10-A, Judgement, 13 December 2004, para. 172 (for the proposition that: In borderline cases in which the Trial Chamber is unable to conclude whether the totality of the evidence shows guilt beyond a reasonable doubt, the Trial Chamber must resolve the uncertainty in the accused's favor).

The Defence submits that if the Trial Chamber keeps this principle of *in dubio pro reo* in mind and resolves any ambiguity or doubt in favor of the accused,<sup>6</sup> then Mr. Taylor must be acquitted. Jurisprudence is clear that if there is another conclusion which is reasonably open from the evidence then the accused must be acquitted.<sup>7</sup> The principle of *in dubio pro reo*, which is a corollary to the presumption of innocence and the Prosecution's burden of proof beyond a reasonable doubt, applies to all findings made by the Trial Chamber which are required for a conviction, including elements which make up the crimes charged.<sup>8</sup>

6. The Defence entreats the Trial Chamber not to place too much reliance on the facts as stated in the Prosecution Final Brief. The PFB is replete with mischaracterizations of evidence (generally evidence which the Defence submits the Prosecution has purposefully taken out of context) and string cites which do not support the totality of the proposition which has been footnoted. Apparently, the Prosecution believes that the name "Charles Taylor" is synonymous with the words "Monrovia" and/or "Liberia"; in numerous instances where the evidence states that something happened in Monrovia or in Liberia, this evidence is transformed and recounted in the PFB as relating to Taylor himself. In light of such routine discrepancies, the Trial Chamber should approach the entirety of the Prosecution Final Brief with caution. While the Defence will highlight below many of the most egregious mischaracterizations or improper citations in the PFB, the Defence notes that these examples are illustrative and not exhaustive.
7. Furthermore, the Defence's inability in this Response to adequately address all parts of the PFB should in no way be construed as the Defence's concurrence with or acceptance of those unchallenged allegations. The Defence recalls jurisprudence to the effect that it is not sufficient for the Trial Chamber to simply *prefer* Prosecution evidence to Defence evidence; a finding of guilt is not a matter of weighing the Prosecution case against the Defence case and favoring one over the other. The Trial Chamber must be satisfied beyond a reasonable doubt that the accused is guilty as charged.<sup>9</sup>

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<sup>6</sup> The Trial Chamber considers whether there is any reasonable interpretation of the evidence other than the guilt of the accused. Any ambiguity or doubt is resolved in favor of the accused under the principle of *in dubio pro reo*: *Prosecutor v. Blagojevic & Jokic*, IT-02-60-T, Judgement, 17 January 2005, para. 18; *Prosecutor v. Halilovic*, IT-01-48-T, Judgement, 16 November 2005, para. 12.

<sup>7</sup> *Prosecutor v. Blagojevic & Jokic*, IT-02-60-T, Judgement, 17 January 2005, para. 21; *Prosecutor v. Halilovic*, IT-01-48-T, Judgement, 16 November 2005, para. 15.

<sup>8</sup> *Prosecutor v. Limaj et al.*, IT-03-66-A, Judgement, 27 September 2007, para. 21.

<sup>9</sup> *Prosecutor v. Nchamihigo*, ICTR-01-63-T, Judgement and Sentence, 12 November 2008, para. 12.

## II. RESPONSE RE: TAYLOR'S RESPONSIBILITY FOR THE CRIMES IN SIERRA LEONE

### II.B. Strategic Instruction, Direction, Guidance

8. In this Section, the Prosecution refers almost entirely to evidence pre-dating the Indictment period and in many cases falling outside the geographic limitations of the Indictment, primarily in order to draw parallels between the RUF and the NPFL. The Prosecution suggests that one was a "carbon copy" of the other and that Taylor intended for crimes committed by the NPFL in Liberia to also be committed by the RUF in Sierra Leone. In addition to the numerous factual and logical flaws in this proposition, the Defence notes jurisprudence to the effect that Rule 93 cannot be used to simply showcase the bad character of an accused. An ICTY Trial Chamber held that "evidence as to the character of an accused is generally inadmissible to show the accused's propensity to act in conformity therewith."<sup>10</sup> An ICTR Chamber has determined that such evidence should be excluded because the evidence because it had a low probative value but a substantial prejudicial effect.<sup>11</sup>
9. Allegations in the PFB at para. 120 regarding frequent radio communications between Taylor and Sankoh after the closure of the border by ULIMO are adequately addressed in the DFB at paras. 814-20.
10. At paras. 121-3 of the PFB it is alleged that Sankoh and the RUF would act on Taylor's "advise". An example of such "advise" is the attack on Sierra Rutile. However, the evidence the Prosecution seeks to rely on as proving its case in this regard is inconsistent and should not be characterized as credible. The evidence relating to this particular attack was in great detail analyzed by the Defence in the DFB at paras. 821-35. Regarding the planning of the Sierra Rutile attack, see further paras. 1354-8 of the DFB.
11. The Prosecution alleges in the PFB at para. 124 that Dr. Sebo was Taylor's publicist. However, this finds no support in the evidence other than a documentary hearsay reference. Otherwise, the Prosecution relies on a single page of the transcript of TF1-168,

<sup>10</sup> *Prosecutor v. Kupreškić et al.*, IT-95-16-T, Decision on Evidence of Good Character of the Accused and the Defence of Tu Quoque, 17 February 1999, para. 31.

<sup>11</sup> *Prosecutor v. Bagosora, Kabiligi, Ntabakuze and Nsengiyumva*, ICTR-98-41-AR93 & ICTR-98-41-AR93.2, Decision on Prosecutor's Interlocutory Appeals regarding Exclusion of Evidence, 19 December 2003, para. 14.

which page does not contain any statement of the witness as to Dr. Sebo being Taylor's publicist.

12. At paras. 125-9 of the PFB the Prosecution alleges that the establishment of the RUF External Delegation in the Ivory Coast was "advised" by Taylor, and, once established, the External Delegation was supported by Taylor. This issue is adequately addressed in the DFB at paras. 448-51.
13. Taylor's involvement in the planning of 'Operation Stop Election' by the RUF with the aim of preventing elections is addressed in paragraphs 444-445 and 836-814 of the DFB.
14. The evidence as presented in paragraphs 130-133 of the PFB concerning the details of the operation and Taylor's alleged involvement in the planning of 'Operation Stop Election' is not credible. The crimes, and in particular amputations, committed during the operation were not ordered as a part of 'Operation Stop Election', which was subsequently confirmed by TF1-371.<sup>12</sup> Contrary to the testimony of TF1-045, another witness, TF1-371, argued that Sankoh intended to disrupt the elections and that the fighters committed amputations without being ordered to do so. Furthermore, the testimony by TF1-532 concerning the planning of the operation is not to be trusted even though the Prosecution was eager to rely on his evidence. Sankoh allegedly contacted Taylor in order to receive his approval of the operation and to inform him that the operation would be fearful and that it would involve a practice of cutting off hands.<sup>13</sup> However, this account is full of inconsistencies as the witness himself confirmed that Taylor and Sankoh did not have further contact after the closure of the border but that Sankoh felt that he needed the approval of Taylor for 'Operation Stop Election'.<sup>14</sup>
15. Taylor's involvement in the construction of an airstrip near Buedu, is discussed in paragraph 825 of the DFB.
16. The allegation in paragraph 134 of the PFB is discredited by another Prosecution witness. TF1-568 provided evidence to the extent that Bockarie had told Mohammed Kabbah that the airfield at Buedu was created in order to import arms directly from Libya.<sup>15</sup> Thus, Taylor was not involved in the construction of the airstrip in any way.

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<sup>12</sup> See: TT, TF1-371, 29 Jan 08, p. 2462.

<sup>13</sup> TT, TF1-532, 10 Mar 08, p. 5693-5.

<sup>14</sup> TT, TF1-532, 10 Mar 08, p. 5693-5.

<sup>15</sup> TT, Mohammed Kabbah, TF1-568, 16 Sep 08, p. 16294.

17. The testimony is uncorroborated, since several of the witnesses referred to in the footnotes testified that the airstrip was constructed in 1996 and others stated that it occurred between 1998 and 1999. Furthermore, paragraph 149 of the PFB when discussing the construction of an airstrip in sometime in 1998 after the Junta, the Prosecution included the same transcript references as it did in paragraph 134. Thus, the Prosecution is clearly confused as to when the airstrip in Buedu was constructed and which timeframe the witnesses were referring to in their evidence.
18. Paragraphs 455-458, 1039 and 1086 of the DFB addresses the issue concerning Taylor's alleged involvement in Sankoh's participation in the peace negotiations in the Ivory Coast while using the opportunity to purchase arms and ammunition.
19. The allegations in paragraphs 135-138 of the PFB relating to Taylor's involvement in arms deals by Sankoh during the peace talks in the Ivory Coast are not credible. Various witnesses have testified to the extent that the RUF obtained assistance from Libya and the Ivory Coast in particular.<sup>16</sup> It is clearly demonstrated that the RUF received assistance in the form of money and materials and that Libya was an important actor in these transactions. Furthermore, Sankoh made various trips in order to receive such assistance but he never sent any letters to Taylor for that purpose.<sup>17</sup> Consequently, Taylor was not involved in Sankoh's initiative to purchase arms and ammunition while he was in the Ivory Coast for peace talks.
20. The PFB alleged in paras. 140-1 that Taylor gave instruction and guidance that saved the AFRC/RUF alliance following the ECOMOG intervention, such instructions reportedly included reforming the AFRC/RUF and maintaining control of diamond fields like those in Kono district. According to the PFB, Taylor communicated with the AFRC/RUF leaders by satellite phone, radio and messengers, such communications and instructions were passed to subordinates by Koroma and Bockarie. Later on in its argument, the Prosecution again discusses in paras. 147-8 Taylor's in restructuring the AFRC/RUF after the ECOMOG Intervention, this included selecting Bockarie as the leader and promoting other commanders.

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<sup>16</sup> TT, Varmuyan Sherif, TF1-406, 10 Jan 08, p. 1018; TF1-371, 31 Jan 08, p. 2696; TF1-367, 20 Aug 08, p. 14194-7; TF1-338, 3 Sep 08, p. 15276; Charles Ngebeh, DCT-146, 23 Mar 10, p. 37848-9; Sam Kolleh, DCT-102, 1 Nov 10, p. 48409-13.

<sup>17</sup> See for instance: Exhibit P-272; Exhibit D-15; TT, TF1-168, 22 Jan 09, p. 23283-95; TT, TF1-367, 20 Aug 08, p. 14157; TF1-371, 31 Jan 08, p. 2696

21. The DFB responded to these allegations in paras. 848-51. Additionally, the PFB cited to Exhibit P-67 to show the imminent collapse of the AFRC/RUF and relied on it to show Taylor gave instructions to the group but failed to note that the same exhibit also shows that plans to capture Kono were made between Bockarie and Superman.<sup>18</sup>
22. In paras. 142-4 of the PFB, it alleged that Bockarie was instructed by Taylor, over the course of several radio/phone conversations and trips to Monrovia, to continue fighting.
23. It is important to note that the Prosecution provides little evidence of any instruction by Taylor to Bockarie (PFB, para. 142) and instead focused on the trips made by Bockarie to Monrovia to visit Taylor as if this was sufficient evidence of actual instruction (PFB, paras. 143-4 ). The DFB did not address the violation of the travel ban but such failure by Taylor to adhere to such a ban and any subsequent meeting with Bockarie is inadequate in itself to show instructions for continued fighting.
24. According to the PFB, paras. 145-6, Taylor gave instructions to Bockarie to bring Johnny Paul Koroma for the purpose of seizing diamonds from the latter and handing them over to Taylor.
25. Although not specifically dealt with in detail by the DFB, the testimony of TF1-371 relied upon by Prosecution about the seizure of diamonds from Johnny Paul Koroma was inconsistent with other witnesses.<sup>19</sup> Furthermore, the Prosecution has sought to, in para. 146, to show that Taylor's name was not mentioned in the Exhibits was evidence of Bockarie and Sankoh's discretion in avoiding any implications on Taylor because of the meetings the two had with Taylor. However, such a finding is absurd as no imputation of guilt can be found simply by an omission of a name; rather, the fact that Taylor's name was omitted must logically lead to the conclusion that Taylor was not involved in giving any instruction to Bockarie. The Prosecution went so far as to even imply Taylor's testimony was actually an admission of meeting with Bockarie and Sankoh to provide instruction when such meetings were regarding the peace process.<sup>20</sup>
26. In PFB para. 149, the Prosecution alleged Taylor instructed Bockarie to build an airstrip, through Daniel Tamba and Ibrahim Bah, to construct an airstrip at Buedu.

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<sup>18</sup> Exhibit P-67.

<sup>19</sup> TT, Samuel Kargbo, TF1-597, 22 May 08, p. 10526-7 (though TF1-371 placed Kallon at [REDACTED], Kargbo claimed Kallon was not present). Uniquely, TF1-567 claimed that Bockarie was not present at the time, see: TT, TF1-567, 2 Jul 10, p. 12899-900.

<sup>20</sup> TT, CT, 25 Nov 09, p. 32441-2



27. Although this particular issue was not discussed in the DFB, footnote 2293 recognized that Bockarie had told Mohammed Kabbah that the RUF built an airstrip in Buedu for the RUF to import arms directly from Libya.<sup>21</sup> Additionally, the witnesses cited to in PFB, paras. 134 and 149, correctly identified in the latter paragraph the time following the ECOMOG Intervention; those same witnesses (TF1-532 and TF1-276), however, were also used in the prior paragraph on the same issue but incorrectly used the reference as that was discussing a separate time frame in 1996 before the ECOMOG Intervention.
28. Para 150 – 157 of the PFB alleges that the Accused planned and/or was involved in a plan to control and maintain control over Kono District. The plan was for the AFRC/ RUF to thereafter move to the capital to restore the AFRC/RUF control over Freetown. This plan resulted in AFRC/RUF control over Freetown. Taylor has consistently denied having planned the invasion and control of Kono by the RUF.<sup>22</sup> Taylor was not even aware of the areas the RUF controlled or lost in order to give them instructions to capture any town.<sup>23</sup> This matter is specifically addressed in the DFB at para. 606. The plan was made between Bockarie and Superman. Superman travelled to Buedu in about May 1998, for a meeting called by Bockarie to discuss, among other things, the diamonds lost by Sesay. It was at this meeting that the plan to recapture Kono was discussed.
29. The allegations in the PFB at para. 151 are that during the many satellite phone calls between Taylor and Koroma while Koroma was fleeing from Freetown, Taylor told Koroma to secure Kono. Koroma gave orders to all fighters to go and capture Kono. Notably the Prosecution cite and base evidence on statements of their witness who claims to have been aware of a conversation between Koroma and Taylor. However, in Samuel Kargbo's testimony he admitted: "but then I did not know anything that they had been conversing about."<sup>24</sup> Therefore, clearly he was not actually privy to any conversation between Taylor and Koroma and was not in a position to know whether Koroma gave orders to capture Kono based on anything Taylor told him. Further the DFB tackles this

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<sup>21</sup> TT, Mohammed Kabbah, TF1-568, 16 Sep 08, p. 16294.

<sup>22</sup> TT, Charles Taylor, 5 Aug 09, p. 26050-51.

<sup>23</sup> TT, Charles Taylor, 22 Sep 09, p. 29402.

<sup>24</sup> TT, Samuel Kargbo, TFI- 597, 21 May 08, p. 10486-87, 10490-91.

- allegation in para. 1497 by citing a stern contradiction by Mohamed Kabbah, who did not hear or see any message from Taylor ordering the RUF to hold Kono.<sup>25</sup>
30. Further allegations in the PFB at paras. 153 to 156 imply that Taylor also instructed Bockarie to hold Kono after which Bockarie traveled to see Taylor in order to obtain arms and ammunition. He allegedly showed his subordinates the large amount of arms and ammunition. The DFB disproves this claim by pointing out a number of grave inconsistencies in this account, at paras. 878 to 925. Some that stand out are the evidence of TF1-571, Karmoh Kanneh, who said that Sam Bockarie rejected the proposal by Jungle and Morris Kallon for reinforcement from Liberia on account of the past problems the RUF had had with the NPFL, and preferred ULIMO-K.<sup>26</sup> Further that according to TF1-371, Bockarie was in fact the brain child of attacks as before his November 1998 trip to Burkina Faso, Bockarie had a meeting with Issa Sesay and Morris Kallon, where they discussed expanding into Kono after the failure of the Fitti Fatta mission.<sup>27</sup>
31. The Prosecution argument that Taylor was involved in the RUF's attempts to retake Kono as part of a grand strategy to recapture Freetown, rests solely on the evidence of Perry Kamara, TF1-360. However, as argued in the DFB, Kamara's testimony on this subject is total fantasy.<sup>28</sup> He gives a revisionist account of the campaign waged by the RUF in December 1998, providing it with a fictional genesis in a meeting of April or May 1998.<sup>29</sup> No other witness provides evidence for such a grand plan being outlined at a meeting at about this time. In fact, the evidence of witnesses such as TF1-371 and TF1-571 is that the supposed grand plan to take Freetown was outlined at a meeting in December 1998.<sup>30</sup> The Trial Chamber should dismiss TF1-360's testimony on this point as incredible, and subsequently, the whole of the Prosecution's proposition that Taylor was involved in a grand plan to take Freetown, as stated in PFB paragraphs 158, 159 and 160.

<sup>25</sup> TT, Mohamed Kabbah, TF1-568, 16 Sep 08, p. 16338-9.

<sup>26</sup> TT, Karmoh Kanneh, TF1-571, 13 May 2008, p. 9726-7.

<sup>27</sup> TT, TF1-371, 28 Jan 08, p. 2411.

<sup>28</sup> DFB, para. 891 *et seq.*

<sup>29</sup> As other witnesses have testified, there was a meeting at some point in about mid-1998 to discuss the Fitti Fatta operation, but it was solely concern with the operation to take Kono, i.e. that operation was not part of a wider plan. For example: TT, Albert Hindowa Saidu, TF1-577, 5 Jun 08, p. 11054-61; Karmoh Kanneh, TF1-571, 8 May 08, p. 9392-7; Alice Pyne, TF1-584, 19 Jun 08, p. 12233-41.

<sup>30</sup> TF1-371's account: DFB, para. 881 *et seq.* TF1-571's account: DFB, para. 902 *et seq.*

32. There is nothing to support the Prosecution proposition in paragraph 161 that Taylor “determined to move again on the major offensive” to retake Freetown because of Sani Abacha’s death or the transfer of Sankoh to Sierra Leone. Once again, the Prosecution is simply assuming an argument is true because it fits its case theory, rather than because there is evidence to support it. The evidence, of course, supports the proposition that the Freetown Invasion was carried out by the AFRC because SAJ Musa wanted to reinstate the army and avenge the AFRC soldiers executed in Freetown.<sup>31</sup>
33. The Prosecution’s account regarding the Freetown Invasion itself has been amply dealt with by the DFB, and in other sections of this Response.<sup>32</sup>
34. In response to paras. 178-9, of the PFB regarding Taylor’s interaction with Sesay on the issue of the release of the UN peacekeepers the Defence notes this is covered in the DFB at paras. 948-56, 1321-2 and 671-7. The proposition that Taylor ‘instructed’ Sesay to release the peacekeepers is adequately dispelled in these sections.
35. The allegations in paras. 178-9 of the PFB can also be dismissed on the basis of Issa Sesay’s testimony, who denied Taylor’s control of the RUF.<sup>33</sup> Sesay stated that his meeting with Taylor at the Executive Mansion took place in the afternoon,<sup>34</sup> not around 10 or 11 p.m. as alleged. [REDACTED]  
[REDACTED].<sup>35</sup> Furthermore, the notion put forward by TF1-338 that Taylor had been promised the chairmanship of ECOWAS if he secured the release of the peacekeepers betrays his lack of understanding of events at the state-level Taylor was operating. The ECOWAS chairmanship is determined on rotation; not by election.<sup>36</sup> Sesay released the peacekeepers because fighting against the UN would not be in the RUF’s interest.<sup>37</sup> In any event, that only some of the peacekeepers were released, and not all, is further indicative that Taylor neither exercised control over the RUF nor instructed that the peacekeepers be released. He negotiated their release.<sup>38</sup>

<sup>31</sup> DFB, para. 911 *et seq.*

<sup>32</sup> See DFB, JCE Section, specifically para. 875 *et seq.*

<sup>33</sup> TT, Issa Sesay, DCT-172, 14 Jul 10, p. 44521.

<sup>34</sup> TT, Issa Sesay, DCT-172, 14 Jul 10, p. 44517.

<sup>35</sup> TT, Issa Sesay, DCT-172, 14 Jul 10, p. 44517. Taylor also stated that at TF1-338, and people of his low status, [REDACTED], TT, Charles Taylor, 19 Aug 09, p. 27178.

<sup>36</sup> TT, Charles Taylor, 19 Aug 09, p. 27177.

<sup>37</sup> TT, Issa Sesay, DCT-172, 14 Jul 10, p. 44521 (the RUF could not fight the UN); 26 Jul 10, p. 44539.

<sup>38</sup> TT, TF1-567, 8 Jul 08, p. 13173.

36. The Prosecution has neglected to address the fact that Taylor was mandated by ECOWAS<sup>39</sup> and the international community<sup>40</sup> to secure the release of the peacekeepers and was applauded for his efforts<sup>41</sup>. Lastly, Sesay denied that he received arms ammunition in return<sup>42</sup> and, in response to the arguments in para. 179 of the PFB, provided an explanation as to why he released the peacekeepers in Monrovia and not Sierra Leone.<sup>43</sup>
37. The decision to appoint Sesay as interim leader was one taken by the ECOWAS presidents, contrary to the characterisation by the Prosecution in paras. 180-1 of the PFB. The Defence addresses this issue in paras. 957-60 in the DFB.
38. Issa Sesay told this court that that it was Olesegun Obasanjo and Taylor who expressed that Sesay would be the appropriate person to appoint as interim leader, considering the agreeable manner in which he released the peacekeepers.<sup>44</sup> Indicative of the collective nature of the decision, it was Obasanjo and Alpha Konare, then Chairman of ECOWAS, who, appropriately, made the trip to see Sankoh and deliver Sesay's letter to him.<sup>45</sup> Ahmed Tejan Kabbah also met Obasanjo and Konare in this process.<sup>46</sup>
39. The allegations in paras. 182-4 of the PFB are addressed in paras. 965-70 and in the Command Responsibility section of the DFB.

#### *II.D. Arms and Ammunition aka Material*

40. The Prosecution Final Brief's section on arms and ammunition is characterized by hyperbole and duplicity. The Prosecution attempts to claim that Taylor was behind almost all sources of the RUF/AFRC's materiel supplies. To that extent, other sources are downplayed significantly. Only one mention is made of the RUF/AFRC capturing arms.<sup>47</sup> Taylor is alleged to have been behind the RUF being supplied by ULIMO and Guinea. However, there is often little or no evidence to support such hyperbolic assertions, and in

<sup>39</sup> Exhibit D-252, para. 21.

<sup>40</sup> Exhibit D-223 (Madeleine Albright encouraged Taylor to continue his positive efforts with regard to Sierra Leone in October 1999); Exhibit D-251 (After Taylor managed to secure the release of some of the peacekeepers, the US ambassador hoped that Taylor would be able to secure the release of the rest).

<sup>41</sup> Exhibit D-251; Exhibit D-252, para. 21; Exhibit D-250, p. 2 (The Sierra Leonean Government acknowledged Taylor's positive role in securing the release of the peacekeepers).

<sup>42</sup> TT, Issa Sesay, DCT-172, 23 Aug 10, p. 46895.

<sup>43</sup> TT, Issa Sesay, DCT-172, 23 Aug 10, p. 46893-4.

<sup>44</sup> TT, Issa Sesay, DCT-172, 26 Jul 2009, p. 44552.

<sup>45</sup> TT, Issa Sesay, DCT-172, 26 Jul 09, p. 44553; Charles Taylor, 19 Aug 09, p. 27163.

<sup>46</sup> TT, Charles Taylor, 19 Aug 09, p. 27172.

<sup>47</sup> Prosecution Final Brief, para. 238.

that sense the Prosecution has been duplicitous, often citing footnotes which do not support the proposition alleged.

41. Indeed, one of the hallmarks of the entire arms and ammunition section is a lack of evidence for the Prosecution's arguments. For example, the Prosecution argument is that Taylor facilitated the RUF purchasing arms from ULIMO.<sup>48</sup> There is however, no evidence cited for this argument in the entire section; the footnotes cited do not support the Prosecution proposition.<sup>49</sup> Equally, the Prosecution argued that "Taylor's actions [in respect of supplying the RUF through ULIMO] were assisted by the long-term cooperation between himself and the leader of ULIMO-K, Alhaji Kromah".<sup>50</sup> There is no evidence for this point. It is simply a Prosecution assumption. The same is true of the Prosecution argument set out in paragraph 241; there is no evidence for the argument set out here. Likewise, in paragraph 224, the Prosecution claims that the supplies transported by Jungle and referenced in the testimony of TF1-388 were connected to Bockarie contacting Taylor in 1997 requesting arms and ammunition as per the testimony of TF1-371.<sup>51</sup> However, there is no evidence to link the two propositions. The Prosecution has assumed the two were linked, but no witness or exhibit states anything to this effect; the Prosecution cannot rely on logic or sense, outside of evidence, either since TF1-388's shipment was in 1998, a year after the supposed contacting of Taylor in 1997.
42. As such, the Prosecution argument is frequently made purely by assumption. A good case in point is paragraph 218, in which the Prosecution claims, "no doubt Taylor gave this trader the start-up money and other assistance to secure a trading alliance with Guineans in Guinea". There is no authority for this assumption. Equally, in paragraph 254, the Prosecution assumes the materiel for the Fitti Fatta operation was abundant, despite no evidence of this. Another assumption is a common one made by the Prosecution: that because Taylor was importing arms, he must have given them to the RUF.<sup>52</sup>
43. Perhaps to buttress such weakly evidenced arguments, the Prosecution makes use of block footnoting. However, such footnotes rarely support the propositions they are being used to reference. For example in paragraph 219, the Prosecution argues that "Taylor devised a

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<sup>48</sup> Prosecution Final Brief, para. 220.

<sup>49</sup> Prosecution Final Brief, para. 220.

<sup>50</sup> Prosecution Final Brief, para. 236.

<sup>51</sup> Prosecution Final Brief, para. 224.

<sup>52</sup> Prosecution Final Brief, para. 269.

means of supplying these RUF which allowed him to keep Sankoh only peripherally involved in the arrangement. Taylor used his connections with ECOMOG and one of his senior subordinates to strike a deal for this material. To that end, Taylor sent one of his senior NPFL Special Forces commanders, Saye Boayou, to Ivory Coast to meet with Sankoh." The footnotes referenced for this section, however, say nothing about Taylor or any role Taylor may have played. There is therefore no evidence to support the Prosecution assertion that Taylor was involved.

44. Likewise, in para. 218 the Prosecution claims Zigzag Marzah set up a system on Taylor's orders so that the RUF could be supplied from Guinea through the ambassador Tiagen Wantee.<sup>53</sup> Footnote 673 then references both Marzah's testimony on this point, and the evidence of TF1-388. However, TF1-388's testimony as referenced only mentions that Tiagen Wantee was the ambassador to Guinea. So therefore, what at first sight seemed corroborated is in fact not, and the whole proposition of paragraph 218 rests on Marzah's testimony alone. The suspicion is that the Prosecution is trying to buttress a problematic witness to fool the Trial Chamber into thinking his evidence is corroborated.
45. Exactly the same is true of paragraph 251. The Prosecution proposition here is supported only by TF1-334, and not TF1-375 as referenced in the footnote. This is particularly misleading as TF1-334's testimony on this point was severely undermined in cross-examination. So the whole proposition in paragraph 251 is weak.
46. This duplicity in footnoting is a common theme. In paragraph 252, the Prosecution proposition is that Taylor supplied the arms and ammunition with which fighters sent by Bockarie to Kono District used in the context of the Fitti Fatta operation. Footnote 758 references 5 witnesses (TF1-532 is repeated twice), but only 2 of those provided evidence for the Prosecution proposition (TF1-532 at p. 5748 and TF1-375 at p. 12523-43). The testimony cited of TF1-334 refers to another operation. The testimony of TF1-532 at p. 5781-83 refers to the trip to Burkina Faso in November 1998 (i.e. a separate event) and not to the proposition.<sup>54</sup> The testimony of TF1-584 contains no mention of Taylor. The testimony of TF1-579 refers to a time after September 1998 and therefore after the Fitti Fatta operation.

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<sup>53</sup> Prosecution Final Brief, para. 218.

<sup>54</sup> This mistake is also repeated at footnote 760-1. The testimony of TF1-532, 11 March 2008, p. 5781-83, refers to the November 1998 trip to Burkina Faso and not Fitti Fatta.

47. And taken with the above, there is little room for doubt that the Prosecution has resorted to duplicity. On certain occasions in which Prosecution witnesses give varied versions of the same event, the Prosecution only refers to one version and omits the inconsistent evidence it does not want. The notable example is its argument on the Magburaka Shipment. Here the Prosecution argument is drawn solely from TF1-371, which is odd considering that [REDACTED] for the shipment, despite other Prosecution witnesses [REDACTED].<sup>55</sup> Yet, this is no doubt because TF1-371's account is the most harmful to Taylor: his version of the quantity of arms and ammunition delivered, for example, being far in excess of what other witnesses claimed.<sup>56</sup> While, the Prosecution does not have a duty to show the Trial Chamber to all the many varying Prosecution accounts of an episode, it cannot in all honesty pretend that only one such version exists when there are many. These are mentioned in the Defence Final Brief.<sup>57</sup>

*II.E. The Accused Supplied Manpower During the Indictment Period*

48. Throughout this section, the Prosecution essentially begs the Trial Chamber to infer that if an action was taken by Liberian security personnel or Liberian forces along the Sierra Leonean border, resulting in the supply of manpower during the Indictment period, it was done with Taylor's knowledge and that he had intended those actions to be taken. Such grand inferences are not supportable on the facts. The Defence disputes the notion that Taylor sent manpower to the RUF or AFRC/RUF during the Indictment period, with the intention that they contribute in a substantial way to the commission of crimes.
49. At paras. 285 to 290 of the PFB, the Prosecution alleges that Taylor facilitated the repatriation of Sierra Leonean manpower from Liberia, and essentially asks the Trial Chamber to find that since Taylor did not arrest these fighters and keep them in Liberia, he is guilty for any of the criminal activities which these individuals undertook upon their return to Sierra Leone. With regard to the killing of Fonti Kanu, Issa Sesay testified that he was arrested at the Sierra Leonean border near Bomaru for trying to cross at night, which was against regulations; that Mike Lamin later killed him.<sup>58</sup> Much of the other evidence

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<sup>55</sup> DFB, para. 593.

<sup>56</sup> DFB, para. 1048.

<sup>57</sup> DFB, paras. 598-596.

<sup>58</sup> TT, Issa Sesay, DCT-172, 16 Aug 10, p. 46303-4.

under this heading relies on the uncorroborated account of TF1-590, and is focused primarily on the actions of Chucky Taylor, rather than the accused.

50. The Prosecution suggests that Taylor sent fighters (ex-ULIMO and members of the Red Lion Battalion) to Sierra Leone as reinforcements for the Kono and Freetown operations, at paras. 291 to 299 of the PFB. The evidence in relation to the ULIMO fighters being sent to Sierra Leone as the “Scorpion Unit” is based on the tainted testimony of Varmuyan Sherif and Abu Keita. The credibility of these witnesses is generally challenged in paras. 529, 1089 and 1090 (Sherif) and 1397 to 1404 (Keita), of the DFB. Taylor entirely dismissed the notion that he would have sent Keita to lead the Scorpion Unit, as he was a former enemy.<sup>59</sup>
51. The accounts given by Keita and Sherif regarding this event contradict rather than corroborate each other. Varmuyan Sherif testified about making contact with Keita around the time of the Camp Johnson Road incident (having been told by Charles Taylor to look for one of the most senior officers of ULIMO to work alongside Sam Bockarie). However, Sherif makes absolutely no mention of Abu Keita being in prison.<sup>60</sup> This also conflicts with Abu Keita’s account that Sherif took him out of prison and took him to Musa Cisse’s house, where Keita met with Benjamin Yeaten in the presence of Sherif.<sup>61</sup> The only mention Sherif makes in relation to Musa Cisse is that Cisse ordered him to take Keita to Yeaten’s house.<sup>62</sup> He distinctly does not mention that he took Keita from prison to Cisse’s house.
52. Keita, on the contrary, goes into detail about the meeting at Cisse’s house; naming those people who were present and quoting Benjamin Yeaten’s words directly.<sup>63</sup> The conversations which Keita repeats between himself and Yeaten demonstrate that Keita was ready and willing to cooperate and to join the RUF.<sup>64</sup> On the other hand, Sherif says that Keita was initially suspicious because ULIMO-K had been fighting against Sam Bockarie for a very long time and he did not know whether his life would be safe.<sup>65</sup> Sherif talks about a meeting at which Yeaten and Keita were both present, but this is not at Musa

<sup>59</sup> TT, Charles Taylor, 6 Aug 09, p. 26215-18.

<sup>60</sup> TT, Varmuyan Sheriff, TF1-406, 9 Jan 2008, p. 856-60.

<sup>61</sup> TT, Abu Keita, TF1-276, 23 Jan 2008, p. 1963-71.

<sup>62</sup> TT, Varmuyan Sheriff, TF1-406, 9 Jan 2008, p. 859.

<sup>63</sup> TT, Abu Keita, TF1-276, 23 Jan 2008, p. 1963-71.

<sup>64</sup> TT, Abu Keita, TF1-276, 23 Jan 2008, p. 1963-71.

<sup>65</sup> TT, Varmuyan Sheriff, TF1-406, 9 Jan 2008, p. 856-60.



Cisse's house it is at Benjamin Yeaten's house.<sup>66</sup> Sheriff states that he took Keita to Yeaten's house on the instruction of Cisse.<sup>67</sup> In contrast, Keita states that when he went to Yeaten's house and met with him, he had travelled to Cisse's house with Mazhar, Sampson and Jungle and from there they had travelled to Yeaten's house.<sup>68</sup> Keita markedly does not mention being taken to Yeaten's house by Sherif. The Defence submits that a more plausible reading of the evidence is that Sherif and Keita, because they had pre-existing contacts with the RUF, were involved in activities on behalf of Yeaten (not Taylor). The Defence notes that the disputed Exhibit P-28 is signed by Yeaten, and not Taylor; there is no credible evidence to the effect that Taylor was ever aware of the Scorpion Unit.<sup>69</sup>

53. The Defence notes that according to Keita, the 150 men Bockarie allegedly returned with from Camp Naama were a mixture of Sierra Leoneans and Liberians;<sup>70</sup> Mallah testified that all of the men who came with Bockarie were Liberians.<sup>71</sup> Keita testified that they were sent for training at Bunumbu, rather than on any mission with Bockarie, as the Prosecution states at para. 293 of the PFB. It is then not clear from the evidence of Alice Pyne that the "Liberian fighters" sent with Senegalese by Bockarie to reinforce Superman are the same Liberians that Keita and Mallah have referred to. See also the credibility analysis of Alice Pyne at para. 1495 of the DFB with respect to Senegalese being an STF.
54. The Prosecution discusses the role of the Red Lion Battalion at paras. 295 to 298 of the PFB. They rely primarily on the testimony of Alimamy Bobson Sesay for the suggestion that there were non-STF Liberians, sent by Taylor, who formed part of this group. However, AB Sesay's evidence on the issue of Liberians and the STF is unclear at best and seems designed to implicate Taylor. In testimony, AB Sesay agreed that the STF was derived from ULIMO, but he had previously told the Prosecution that the STF were members of the NPFL who broke away.<sup>72</sup> In his statement to the Prosecution, TF1-334 stated that Superman brought 50 Liberians who "became" the STF.<sup>73</sup> However, it is well

<sup>66</sup> TT, Varmuyan Sheriff, TF1-406, 9 Jan 2008, p. 860.

<sup>67</sup> TT, Varmuyan Sheriff, TF1-406, 9 Jan 2008, p. 859.

<sup>68</sup> TT, Abu Keita, TF1-276, 23 Jan 2008, p. 1963-71.

<sup>69</sup> TT, Charles Taylor, 6 Aug 09, p. 29215-6 (Taylor denied creating or knowing about the Scorpion Unit).

<sup>70</sup> TT, Abu Keita, TF1-276, 23 Jan 08, p. 1995.

<sup>71</sup> TT, Augustine Mallah, TF1-045, 13 Nov 08, p. 20219.

<sup>72</sup> TT, AB Sesay, TF1-334, 28 Apr 08, p. 8754, 8777.

<sup>73</sup> TT, AB Sesay, TF1-334, 28 Apr 08, p. 8778.

known that the STF was in existence in 1992. AB Sesay claims the Red Lion Battalion came into existence at Colonel Eddie Town,<sup>74</sup> but also claims that the battalion was a body-guard unit of Superman,<sup>75</sup> meaning it was in existence before Colonel Eddie Town. The Defence also notes its related comments in relation to the credibility of AB Sesay generally at paras. 915-18 of the DFB. On the basis of such unreliable evidence, the Prosecution has not proven the connection between Taylor and the Liberian fighters to the atrocities leading up to and during the Freetown invasion beyond a reasonable doubt.

55. At paras. 300-305, the Prosecution list Jungle as one of Taylor's messengers or liaisons. The Defence notes that there is inconsistent evidence regarding Jungle: who he was and what the source of the ammunition he allegedly brought to the RUF actually was. For instance, TF1-585 [REDACTED] testified to never seeing Jungle (Daniel Tamba) bring arms and ammunition to Kenema;<sup>76</sup> Issa Sesay confirmed that Jungle did not deliver ammunition to the RUF when Bockarie was in Kenema in 1997, and that the RUF only received ammunition from the AFRC;<sup>77</sup> TF1-375 stated that Jungle was Taylor's bodyguard and Jungle was the liaison between Taylor and Bockarie, having set up the relationship between them.<sup>78</sup> However, DCT-008 confirmed that Jungle never served as Taylor's security<sup>79</sup> and his movement of ammunition to Sierra Leone on Yeaten's behalf was secret and never known to Taylor;<sup>80</sup> Mustapha Mansaray testified that Jungle had been with Sankoh in Zogoda in 1995 and was sent by Sankoh to obtain arms and ammunition from Liberia, though the witness did not know the source of this;<sup>81</sup> Dauda Fornie testified that Jungle was one of Sankoh's men in about 1993;<sup>82</sup> TF1-516 testified that Jungle was trapped in a separate jungle when ULIMO-K cut off the link between the NPFL and RUF, and Jungle crossed into SL and stayed with Bockarie when ECOMOG disarmed the NPFL and ULIMO-K;<sup>83</sup> and TF1-168 testified that Jungle joined the RUF around January 1994 after he and a group of NPFL had been cut off from Liberia

<sup>74</sup> TT, AB Sesay, TF1-334, 28 Apr 08, p. 8762.

<sup>75</sup> TT, AB Sesay, TF1-334, 28 Apr 08, p. 8771.

<sup>76</sup> TT, TF1-585, p. 15844.

<sup>77</sup> TT, Issa Sesay, DCT-172, 11 Aug 10, p. 45955-8.

<sup>78</sup> TT, TF1-375, 23 Jun. '08, 12492.

<sup>79</sup> TT, DCT-008, 02 Sept. 09, p. 47818. See, also, TF1-579, 5 Nov. 2008, p. 19856.

<sup>80</sup> TT, DCT-008, 27 Aug. 10, p. 48186.

<sup>81</sup> TT, Mustapha Mansaray, TF1-337, 5 Mar 08, p. 5296-8.

<sup>82</sup> TT, DAF, TF1-274, 1 Dec 08, p. 21388.

<sup>83</sup> TT, TF1-516, 8 Apr 08, p. 6914.

by ULIMO, and he became a trusted member of the RUF thereafter and was sent by Bockarie to Danane in 1996 to obtain money from Sankoh for use in buying arms and ammunition from former ULIMO combatants.<sup>84</sup>

56. With respect to the allegations of herbalists provided by Taylor prior to the Fitti Fatta operation at para. 306 of the PFB, the Defence refers to paras. 1192-4 of the DFB.

### II.F. Communications

57. Unlike the arms and ammunition section of the Prosecution Final Brief, the communications section does not resort to the misleading approach of being referenced by inaccurate footnotes. In the communications section, often only one witness has been given as an authority for a proposition. This means that propositions stand or fall by the credibility of that witness, and such credibility has been tackled in the Defence Final Brief.
58. The Prosecution nevertheless has a tendency to hyperbole. A good example of this is at para. 324 where the Prosecution alleges that Taylor supplied the RUF/AFRC with satellite phones. However, few of the examples then cited were of phones given to the RUF/AFRC by Taylor. What has been produced is simply a bulk referencing of all satellite phones that came into the hands of the RUF/AFRC, which then goes unanalyzed. This cannot stand as evidence against Taylor! Once again, as with its section on arms and ammunition, the Prosecution attributes everything given to the RUF as being from Taylor, even when what is being given is demonstrably not from him.
59. The Prosecution has attempted to merge the accounts of its witnesses concerning 448 warnings. In para. 315 the Prosecution alleges that 448 warnings came from both the ex-SLA members with the RUF in Buedu and from Taylor's government in Liberia. However, the latter allegation comes from three witnesses TF1-585 [REDACTED], TF1-568 (Mohamed Kabbah) and TF1-334 (Alimamy Bobson Sesay). By contrast, the proposition that 448 warnings came from the ex-SLA members is given in the testimony of numerous witnesses (including TF1-360, Perry Kamara, TF1-516, [REDACTED] and DCT-172, Issa Sesay), rather than solely TF1-516 as referenced by the Prosecution in its Final Brief. The interesting point is that in each of their testimonies, the later set of witnesses do not mention 448 warnings coming from Liberia (and given that TF1-516 [REDACTED]

<sup>84</sup> TT, TF1-168, 26 Jan. '09, pp. 23534-37.



inconsistencies and contradictions between the case it wants to make against Taylor and the evidence its witnesses provide.

### II.G. Training

62. Allegations in the PFB at paras. 326-7 regarding Taylor's orders regarding training at [REDACTED] are adequately addressed in the DFB at paras. 1100 and 1286-9.
63. Allegations in the PFB at para. 328 regarding evidence that Taylor sent Martina Johnson to Buedu to conduct training on a 40-barrel missile are misleading; the evidence on record is uncorroborated and does not actually implicate Taylor. TF1-371 testified that Bockarie "requested ... one of Mr. Taylor's training commandant called Martina Johnson, and Sam Bockarie said she was coming to train them in the use of the 40-barrel missile" and that she actually came to Buedu with Bockarie in 1998.<sup>89</sup> TF1-371's evidence does not say that Bockarie requested Taylor to send Johnson; only that Bockarie and Johnson, who happened to be a former NPFL artillery commander, were in contact and she came to Buedu. Strikingly, the other evidence cited ostensibly in support of TF1-371's allegation does not say anything about Johnson training the RUF on a 40-barrel missile, with or without Taylor's involvement – only that she was formerly a commander of the NPFL artillery unit and currently worked at RIA<sup>90</sup> and that Bockarie was seen at Johnson's house in 1998.<sup>91</sup> Taylor denies sending Johnson.<sup>92</sup> In any event, TF1-371 stated that the 40 barrel missile was not actually used because it was a technically difficult weapon. Therefore, it is difficult to see how, outside the context of a JCE, the provision of "training" by Johnson could have had a substantial impact on the commission of any crime under aiding and abetting.

### II.H. Safe Haven

64. The general notion of Taylor's alleged provision of "safe havens" to RUF fighters during the pre-Indictment period is addressed in paras. 1007-9 of the DFB.

<sup>89</sup> TT, TF1-371, 4 Feb 08, p. 2950.

<sup>90</sup> TT, Moses Blah, TF1-561, 15 May 08, p. 9906.

<sup>91</sup> TT, Varmuyan Sherif, TF1-406, 9 Jan 08, p. 866-9.

<sup>92</sup> TT, Charles Taylor, 29 Sept 09, p. 29796-8; 29 Oct 09, p. 30773 (Taylor stated that it was possible that Johnson knew Bockarie through Yeaten).

65. The evidence cited in the PFB at para. 330, with regard to the allegations that after the fall of Zogoda when Mike Lamin and 2000 RUF fighters were pushed into Pujehun and then Liberia, Taylor ensured that Lamin obtained Liberian travel documents in order to travel to Sankoh in the Ivory Coast is not credible. Augustine Mallah testified that he accompanied Lamin to a meeting with Taylor in Monrovia, but that he did not go inside. Further, that Lamin came out of the meeting with \$100 and later obtained from the Ruth Perry Government a laissez-passer to travel to Ivory Coast. Mallah had previously told the OTP that he saw Taylor on this occasion but later testified to the contrary.<sup>93</sup> His account cannot be trusted, [REDACTED]

[REDACTED]

66. The incident regarding Junta personnel landing in Monrovia during the Intervention, at para. 331 of the PFB is improperly characterized as an example of Taylor providing safe haven to the Junta. See para. 502 of the DFB for a different characterization of events; one that is reasonably open on the evidence. The Defence further submits that if the Junta had been as close to Taylor as the Prosecution allege, they would have known that ECOMOG, not Taylor, was in charge of Spriggs Payne and would not have risked landing there.<sup>95</sup> In any event, outside the context of a JCE, the Junta's thwarted attempt to find safe haven in Liberia is irrelevant. Certainly, this evidence cannot prove that because the Junta's helicopter landed at Spriggs Payne and its crew was captured by ECOMOG, Taylor is somehow guilty of aiding and abetting the Junta in the commission of crimes.

<sup>93</sup> TT, Augustine Mallah, TF1-045, 14 Nov 08, p. 20322-27.

<sup>94</sup> TT, [REDACTED].

<sup>95</sup> See also, DFB, paras. 858 and 860.

### II.I. Other Support

67. The evidence of Albert Saidu is recounted at para. 332 of the PFB; he alleges that Taylor sent engineers from Liberia to repair a 40-barrel missile for use by the RUF. To begin, Saidu does not give any indication as to the provenance of his “knowledge” that it was Taylor himself who sent the engineers.<sup>96</sup> Then Saidu explained that the 40-barrel missile was destroyed by a helicopter gunship before the repairs were even finished.<sup>97</sup> Saidu then speculated that had the weapon in fact been repaired, the RUF “would have used it against the Government of Sierra Leone”.<sup>98</sup> Finally, Saidu admitted that no-one in the RUF even knew how to use a 40-barrel missile, even had the weapon been repaired.<sup>99</sup> In his testimony, Issa Sesay stated that Taylor did not send engineers to repair the 40-barrel missile.<sup>100</sup> The Prosecution fails to show how, outside the context of a JCE, the un-finished repair of a weapon which is then completely damaged, and which would have been used to fight government forces had it been fixed and had anyone even known how to shoot the weapon, proves beyond a reasonable doubt that Taylor provided support which had a substantial effect on the perpetration of a crime.<sup>101</sup>
68. The Prosecution’s twisted account of the RUF Guesthouse and Taylor’s provision of other lodging to RUF and ex-RUF members at paras. 333-334 of the PFB must be considered in light of the analysis at, *inter alia*, paras. 1010 to 1029 of the DFB. This analysis demonstrates that there is a non-sinister explanation for the purpose of the Guesthouse, ie, the promotion of the RUF’s role in the peace process, which is reasonably open to the Trial Chamber.
69. With regard to the provision of money or financial assistance to the RUF and AFRC/RUF, argued at paras. 335-337 of the PFB, the Defence refers, *inter alia*, to paras. 1169 to 1174 and 1185 of the DFB.
70. With regard to the provision of medicine and medical treatment to the AFRC/RUF, argued at para. 338 of the PFB, the Defence refers to para. 1186 of the DFB.

<sup>96</sup> TT, Albert Saidu, TF1-577, 4 Jun 08, p. 10991.

<sup>97</sup> TT, Albert Saidu, TF1-577, 4 Jun 08, p. 10991.

<sup>98</sup> TT, Albert Saidu, TF1-577, 4 Jun 08, p. 10992-3.

<sup>99</sup> TT, Albert Saidu, TF1-577, 4 Jun 08, p. 10994.

<sup>100</sup> TT, Issa Sesay, DCT-172, 30 Jul 10, pp. 45147-48.

<sup>101</sup> See also, DFB, para. 1188.

71. With regard to the provision of morale boosters and other support to the RUF and AFRC/RUF, argued at paras. 339-340 of the PFB, the Defence refers to paras. 1175 to 1184 of the DFB.

### **III. RESPONSE RE: TAYLOR BENEFITS FROM HIS PARTICIPATION, INVOLVEMENT, CONCERTED ACTION WITH THE RUF, AFRC/RUF, IN THE SIERRA LEONEAN CONFLICT**

72. In this Section, the Prosecution adduces a lot of evidence which is not relevant to the commission of a crime. Rather the Prosecution attempts to cloud the evidentiary record with evidence of Taylor's "motive" for assisting the RUF and/or AFRC/RUF.

#### III.A. Taylor & Diamonds: Motive & Contribution

73. Starting at para. 346 of the PFB, much of the Prosecution testimony concerning diamonds relies on TF1-371, who is a largely discredited witness. It also runs contrary to the analysis included at paras. 459 to 460 of the DFB.
74. Neither of the transcript references cited in para. 348 of the PFB support the assertion that Taylor *directed* Sankoh to capture Kono. This is wishful thinking at best and downright distortion of the evidence at worst. The first witness cited, TF1-567, says Sankoh and Taylor arranged that the RUF would capture Kono; the second, TF1-360, says no more than that they would attack Kono and "get diamonds and money that will help us get more ammunition. That is what Taylor told him". It is totally unclear what aspect of this Taylor told him; it is however indicative of the OTP's willingness to read in to the evidence that which is not there in their desperation to fit the evidence to their theory of what they want the evidence to say, even though it doesn't. Furthermore, the reference at footnote 1026 contradicts expert Ian Smillie's evidence that the RUF was in control of this area [Koidu] for nine months – six months longer than the evidence cited. This once again shows Smillie's unreliability, but where do we see any acknowledgement of weaknesses in that OTP witness's evidence? Smillie is left sitting there as if his every word is gospel and fitting of an expert, and yet the Prosecution's own final submissions contradict him.
75. At para. 353, in trumpeting the use of diamonds as payment for the Magburaka arms shipment, the Prosecution cites TF1-371 but fails to take into consideration his cross-



examination on this same point, which severely undermines his evidence.<sup>102</sup> Also, the Prosecution propositions at para. 354 do not stand up to scrutiny based on TF1-371's cross-examination as referenced.

76. At para. 356 of the PFB, the Prosecution suggests that the account given by Karmoh Kanneh is corroborated by a crime base witness. But all that witness testified is not a corroboration of Kanneh, just a reproduction of Kanneh's story for the second time. Corroboration is where another witness tells the same story himself.
77. The evidence quoted in para. 357 shows that the witness had a confused state of mind in respect of what was White Flower and what was the Executive Mansion, which undermines his general credibility.
78. The selection of Sherif's evidence relied on by the Prosecution at para. 363 to the effect that he saw Bockarie with a mayonnaise jar of diamonds does not accurately reflect the totality of his evidence, especially when his cross-examination is considered. Sherif had never mentioned this mayonnaise jar in proofing and indeed had previously said to the OTP that he had not seen Bockarie with the diamonds. This is an egregious failure by the Prosecution to put the full evidence of their witness before the Trial Chamber – perhaps they fear their own witnesses are unreliable.
79. At para. 368, the Prosecution cites the evidence of TF-539 (see footnote 1120) as corroboration for a story told by Zig Zag Marzah. TF-539 infamously mentioned mayonnaise jars full of diamonds in proofing for the first time after Moses Blah testified to the same effect. TF-539 had previously told the OTP that he saw diamonds in boxes. Yet on cross-examination, he could give no explanation of why he changed from boxes to mayonnaise jars. Footnote 1125 also contains a gross distortion of the evidence: in the footnote we see the reference to “Taylor's emissary Bah was allowed to cross the border...with trucks filled with mining equipment...”. Issa Sesay's evidence is relied upon in support of this and is selectively quoted. In fact, if you read on a bit, Sesay says that to his knowledge, Taylor had nothing to do with this trip by Bah.<sup>103</sup> The footnote

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<sup>102</sup> TT, TF1-371, 31 Jan 08, p. 2701-32 (TF1-371 is exposed as telling different stories about how the shipments were paid for); 30 Jan 08, p. 2660 (where TF1-371 says Yeaten used to pocket diamonds intended for Taylor – one wonders what else Yeaten used to do behind Taylor's back?).

<sup>103</sup> TT, Issa Sesay, DCT-172, p. 44484.

- makes it clear from its language that the OTP are saying that Sesay said that Bah was doing this as Taylor's emissary. This is the direct opposite of what he said in his evidence
80. At para. 371 (footnote 1138), paras. 374-5, and para. 379, the Prosecution relies on the evidence of TF1-338, whose evidence has been massively discredited in the DFB at paras 1215 to 1217.
81. The Prosecution also refers to Exhibit P-277 [REDACTED] in support of TF1-338, but fails to acknowledge that [REDACTED]  
[REDACTED]  
[REDACTED].<sup>104</sup> Similarly, a Prosecution witness acknowledged that much of the information [REDACTED] to the effect that Sankoh had told him he took diamonds to Charles Taylor in 1991-2 was only his impression; the witness could not be sure that Sankoh was not lying<sup>105</sup> or bluffing when Sankoh told him this.

III.B – D. RUF, AFRC/RUF as Proxy Force, Taylor Received Weapons from AFRC/RUF, and Other Benefits

82. The Prosecution routinely misstates or mischaracterizes evidence throughout this section. The Prosecution also equates "Taylor" with references made by witnesses to "Monrovia" or "Liberia". This results in a skewed version of events which the Trial Chamber should reject.
83. At para. 383, the Prosecution alleges that Taylor used RUF radio operators in Liberia. However, the witness, TF1-516, referred to in footnote 1177 merely stated that there was a radio operator at the Guesthouse in Monrovia.<sup>106</sup> TF1-516 did not state that Taylor used the RUF radio operator for his own purposes. The cited testimony of TF1-585 does not support the Prosecution proposition that Taylor used RUF radio operators in Liberia either.<sup>107</sup> TF1585 stated that [REDACTED] would go to Yeaten's residence in order to use the radio for communications, but the witness also said that [REDACTED]. Thus, even though [REDACTED] may have used Yeaten's radio, this does not necessarily imply that Taylor used RUF radio operators for his own purposes.

<sup>104</sup> TT, [REDACTED].

<sup>105</sup> TT, [REDACTED].

<sup>106</sup> TT, TF1-516, 16 Apr 08, p. 7743.

<sup>107</sup> TT, TF1-585, 9 Sep 08, p. 15832-3.

84. The evidence at para. 384 is pre-Indictment and thus is Rule 93 evidence, which the Trial Chamber should not accept. In any event, Morris Kallon returned to Sierra Leone without arms or ammunition, so it is unclear how Taylor could be responsible under aiding and abetting when there was no substantial assistance actually given.
85. In para. 395, the Prosecution tried to create a contradiction between Taylor's testimony and that of a Defence witness. The OTP states:
- “[H]is testimony was contradicted by his own witness, who confirmed that the AFRC/RUF fought together with Taylor's AFL against the LURD.”
86. In the context of the OTP's argument throughout this section, the OTP presented their argument as if the witness confirmed that the RUF provided forces to Taylor in order to fight LURD. Yet when considering the cited transcript of John Vincent,<sup>108</sup> however, the witness stated that the RUF and the AFL merely cooperated in order to prevent the Kamajors from entering Sierra Leone and to prevent LURD from entering Liberia from Guinea. He further said that the Kamajors and LURD were located in the same area within Guinea which prompted them to cooperate. The witness clearly stated that they cooperated to fight off different enemies; that the RUF had no intention of fighting LURD in particular; and that it only intended to protect its own interest – which was to prevent the Kamajors from entering Sierra Leone. The Guinea operations are also addressed, for example, in the DFB at paras. 1360 to 1365.
87. The allegations at paras. 393, 399 and 400 are only supported by the evidence of one witness.
88. At para. 388 of the PFB, the OTP stated that when Bockarie sought refuge in Liberia in December 1999, Taylor took control of the RUF forces that came along with Bockarie. The OTP further stated that:
- “Taylor absorbed these personnel into his security forces, most of them into the ATU.”
89. The Prosecution attempted to demonstrate that the RUF provided Taylor with support but at the same time it also argues that these RUF forces were absorbed into the Liberian security forces. Hence, in effect the OTP supports the arguments of the Defence that these

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<sup>108</sup> TT, DCT-215, John Vincent, 26 Mar 10, p. 38161-2; 30 Mar 10, p. 38260.

RUF forces were no longer RUF, but that they were incorporated in the ATU. These allegations were well covered in paras. 1158-1160 of the DFB.

90. In para. 389, the OTP states:

“Throughout Sesay’s reign as leader of the RUF, in obedience to Taylor’s instruction, Sesay provided manpower to fight for Taylor in Liberia and in Guinea, under the overall command of Taylor’s senior Liberian commanders.”

91. The allegation is discussed in more depth in paras. 390-395 of the PFB. In these paragraphs, the OTP alleged that, under Sesay’s leadership, the RUF provided forces to Taylor in order to fight in Liberia and Guinea. In his testimony, however, Issa Sesay, however, denied that he received orders from Taylor to attack locations in Liberia or Guinea and he denied sending RUF forces to assist Taylor on several occasions.<sup>109</sup> This must create some doubt with respect to the allegations.

92. In para. 393, the OTP provided a concrete description of an arrangement between Taylor and Sesay to provide arms and ammunition and how the materiel was subsequently taken to Sierra Leone. Then the OTP states:

“According to Sesay, the materiel was later used to attack Guinea.”

93. However, in the footnote (FN 1203) the OTP refers to the testimony of Karmoh Kanneh,<sup>110</sup> not Issa Sesay. In his testimony Sesay continuously denied that the RUF had supported Taylor in any attack on Guinea. Sesay, on the other hand, did confirm that the RUF fought the Kamajors along the Guinean border.<sup>111</sup> Nevertheless, the OTP made it appear as if Sesay – during his testimony – confirmed that the materiel was used to attack Guinea.

#### IV. RESPONSE RE: TAYLOR’S *MENS REA*

94. The essence of the Prosecution’s case under this heading is that the Trial Chamber should infer that Mr. Taylor intended all the crimes charged in the Indictment on the basis of his

<sup>109</sup> TT, Issa Sesay, DCT-172, 28 Jul 10, p. 44906; 4 Aug 10, p. 45337-44 (in response to TF1-338’s testimony); 6 Aug 10, p. 45617-8 and 45620-3 (in response to Abu Keita’s testimony); 6 Aug 10, p. 45641-2 (in response to Mustapha Mansaray’s testimony); 25 Aug 10, p. 47092-4 (Cross); 25 Aug 10, p. 47097 (Cross); and 25 Aug 10, p. 47107-8 (Cross).

<sup>110</sup> TT, Karmoh Kanneh, TF1-571 12 May 08, p. 9503-10.

<sup>111</sup> TT, Issa Sesay, DCT-172, 6 Aug 10, p. 45615-7.

alleged consistent pattern of conduct in relation to pre-Indictment events in Liberia, and to some extent, Sierra Leone. The Prosecution argues that Taylor created the RUF as a “carbon copy” of his own NPFL;<sup>112</sup> used the NPFL to train the RUF and initially command the RUF invasion of Sierra Leone;<sup>113</sup> engaged in a campaign of terror against the civilian population of Liberia in order to forcibly gain control over the Liberian population and territory and exploit its resources,<sup>114</sup> the same allegation it makes with respect of Sierra Leone. Indeed that from the onset, Taylor’s NPFL set the example in Sierra Leone, *importing the pattern of terrorising civilians* as the means to achieve the ultimate objective.<sup>115</sup> The Prosecution argues that Taylor's intention to commit the crimes perpetrated by the RUF should therefore be inferred from this logic.<sup>116</sup>

95. However, the actual evidence on which Taylor's intent to commit the crimes perpetrated by the RUF is grounded is sparse. Firstly, the Prosecution relies on evidence from the pre-Indictment period, including Taylor's supposed comments about Sankoh in the early period of the war stating that he (Sankoh) would get used to atrocities,<sup>117</sup> which has been addressed in the Defence Final Brief, and the old gems of the Sierra Rutile attack and Operation Stop Election,<sup>118</sup> both of which rest on very shaky foundations and have again been dealt with in the Defence Final Brief.
96. Essentially, the Prosecution seeks to push the frontiers of Rule 93 evidence by suggesting that such evidence can found *mens rea*. That argument has no basis in law. Indeed, it goes against the established purpose of Rule 93 evidence. Rule 93 allows for the admission of evidence of a consistent pattern of conduct relevant to serious violations of international humanitarian law in the interests of justice. Similarly, under the so-called principle of “similar fact evidence”, courts in England and Wales, Australia and the United States admit evidence of crimes or wrongful acts committed by the defendant other than those charged in the indictment, if the other crimes are introduced to demonstrate a special

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<sup>112</sup> PFB, para. 402.

<sup>113</sup> PFB, para. 404.

<sup>114</sup> PFB, para. 407.

<sup>115</sup> PFB, para. 416.

<sup>116</sup> Prosecution Final Brief, paras. 415 and 418.

<sup>117</sup> Prosecution Final Brief, para. 404.

<sup>118</sup> Prosecution Final Brief, paras. 417.

knowledge, opportunity, or identification of the defendant that would make it more likely that he committed the instant crime as well.<sup>119</sup>

97. Evidence of a prior criminal act of the Accused is however *not admissible for the purpose of demonstrating a general propensity or disposition to commit the crimes charged*.<sup>120</sup> Even if an accused is charged with the same crime, the evidence of the prior crime is *not admissible to show that the accused is capable of committing the offence, or that on some other occasion he had the intent to commit the offence*.<sup>121</sup> Evidence of similar conduct may be admissible where it is *probative of some peculiar feature of the case* or where it is *highly distinctive or unique such that it amounts to a signature or identifiable pattern*.<sup>122</sup> The Prosecution's attempt to establish Mr. Taylor's alleged *mens rea* in respect of the crimes charged in the Indictment, which but for Count 1, all underlie the crime or terror, must fail on the basis of the foregoing.
98. The Defence submits that the cases cited by the Prosecution at para. 47 of its Trial Brief do not support the contention that Rule 93 Material can found intent. The cases simply acknowledge that intent may be inferred from circumstantial evidence as it is often difficult to find explicit manifestations of a perpetrator's intent.
99. With respect to the secondary argument by the Prosecution the sheer volume and breadth of Taylor's assistance to the RUF and later the AFRC/RUF during the Indictment period should found the requisite *mens rea*;<sup>123</sup> the Defence notes that while it makes reference to the AFRC, the Prosecution but provides no evidence regarding that group. All evidence, even that evidence which falls under the category of evidence by inference, concerns the RUF and not the AFRC. To this the Defence submits that such an argument cannot form proof beyond reasonable doubt for a finding of intent. However, even if the Trial Chamber decides that such evidence by inference can in theory form not just the basis but the entirety for a finding of intent, the Defence submits that it cannot do so unless the evidence is overwhelming. Here it is not. Such evidence is based on the testimony of witnesses such

<sup>119</sup> *Prosecutor v. Kupreskic et al*, IT-95-16-A, Judgement, 23 Oct 01, para. 321.

<sup>120</sup> *Prosecutor v. Nshogoza*, ICTR-07-91-T, Decision on Prosecutor's Motion to Admit Evidence of a Consistent Pattern of Conduct, 20 Feb 09, para. 4.

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> PFB, para. 418.

as TF1-532 and TF1-399, who are not credible witnesses, rather than, for example, any credible documents.

100. Equally, the reasoning employed by the Prosecution is itself flawed. It is quite one thing to say that one could infer that Taylor intended for the RUF to commit crimes because he assisted it.<sup>124</sup> It is quite another to say that it should be inferred that Taylor had such an intention. A finding of intent inferred from the circumstances is simply one of a range of possibilities, for which one must produce further evidence to show that it is more or less likely. Otherwise, one can infer intent from all manner of assistance. For example, there is evidence that corrupt ECOMOG officials were assisting the RUF;<sup>125</sup> yet it is a leap defying all logic to infer that such officials thus intended the RUF to commit crimes. Likewise, the Trial Chamber has heard evidence about diamond dealers assisting the RUF: did such dealers also intend the RUF to commit crimes? Again it is another illogical leap to simply infer that they did.
101. Even if it is accepted that Taylor assisted the RUF (and clearly the Defence does not), the Trial Chamber cannot infer that Taylor intended for the RUF to commit crimes any more than the Trial Chamber can infer others who assisted the RUF intended the RUF to commit crimes. *Arguendo*, another inference supported by Prosecution evidence if taken at face value is that Taylor was exploiting the RUF to make a profit for himself (this is the Prosecution position in Section III of the PFB). Everything the Prosecution has argued in paras. 418, 419 and 420 of the PFB would support the benign inference of personal profit just as easily as it would the inference that Taylor intended the RUF to commit crimes. The principle of *in dubio pro reo* makes it clear that where two or more findings are reasonably open to the Trial Chamber on the evidence, the Trial Chamber must find in favor of the accused. Thus, there is nothing in the Prosecution's arguments under this head that enables the Trial Chamber to conclude, beyond reasonable doubt, that Taylor intended the RUF and/or AFRC/RUF to commit crimes.

## V. RESPONSE RE: EVIDENCE OF AFRC/RUF ALLIANCE AND THE DECEMBER 1998 TO JANUARY 1999 OFFENSIVE

<sup>124</sup> PFB, para. 419.

<sup>125</sup> Exhibit D-269. The UN forces commander General Jetley complained about Nigerian officials trading in diamonds with the RUF.

102. In Chapters V and VI of the OTP Final Brief, the Prosecution deals with the events leading up to, and the Freetown invasion in January 1999. The thrust of the Prosecution's argument is predictably that the RUF, under the direction of Charles Taylor, played a major role in the Freetown invasion. Thus in Chapter V,<sup>126</sup> which precedes Chapter VI dealing with the Freetown invasion, the Prosecution makes a spirited attempt to show that the AFRC and the RUF were effectively a single unit from the Junta era up to, and even after the Freetown invasion. This, it might be observed, is calculated to link Taylor to the infamous Freetown invasion.

#### **AFRC/RUF collaboration - Junta era**

103. To start with, the Prosecution alleges that the RUF/AFRC alliance was strategic in that the AFRC needed the RUF for its connections to Taylor, as well as, to help ward off ECOMOC and Kamajor attacks.<sup>127</sup> This argument however deliberately overlooks a number of important factors, which would otherwise falsify the claim:
104. First, the fact that when the AFRC came to power and immediately called upon the RUF to join them in forming a government, they had not as yet faced any military resistance from either ECOMOG or the Kamajors. According to TF1-597, Samuel Kargbo, the very same witness who makes the allegation above, the AFRC called the RUF within a week or so of the coup.<sup>128</sup> There is no evidence that the Junta faced military pressure from ECOMOG or the Kamajors at that time.
105. Second, the fact that Taylor only became President of Liberia more than two months after the Junta coup, and at that time (as the Defence evidence, as well as the evidence of TF1-371, discussed in our Final Brief shows<sup>129</sup>), there was no contact between the RUF and Charles Taylor.

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<sup>126</sup> PFB, p. 215-230.

<sup>127</sup> PFB para. 438.

<sup>128</sup> TT, Samuel Kargbo, TF1-597, 21 May 08, p.10440-1.

<sup>129</sup> DFB paras 852-3.



106. Third, the reality is that the AFRC coup was an unplanned act by disgruntled junior SLAs, who when they took over called on the RUF to join the government in order to foster peace.<sup>130</sup>
107. Concerning the allegation that once the AFRC and the RUF formed a government together, the two groups “functioned effectively”<sup>131</sup> and cordially,<sup>132</sup> the Defence submits that this aspect is adequately addressed in our Final Brief.<sup>133</sup> Quite to the contrary, all indications are that the relations between the AFRC and the RUF were fractious and the marriage was one of convenience. As indicated in our Final Brief, Sam Bockarie himself described the union as a “marriage of uneven and unequal partners”.<sup>134</sup>
108. Indeed as TF1-568, Mohamed Kabbah, would concede in cross-examination, it was natural that the AFRC and the RUF as former enemies “there must arise [a] power struggle among us”<sup>135</sup> The witness would thus also agree that he knew, as did Bockarie, that the marriage was doomed to fail.<sup>136</sup> Even TF1-274, DAF, who was so keen on emphasising the degree of cooperation between RUF and AFRC throughout his testimony, when pushed in cross-examination would admit that relations between the RUF and the AFRC had not been “perfectly cordial” during the time of the Junta government.<sup>137</sup>
109. Indeed rather than functioning effectively and cordially; as argued in our Final Brief, there is overwhelming evidence that the RUF was largely marginalised.<sup>138</sup> Furthermore, there is even evidence of serious tensions between the two groups. There is, for instance, overwhelming evidence across the Prosecution/Defence divide of a plot by Foday Sankoh for Gibril Massaquoi and Steve Bio to overthrow JPK and the AFRC.<sup>139</sup> Likewise, there is also evidence suggesting that some elements in the AFRC tried to kill Sam Bockarie.<sup>140</sup>
110. There are also a number of Exhibits, showing some discord between the AFRC and the RUF, *intra se* and *inter se*, such as Exhibit P-131 (about a serious fall out between Sam

<sup>130</sup> AFRC Adjudicated Fact 1.

<sup>131</sup> PFB para. 440.

<sup>132</sup> PFB para. 446.

<sup>133</sup> DFB, paras 842-3.

<sup>134</sup> Exhibit D-9, p. 2.

<sup>135</sup> TT, Mohamed Kabbah, TF1-568, 16 Sep 08, p. 16282.

<sup>136</sup> TT, Mohamed Kabbah, TF1-568, 16 Sep 08, p. 16284.

<sup>137</sup> TT, Dauda Aruna Fornie, TF1-274, 4 Dec 08, p. 21748-9.

<sup>138</sup> DFB, paras 842-3. Also see Exhibit D-9 and D-84.

<sup>139</sup> TT, TF1-168, 26 Jan 09, p. 23520-1; Exhibit P-277, p. 52; also see Exhibit D-9; Exhibit D-84; TT, Issa Sesay, DCT-172, 7 Jul 10, p. 43921-4.

<sup>140</sup> Exhibit D-9; and TT, Issa Sesay, DCT-172, 7 Jul 10, p. 43920-1.

Bockarie and Eldred Collins, and the Council even discussed giving Collins an armed guard); Exhibit P-134A in which [REDACTED];<sup>141</sup> and Exhibit P-134A in which SBY Rogers stated that JP Koroma and SAJ Musa did not work as a team.<sup>142</sup>

111. As argued, in our Final Brief, so despondent was Sam Bockarie with the marginalization of the RUF that he decided to leave the seat of power, Freetown and base himself in Kenema.<sup>143</sup>

#### **AFRC/RUF collaboration - Post Intervention**

112. The Prosecution suggests that Junta alliance continued to work effectively after the Intervention. In making this outlandish suggestion bereft of any factual basis, the Prosecution again largely relies on the personal allegiances of individuals to emphasize the point. The Prosecution thus cherry-picks its evidence and highlights the personal allegiance of AFRC commanders like Akim Turay or Leatherboot to the RUF, or the personal friendship of AFRC senior official like Eddie Kanneh to Sam Bockarie, to underline this point. Likewise, the Prosecution also highlights the presence of RUF elements in AFRC group in the North. Furthermore, the Prosecution also tries to capitalize on the cooperation of the AFRC and the RUF under Superman against common enemies like ECOMOG in the North to underscore this point.
113. Exhibit D-8 however clearly illustrates the point that allegiances, in this instance, the allegiance of some AFRC members to the RUF, was personal and not founded on any organizational amity or collaboration. Page 3 of the Exhibit, observes that: *“Although about 90-95% of the SLA brothers including Col. Akim Turay, Lt. Col. Soriba, Lt. Col. Dumbuya, Lt. Col. Bakarr, Major Leather Boot and many others are loyal to this movement, but out of observations, the balance 5-10% are power conscious, materialistic and so can be incited by the politicians. Moreover, it will take some of them time to get use [sic] to some of the rules and regulations (ideology) binding the RUF/SL movement.”*

<sup>141</sup> Exhibit P-134A. Though he does not say when this begins, and he may well have in mind the seizure of JP Koroma’s diamonds by Bockarie.

<sup>142</sup> Exhibit P-134A. Again it is not clear as to the period this refers to, but the only time JP Koroma and SAJ Musa worked alongside one another was in the Junta government.

<sup>143</sup> Def Final Brief, para. 842; Exhibit P-67, p. 2-3.

114. The Prosecution's selective application of its own conflicting evidence will however not fool this Trial Chamber, which has already noted that there was a major split between the RUF and the AFRC main group. The AFRC group under SAJ Musa broke rank with the RUF in about February 1998 because they refused to be placed under the charge of untrained soldiers.<sup>144</sup>
115. Furthermore, the Trial Chamber in the same Adjudicated Fact also noted the fight that erupted between the AFRC and the RUF over command and control before the Kono attack, which resulted in SAJ Musa and a significant number of soldiers loyal to him not taking part in the attack. This major split between the AFRC and the RUF was even acknowledged by the Prosecution's star witness on AFRC matters, TF1-597, Samuel Kargbo, who testified of problems between the RUF and the SLA, which resulted in the SLAs moving to Kabala and the RUF to Makeni.<sup>145</sup>
116. Furthermore, in alleging an AFRC/RUF alliance after the intervention, the Prosecution also deliberately overlooks another judicially noted fact, that when the RUF lured JPK to Kailahun after the fall of the Junta, he was given to believe that he would be welcomed there by the RUF, only to be humiliated by being searched and his diamonds taken from him and thereafter to be kept under house arrest.<sup>146</sup>
117. Likewise, in another feat of evidence cherry-picking, while highlighting Gullit's temporary presence in Kailahun with Sam Bockarie as further proof of social harmony between the AFRC and the RUF, the Prosecution again deliberately overlooks another well-known fact of the subsequent rift between Gullit and Sam Bockarie. The Prosecution suppresses the evidence that Gullit subsequently left Kailahun under acrimonious circumstances, after (as Issa Sesay testified) the RUF also manhandled him and took diamonds from him. This resulted in Gullit leaving Sam Bockarie's group to join Musa in the North. According to TF1-334, Bobson Sesay, on the way Gullit passed through Kono and took AFRC fighters in Kono under Bazzy and joined Musa the North. On arrival in the North, Gullit expressed

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<sup>144</sup> AFRC Adjudicated Fact 6.

<sup>145</sup> TT, Samuel Kargbo, TF1-597, 22 May 08, p. 10517-8.

<sup>146</sup> Adjudicated Fact 7.

- how unhappy he was with Bockarie and complained to Musa about the way Bockarie had treated him, and asked Musa for advice.<sup>147</sup>
118. Furthermore, according to TF1-274, Dauda Aruna Fornie, Gullit left Kailahun because he was disgruntled by the way the RUF had treated JPK, and once he got to Kurubonla, he verbally attacked Sam Bockarie on the radio for having disgraced JPK.<sup>148</sup>
119. Remarkably, in a bid to establish an AFRC/RUF collaboration after the intervention, the Prosecution even attempts to give a positive spin to the fallout between Sam Bockarie and Superman after the failure of the Fitti Fatta mission,<sup>149</sup> by suggesting that Bockarie in fact sent Superman to Musa, and that the collaboration between SAJ Musa and Superman in the North was in furtherance of the AFRC/RUF alliance. This is however not supported by its multiple and confused evidence on the issue.
120. According to TF1-360, Perry Kamara (whose evidence as illustrated in our Final Brief, is obviously revisionist and desperately tries to link the RUF to the Freetown invasion),<sup>150</sup> Superman left to join Musa as part of an agreement between Sam Bockarie and Musa.<sup>151</sup> However, according to TF1-584, Alice Pyne, Superman was sent to attack Musa, and defected instead.<sup>152</sup> According to TF1-274, Dauda Aruna Fornie, on the other hand, the fallout between Sam Bockarie and Superman related to Issa Sesay's loss of diamonds and Bockarie's failure to punish him.<sup>153</sup> Bockarie on the other hand was unhappy with Superman for misappropriating diamonds.<sup>154</sup>
121. Furthermore, any suggestion that Superman went to SAJ Musa, Sam Bockarie's known nemesis, to collaborate with him as part of an RUF/AFRC alliance, is further falsified by the evidence that when Superman got there, while cooperating with Musa, he refused to cooperate with Bockarie. Superman, for instance, defied Bockarie's order and refused to return the ammunition that he had taken with him to the North, which had been captured in

<sup>147</sup> TT, Alimamy Bobson Sesay, TF1-334, 18 Apr 08, p. 8023-5. The Witness puts this in May/June 98. NB.

Adjudicated Fact No. 8 acknowledges the arrival in the North of the group that defected from the RUF in Kono.

<sup>148</sup> TT, Dauda Aruna Fornie, TF1-274, 4 Dec 08, p. 21682-5

<sup>149</sup> Exhibit P-67, p. 5-6.

<sup>150</sup> DFB paras 891-898; TT, Perry Kamara, TF1-360, 5 Feb 08, p. 3159-65.

<sup>151</sup> TT, Perry Kamara, TF1-360, 5 Feb. 08, p. 3167-72.

<sup>152</sup> TT, Alice Pyne, TF1-584, 19 Jun 08, p. 11248-57; 23 Jun 08, p. 12433-4; Also see TT, TF1-275, 22 Feb 08, p. 4525.

<sup>153</sup> TT, Dauda Aruna Fornie, TF1-274, 4 Dec 08, p. 21689-94. See also Exhibit D-85.

<sup>154</sup> TT, Dauda Aruna Fornie, TF1-274, 4 Dec 08, p. 21704.

Kono.<sup>155</sup> Furthermore, when he and Musa captured ammo in the Kabala attack, he also refused to turn it over to Bockarie.<sup>156</sup>

122. Matters came to a head when Sam Bockarie summoned Superman to a meeting in Buedu and Superman refused.<sup>157</sup> This resulted in the two exchanging insults over the radio. Bockarie then even resolved to kill Superman,<sup>158</sup> and as argued in our Final Brief, effectively declared Superman a *persona non grata* within the RUF.
123. Against all this evidence, it is thus a stretch of imagination to suggest that Musa and Superman were collaborating as part of an AFRC/RUF alliance. It is quite clear from the evidence taken as a whole that when Superman went to join Musa in the North, he broke rank with the RUF, and started to operate on his own.<sup>159</sup>
124. This position, it is further argued, is supported by the Prosecution's other evidence (taken at face value) that at the meeting in Buedu in December 1998, way after Superman had already left to join Musa in the North, there were discussions concerning Musa's refusal to cooperate with the RUF.<sup>160</sup> Such discussion would not have arisen if Musa was cooperating with Superman as part of an AFRC/RUF alliance.

#### **AFRC/RUF collaboration - Post Freetown invasion**

125. The Prosecution goes on to make another outlandish suggestion that the so-called AFRC/RUF alliance continued to function effectively after the intervention. In this regard, the Prosecution again relies on personal allegiances and AFRC/RUF collaborations against common enemies to try to found common purpose. Most outlandish in this regard (which it is submitted directly goes to the credibility of the witnesses concerned) is the allegation at paragraph 481 of the Prosecution's Brief that "RUF men were fighting alongside the Westside Boys in Gberibana and all the fighters worked together and were under the command of Bockarie."

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<sup>155</sup> Exhibit D-9.

<sup>156</sup> TT, TF1-375, 24 Jun 08, p. 12563-5.

<sup>157</sup> TT, Dauda Aruna Fornie, TF1-274, 4 Dec 08, p. 21704; also see TT, Issa Sesay, DCT-172, 8 Jul 10, p. 44054-5; Exhibit P-67, and Exhibit D-9.

<sup>158</sup> TT, Isaac Mongor, TF1-532, 11 Mar 08, p. 5766-8.

<sup>159</sup> Exhibit P-67, end of p. 6.

<sup>160</sup> TT, Karmoh Kanneh, TF1-571, 9 May 08, p. 9427-9.

126. These allegations clearly ignore well-known facts relating to the internal split within the RUF shortly after the Freetown invasion,<sup>161</sup> as well as within the AFRC.<sup>162</sup> Most importantly, the suggestions ignore the major rift between the RUF and the AFRC, which resulted in the AFRC being marginalized at Lomé,<sup>163</sup> resulting in the West Side Boys abducting ECOMOG soldiers and journalists.<sup>164</sup>
127. Indeed, the suggestion at paragraph 484 of the Prosecution's Brief that the AFRC was represented at Lomé by Leatherboot, or the suggestion by Prosecution witness TF1-274, Dauda Aruna Fornie, (which it is submitted also goes to his credibility) that Sankoh had control over Bazzy and JPK in 1999, is nothing short of re-writing history. The allegations go against the tide of evidence which clearly shows that the West Side Boys under Bazzy were loyal to JPK, hence their insistence on him being released from RUF captivity in Kailahun, as well as their insistence that they be represented at Lomé.<sup>165</sup>
128. For the same reason the Trial Chamber must dismiss the evidence of TF1-371 at paragraph 486, suggesting a close union between the AFRC and the RUF. The Defence observes that the same witness in cross-examination acknowledged the rift between the AFRC and the RUF at Waterloo following accusations by the AFRC that the RUF had not come to its aid when they were under attack in Freetown.<sup>166</sup> The Defence submits that this should also reflect on the witness's overall credibility.

### **Freetown Invasion**

129. The hallmark of the Prosecution's case on the Freetown invasion is a duplicitous and deliberate manipulation of the evidence. Indeed, it is quite remarkable that this incident, which largely contributed to the conviction of 3 Defendants in the AFRC case, who now serve sentences averaging 50 years in Rwanda, is now being paddled as an entirely RUF scheme that originated from Taylor.
130. The issue is however adequately covered in our Final Brief and here we will only address some of the deliberate distortions in the Prosecution case.

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<sup>161</sup> DFB, paras. 637-639.

<sup>162</sup> TT, Alimamy Bobson Sesay, TF1-334, 25 Apr 08, p. 8558. Gullit went to Makeni, Bazzy Kamara stayed close to Freetown and formed the West Side Boys of which he was the leader.

<sup>163</sup> DFB, paras. 640-646.

<sup>164</sup> Exhibit D-206, para. 1.

<sup>165</sup> DFB, paras. 640-646.

<sup>166</sup> DFB, para. 915.

131. While at paragraphs 489 and 490, the Prosecution tries to suggest that the evidence of its two witnesses TF1-571, Karmoh Kanneh and TF1-532, Isaac Mongor corroborates each other on the allegation that the plan to attack Freetown originated from the meeting in Buedu in late 1998, the Prosecution conveniently overlooks the inconsistencies in the accounts of these two witnesses on the said meeting, which inconsistencies, it is argued, should call into question the credibility of the witnesses and their evidence on the matter.<sup>167</sup>
132. At paragraph 492, the Prosecution refers to the evidence of TF1-275, Foday Lansana suggesting that the alleged plan conceived in Buedu to takeover Freetown was same plan that was communicated to the AFRC in the North and which resulted in the Freetown invasion by the AFRC. The witness alleges that:

We were at Pumpkin Ground when we got information from the BBC that Foday Sankoh has been condemned in Freetown. Based on this information, Sam Bockarie called Superman over the HF radio and instructed him that this time they need not to waste time but to march on to Freetown. *He told Superman that he was also in communication with Gullit* and that Superman should get ready for Makeni, on to Freetown. *Gullit will also start from Lunsar, on to Freetown.* He had prepared Issa Sesay and Morris Kallon to also move on Koidu Town, on to Makeni. Based on these instructions, Superman organized troops that were under his command and moved from Pumpkin Ground to Alkalia, to Makeni, after that instruction. *(Emphasis added)*

133. This evidence piece of evidence, it must be noted, contains a number of deliberate inaccuracies, and serves to illustrate the duplicity of the Prosecution's case and the unreliability of its witness.
134. First, as argued in our Final Brief,<sup>168</sup> on the Prosecution's own evidence, by the time Superman reached Musa's group in the North in Koinadugu, Musa had already dispatched Gullit to Rosos as part of the preparation for the Freetown invasion. Secondly, also as argued in our Final Brief,<sup>169</sup> it was not long after Superman arrived in Kabala that he fell out with Musa, and Musa left to join Gullit, *en route* to Freetown.
135. Thirdly, the AFRC's advance towards Freetown had nothing to do with Sankoh's arrest. Rather, Musa insisted on going to Freetown to have the army reinstated. This, it might be recalled, was one of the reasons why he had always refused to be subordinate to Sam

<sup>167</sup> See DFB, paras. 883-889 and 907-915.

<sup>168</sup> DFB, para. 912.

<sup>169</sup> *Ibid.*

Bockarie.<sup>170</sup> Fourth, when Musa left Superman and came to Col. Eddie town, he took over command from Gullit<sup>171</sup> and imposed a radio-communication ban with the RUF.<sup>172</sup> Even before Musa's arrival, according to TF1-334, Bobson Sesay, Gullit had only been in communication with Sam Bockarie over the radio once.<sup>173</sup>

136. For all the foregoing reasons, the Prosecution's suggestion through the evidence of TF1-275, Foday Lansana, that the separate movements by the AFRC and the RUF to Freetown were part of a synchronized plan orchestrated by Bockarie and spurred by the news of Foday Sankoh's death sentence, is nothing but a lie that was deliberately designed to feed into the Prosecution's theory that the Freetown Invasion was an RUF affair. This lie underlines the entire Prosecution's brief.
137. The Prosecution continues with this lie by suggesting at paragraph 497 that Musa's alleged 'acceptance' of RUF radio operators King Perry and Alfred Brown, who allegedly came with Superman, manifested his willingness to cooperate with RUF. Some Liberian fighters, it is also alleged, were also sent to join the group in the Northern Jungle and some of them were later integrated into the Red Lion Battalion. This argument is however as myopic as it is dishonest in that it deliberately tries to capitalize on the fluidity of the RUF/AFRC boundary with respect to movement of individuals for personal reasons, while clearly ignoring acknowledged facts such as communications embargo that SAJ Musa imposed between his group and the RUF.
138. The allegation also clearly ignores another established fact that when Superman came to join Musa in the North, as argued above, that was in fact an act of rebellion against Sam Bockarie after they fell out; hence his repatriation to Musa, Sam Bockarie's known nemesis. Thus, to suggest that Superman in fact brought reinforcement to Musa in the form of the Liberian fighters later to constitute the so-called Red Lion Battalion takes quite some imagination. This allegation is however deliberate as the Red Lion Battalion allegedly comprised some Liberians and allegedly would later commit serious atrocities in Freetown. The Prosecution however tries to be clever about the issue. While

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<sup>170</sup> See AFRC Adjudicated Fact No. 6.

<sup>171</sup> See AFRC Adjudicated Fact No. 11 on the change of leadership.

<sup>172</sup> TT, Perry Kamara, TF1-360, 6 Feb 08, p.3210.

<sup>173</sup> TT, Alimamy Bobson Sesay, TF1-334, p. 8218-20.



- acknowledging the well-known fallout between Superman and Sam Bockarie, they conveniently try to place that fallout later after Superman had already moved to the North.
139. The Prosecution again surpasses itself by suggesting that the death of SAJ Musa at Benguema just before Freetown on the advance to the city was in fact an assassination.<sup>174</sup> Though the Prosecution does not say by whom, the suggestion is that Musa was killed by Gullit. This far-fetched conclusion, it might be noted, is convenient for two reasons. First, it tries to give credence to TF1-571, Karmoh Kanneh's discredited evidence that the meeting at Buedu also discussed an assassination plot against Musa after complaints of his non-cooperation had been made to Taylor.<sup>175</sup> Second, it is designed to foreshadow Gullit's alleged subsequent cooperation with Sam Bockarie during the Freetown invasion.
140. Indeed the Prosecution goes on to allege that Gullit's subsequent attack of Freetown was a joint military operation in which the RUF directly participated. In a remarkable feat of evidence-engineering, at paragraph 506, the Prosecution suggests that after Musa's death, Bockarie told Gullit to wait for reinforcement from Sesay's group but Gullit did not wait because his group was assured of Sesay's reinforcement. The Prosecution's art of creativity however goes against the tide of evidence, even its own.
141. First, the very same witness the Prosecution relies on to make this suggestion, it must be noted, went on to say that the AFRC voted not to wait in defiance of Sam Bockarie's alleged order.<sup>176</sup> Indeed, it is quite clear why the AFRC would not have waited for the RUF. They wanted to beat the RUF to Freetown, as had always been their plan to.<sup>177</sup>
142. Furthermore, even by TF1-334's account, when Gullit allegedly called Sam Bockarie after Musa's death, he was not asking for any reinforcement, hence the decision to rush ahead of the RUF into Freetown. This position is further supported by the Prosecution's own evidence that Gullit only started to ask for reinforcement when he came under severe attack from ECOMOG in Freetown.
143. Remarkably, at paragraphs 508 to 512, the Prosecution tries to spin the RUF's joy at the AFRC taking over of Freetown as a sign that the two were in collaboration. The suggestion, it is submitted, is as outlandish as suggesting that all the Egyptians who

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<sup>174</sup> PFB, para. 500.

<sup>175</sup> TT, Karmoh Kanneh, TF1-571, 9 May 08, p. 9427-29.

<sup>176</sup> TT, Perry Kamara, TF1-360, 6 Feb 08, p. 3218-21; DFB, para. 913.

<sup>177</sup> See AFRC Adjudicated Fact No. 11.

celebrated President Mubarak's recent fall belonged to one organization. Collaborating against a common enemy does not translate to common purpose.

144. With respect to the alleged participation of the RUF in the Freetown Invasion, the Prosecution, *inter alia*, advances a highly speculative military theory it calls the "Altering the military balance", which basically suggests that because the AFRC and the RUF were fighting a common enemy at the same time, to the extent that their military exploits complemented each other's, they were therefore acting in unison.<sup>178</sup> This theory is encapsulated in the evidence of Prosecution witness, AB Sesay, recited *verbatim* at paragraph 536:

Well, as I earlier said, *it was an operation that was planned*. The RUF, SLAs who were in the eastern part around that Kono area moved, those of us who were in the north moved and those of us in that Kailahun-Daru axis also moved. *So whilst we were attacking they were simultaneously attacking*. So *it was a strategy that we used* so that the ECOMOG would not reinforce each other in any other position. So those who were in Kono would not reinforce those in Makeni. Those who were in Daru would not reinforce those who were in Kenema. Those who were within Benguema would not be able to reinforce because we had destabilized them in Freetown. *So this was the strategy that we used and this was what Mosquito was telling Gullit*. He said now that the men were pushing to ensure that they weakened ECOMOG they would come and reinforce us later and *we all bulldoze our way to Freetown*. (*Emphasis added*.)

145. The evidence of AB Sesay recited above however does not assist the Prosecution's far-fetched theory in that the witness was obviously lying about the alleged well-orchestrated plan, which involved the synchronized movements of the "RUF, SLAs in the eastern part around that Kono area"; those who were in the North (Musa's group of which he alleges he was part of) and "those in the Kailahun Daru Axis". As adequately argued above, as well in our Final Brief,<sup>179</sup> the plan for the Freetown invasion by the AFRC was made long before the plan by the RUF to move and attack Kono and Segbwema before moving to Makeni. The witness should have known this if he was indeed in Musa's group.
146. Furthermore, by the time Musa came to Col. Eddie town, to prepare the movement to Freetown, he took over command from Gullit and imposed a radio communications ban with the RUF. The witness's allegation of "simultaneous" attacks by the 3 groups is therefore nothing but a pack of lies designed to fit into this grand scheme to directly

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<sup>178</sup> PFB, paras 519-527.

<sup>179</sup> DFB, paras. 911-912.

implicate the RUF in the Freetown invasion and ultimately trace it all to Charles Taylor. This lie is made more apparent by the reference to Gullit being in communication with Sam Bockarie and collaborating on how “we will all bulldoze our way to Freetown.” The only other evidence there is of any communication between Gullit and Sam Bockarie was after the death of SAJ Musa when Gullit allegedly contacted Sam Bockarie. According to this piece of evidence, referred to above, Gullit however refused to wait for RUF reinforcement before invading Freetown. Rather, as argued above, he made a rush for Freetown in order to beat the RUF to it. The Prosecution’s altering the balance theory, to the extent that it suggests coordinated military attacks between the AFRC and the RUF on the advance to Freetown should therefore fall with the discredited evidence of AB Sesay.

147. Concerning the allegation that the Red Lion Battalion was part of the RUF’s contribution to the Freetown invasion,<sup>180</sup> again the Prosecution tries to manipulate the fluidity of the RUF/AFRC divide and the personal allegiances of individuals to import a common purpose between the RUF and the AFRC. However as argued above, the Trial Chamber will recall that from the Prosecution’s own evidence, (taken at face value) the Liberian elements of the Red Lion Battalion (whatever number allegedly ended up in Freetown), came with Superman to Musa in the North, after Superman had fallen out with Sam Bockarie.<sup>181</sup> During the time that Musa and Superman were collaborating in the North, some of them were then dispatched to Gullit at Rosos under O-Five.<sup>182</sup> These elements then remained with the AFRC group after Musa fell-out with Superman and would subsequently make their way into Freetown as part of that group. In those circumstances, it is rather convenient to suggest that the Liberians in the Red Lion Battalion were an RUF outfit that was seconded to Musa’s group as part of an AFRC/RUF collaboration. This is particularly so given Musa’s known aversion and contempt for the RUF. Indeed, even by the Prosecution’s own evidence, Musa had always refused to work with the RUF.<sup>183</sup>
148. Against this background, the allegation by TF1-360, Perry Kamara (whose entire evidence as indicated in our Final Brief was revisionist<sup>184</sup>) that the Red Lion Battalion was the group that was ultimately responsible for most of the atrocities in Freetown is of no

<sup>180</sup> PFB, paras. 535 to 537

<sup>181</sup> TT, Perry Kamara, TF1-360, 6 Feb 08, p. 3183-91.

<sup>182</sup> TT, Alice Pyne, TF1-584, 19 Jun 08, p. 12259-61.

<sup>183</sup> PFB, para. 498.

<sup>184</sup> DFB, para. 891 *et seq.*

consequence as regards which group bears liability. As argued above, the suggestion by the Prosecution in this regard that most of the atrocities in Freetown were done by RUF elements following direct orders from Sam Bockarie marks the height of the Prosecution's duplicity before this court. As argued above, in the AFRC, these were crimes pinned on the AFRC, and now in this case, because the Prosecution must get Taylor; these same crimes are now being pinned on the RUF.

149. In raising this issue, the Defence is aware that we are dealing with different cases. That said; Trial Chamber should not however lose sight of the fact that we are dealing with the same Prosecution and the same set of events. Moreover, in this case, the Prosecution alleges a JCE between Taylor, the AFRC and the RUF. In those circumstances, it is a travesty of justice, to say the least, that the Prosecution should be allowed to manipulate its evidence in this way. Criminal prosecutions are not a must win game. People's lives depend on it!
150. With regards the allegation that the mayhem that characterized the Freetown invasion was a direct result of Sam Bockarie's order to Gullit:<sup>185</sup> First, the Defence notes that the Prosecution so soon forgets that according to its witness, TF1-360, Perry Kamara, the groups that stayed behind in Freetown to carry out Sam Bockarie's orders to burn and destroy and make the area fearful, even as Freetown fell and the AFRC were fleeing, were the Rambo Red Goat group and a portion of the Red Lion Battalion *led by "Striker"*.<sup>186</sup> Indeed, there seem to be no end to the Prosecution's duplicity.
151. Second, the Defence submits that there is no evidence of a superior/subordinate relationship between Sam Bockarie and Gullit that would have led Gullit to comply with Sam Bockarie's order. Neither, the alleged claims by Sam Bockarie that Gullit was 'his [subordinate] commander' or the evidence that Gullit referred to Bockarie as "Sir" or "Master", as alleged at paragraph 554, would suffice. Nor would the sweeping allegation that Gullit took direct orders from Sam Bockarie at paragraphs 555 *et seq.*
152. These allegations clearly ignore the Prosecutions own other evidence suggesting that Gullit did not consider Sam Bockarie as his superior. As highlighted above, there is evidence that when Gullit left Kailahun following his ill-treatment at the hands of the

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<sup>185</sup> PFB, paras 553 to 564.

<sup>186</sup> PFB, para. 546.

RUF, he switched allegiance and went to join Musa, Bockarie's long standing rival. On arrival, he told Musa of his disquiet at the way the RUF had treated him and sought Musa's counsel on the matter. Indeed, according to DAF, Gullit even insulted Sam Bockarie over the radio.<sup>187</sup> Furthermore, the Prosecution's own evidence clearly shows that Gullit refused to take any instructions from Bockarie, whom he rather treated as a competitor. When Bockarie, for instance, asked him to wait for the RUF before invading Freetown, Gullit refused and instead made a dash for Freetown to beat Bockarie to it. He only started collaborating with Bockarie after he came under severe pressure from the ECOMOG.

153. Against the background, it also a stretch of the evidence to suggest, as the Prosecution does, that the RUF welcomed the death of SAJ Musa at Benguema and Gullit's leadership takeover as he was more amenable to the RUF,<sup>188</sup> or that he was more willing to subordinate himself to the RUF.<sup>189</sup>
154. Concerning the allegations at paragraphs 565 to 569; and in particular the allegation at paragraph 567, that Issa Sesay was inconsistent on this issue therein, the Defence submits that the Prosecution fails to establish any inconsistency. On the evidence referred to in that paragraph, Issa Sesay only denied that *he had led* the attempt to retake Freetown. That is different from saying he denied that there was such an attempt altogether.

## VI. RESPONSE RE: MODES OF LIABILITY

### JCE

155. With respect to JCE, it is interesting to note that, yet again, there is another shift in the Prosecution's position on this issue.
156. The first notable point is that in its Final Brief, the Prosecution makes a marked shift from its original theory of a JCE that was conceived between Taylor and Sankoh in Libya to engage in a campaign of terror against the people of Sierra Leone, which JCE it was alleged, went on to subsist throughout the Indictment period. In the Final Brief, the Prosecution now asks the Trial Chamber to infer the existence of a JCE and some strategic

<sup>187</sup> TT, Dauda Aruna Fornie, TF1-274, 4 Dec 08, p. 21684-5.

<sup>188</sup> PFB, paras. 503-504.

<sup>189</sup> PFB, para. 553.

plan from the alleged cooperation between Taylor and the RUF, and the AFRC/RUF, whom it alleges all acted in “unison” for the most part of the Indictment period.<sup>190</sup>

157. Under this revised theory, the Prosecution argues that the entire war in Sierra Leone, as in Liberia, was masterminded by Charles Taylor, and that all the other players, including Foday Sankoh and other successive leaders of the RUF, as well as AFRC leaders, including Johnny Paul Koroma, were mere subordinates in a continuous campaign of terror that was orchestrated by Taylor in order to pillage the mineral resources of Sierra Leone, in particular diamonds.
158. In this regard, the Prosecution makes yet another marked shift on JCE and tries to hedge its bets by alleging that the common purpose of the JCE was a campaign of terror which involved the commission of all the crimes charged in the Indictment, while the ultimate objective of the JCE was to gain territorial control in order to pillage the country’s resources in particular diamonds.<sup>191</sup> Notably, count 11, pillage, however does not charge the pillage of diamonds or any other natural resources. Rather, the charge is limited to, and the Defence submits rightly so, the pillaging of “civilian property”.<sup>192</sup>
159. As the Prosecution now conveniently, albeit belatedly, tries to abandon its discredited “Libyan theory”, it places the undue burden of establishing its belatedly conceived JCE theory on the Trial Chamber. It requests the Trial Chamber to infer from the evidence that the entire war in Sierra Leone was masterminded by Charles Taylor; that all the successive RUF leaders, as well as the AFRC leaders, including Johnny Paul Koroma, were subordinates of Charles Taylor who willingly joined Taylor’s criminal enterprise of terror that was designed to facilitate the pillaging of Sierra Leone’s resources; that this campaign of terror, which in fact pre-dated the Indictment’s temporal jurisdiction, continued uninterrupted during the entire Indictment period.
160. Remarkably, while the Prosecution asks the Trial Chamber of this impossible task, it offers no submissions of whom, other than Taylor, the original parties who planned the JCE are, or when the JCE was actually conceived. The Prosecution quietly abandons the allegation that the original parties were Taylor and Sankoh and that the plan was made in Libya, and leaves it to the Trial Chamber’s to draw alternative inferences, simply because its original

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<sup>190</sup> PFB, para. 574

<sup>191</sup> PFB, para. 574-579.

<sup>192</sup> Indictment, paras 28-32.

case was weak on that point. This is what the Prosecution referred to in its Oral Response on 9 March 2011 as the “strategic plan”.

161. In line with the revised JCE allegation, the Prosecution also asks the Trial Chamber to infer that all the crimes charged in the Indictment were actually committed as part of a terror campaign orchestrated by Taylor, and that such crimes were committed in furtherance of that campaign. Put differently, the Prosecution asks the Trial Chamber to find that the only reasonable explanation available is that all the crimes that were committed by all the warring parties implicated in the Indictment during the Indictment period were committed with the primary purpose of spreading terror as part of the overall campaign of terror designed by Taylor.
162. Furthermore, that all the members of the RUF and the AFRC who committed the crimes charged in the Indictment committed those crimes in furtherance of the plan that was designed by Taylor to terrorize the civilian population of Sierra Leone for his personal enrichment. Moreover, that Taylor’s alleged acts in “unison” with the RUF and the AFRC/RUF were in furtherance of the alleged JCE. Closely related to this is the other notable point which the Prosecution also asks of the Trial Chamber to infer; that (whenever the JCE between Taylor and the RUF and the AFRC/RUF is found to have started), that JCE continued as a single, continuous and uninterrupted plan throughout the successive periods in the history of the Sierra Leonean conflict.
163. A number of observations must be made of the Prosecution’s latest stance on JCE. Firstly, the Defence reiterates its longstanding complaint in this matter that the Prosecution’s pleading of JCE defies all fundamental tenets of a fair trial. Notably, the Prosecution forsakes the fundamental principle of certainty in the pleading of an Indictment, which also goes to the question of notice. At a time when the Defence was under the impression that the question of the pleading of JCE in this matter had been clarified by both the Trial Chamber and the Appeals Chamber, the Prosecution yet again turns around and introduces yet another dimension to try and make its case fool proof.
164. Furthermore, the Prosecution forsakes the fundamental principle that he who alleges must prove and that in an adversarial system as ours, the Prosecution and only the Prosecution is the accusing party. Consequently, that it should know its case against the accused from the onset and should be able to back its allegations against the Accused with credible evidence

establishing the Accused's guilt beyond all reasonable doubt. In this case, the Prosecution having failed to prove a JCE involving Taylor and Sankoh in Libya as alleged in its accusatory instruments now seeks to abdicate that responsibility to the Trial Chamber, which it asks to infer a JCE involving terror from the myriad of allegations that characterize the case against the Accused. This, it is submitted, underlines the Defence's oft stated position that the whole notion of a JCE involving Taylor has always been a fishing expedition.

165. Secondly, the Defence submits that the multiple inferences that the Prosecution asks of the Trial Chamber to make in order to found the alleged JCE are not the only reasonable inferences that could be made in the circumstances. Indeed, given that terrorism is a specific intent crime, on the evidence before this Court of the crimes committed in Sierra Leone, it could not be said that the only reasonable inference that can be drawn is that the entire war was one continuous campaign of terror. Nor could it be the only reasonable inference that all the actors therein were primarily or solely acting in furtherance of that plan.
166. With respect to the *mens rea* element of the JCE and the requirement to establish a *shared intent*, the Prosecution repeatedly alleges that "*the Accused's intent was manifested directly and through his continued participation in the JCE with the knowledge of the ongoing crimes*".<sup>193</sup> In making this allegation, the Prosecution however does not say exactly when Taylor's alleged continued support should give rise to an inference of direct intent. Again, it leaves the burden on the court to infer.

#### Mens Rea under JCE III

167. Still on the question of intent, because the Prosecution itself has failed to show the existence of a common plan involving any crimes charged in the Indictment and would like the Trial Chamber to infer such plan from the evidence, it cannot as it does at paras. 593 and 594, ask the Trial Chamber to infer that if there was no direct intent, then there was a reasonable foreseeability that crimes charged in the Indictment would occur – *mens rea* under JCE III. This is because JCE III is dependent on the establishment of an existing plan involving a criminal purpose.

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<sup>193</sup> See for instance PFB, para. 588 and 590.



168. Likewise, the “evolving criminal means” argument in para. 591 and 592 of the PFB does assist the Prosecution in this case to establish intent on the part of the Accused and other members of the alleged JCE. The evolving criminal means theory applies to a situation where there is an expanded JCE. In such cases, the *mens rea* with respect to the expanded aspects of the JCE can be inferred *inter alia*, from the Accused’s failure to stop ongoing crimes within the Accused’s knowledge. This is however different from this case, where the Prosecution is arguing that the Accused’s failure to act should import a retrospective *mens rea* covering all the crimes committed going backwards to an indeterminate time in the Indictment.
169. With respect to the participation of the other members of the JCE, namely RUF and AFRC commanders, it is interesting that the Prosecution implicates them in the alleged JCE by virtue of them being a member of either the RUF or the AFRC. As argued in our Final Brief,<sup>194</sup> the Prosecution suggests that RUF commanders joined the JCE in 1990, which coincided with their training at Naama; effectively suggesting that the mere fact that they joined the RUF, whether voluntarily or by force (as the Prosecution concedes in its Final Brief) they thus *ipso facto* became part of a criminal enterprise and from then on, only acted in its furtherance. Likewise, the alleged entry of the AFRC commanders into the alleged JCE on 25 May 1997 coincides with the Junta coup, thus also suggesting that by inviting the RUF to join the Junta government, the AFRC effectively joined into a subsisting JCE. Again this issue is adequately dealt with in our Final Brief,<sup>195</sup> where we argue that the Prosecution is trying to bring back the discredited notion of criminal organizations, where if an organization was outlawed, one became guilty simply by virtue of being a member.
170. The Defence also takes this opportunity to apprise the Trial Chamber of the evolving jurisprudence on the notion of JCE in the context of the international crime of terrorism/acts of terrorism, which is directly relevant to the present case. The Defence refers to the recent Special Tribunal for Lebanon (“STL”), “Appeals Chamber Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide,

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<sup>194</sup> DFB, para. 869.

<sup>195</sup> DFB, para. 849.

Perpetration, Cumulative Charging”,<sup>196</sup> which was issued after the parties had already filed their Final Trial Briefs. Based on this new jurisprudence, the Defence makes three directly relevant points.

171. First, the Defence submits that the STL Decision provides legal authority to the submissions at paragraph 733 of the Defence Final Trial Brief that it is an oxymoron to allege JCE I and JCE III concurrently where the alleged crime relates to the specific intent crime of terror. The STL Appeals Chamber has attempted to try and reign in the run away ambit of JCE by departing from the traditional ICTY and ICTR practice where cumulative charging and convictions under JCE I and JCE III are permissible in relation to specific intent crimes such as genocide.<sup>197</sup> Rather, the learned judges of the Appeals Chamber opined that as terrorism is a specific intent crime, it would be inappropriate to charge it under JCE III, which is reliant on the advertent reckless (*dolus eventualis*) standard.<sup>198</sup> Rather than charge the so-called secondary offender under JCE III, “the better approach”, the Appeals Chamber opined, would be to treat such an offender as an aider and abetter than “pin on him the stigma of full perpetratorship”.<sup>199</sup>
172. The second issue that the Defence raises is the finding by the learned judges that as the legal definition of the crime of terrorism continually evolves (based on the Court’s extensive analysis of state practice and the writing of scholars and other legal authorities), it is now established in customary international law that the definition of acts of terrorism consists of the three critical elements: (i) the perpetration of a criminal act (such as murder, kidnapping, hostage-taking, arson, and so on), or threatening such an act; (ii) the intent to spread fear among the population (which would generally entail the creation of public danger) or *directly or indirectly coerce a national or international authority* to take some action, or to refrain from taking it; (iii) *when the act involves a transnational element*.<sup>200</sup>
173. The second and third elements raise interesting questions in this case where: i) the main perpetrators of the alleged acts of terror; members of the RUF and the AFRC, were largely Sierra Leoneans who were terrorising their fellow countrymen; and ii) where the alleged

<sup>196</sup> Case No. STL-11-01/I/AC/R176bis, Appeals Chamber Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging, 16 Feb. 2011. (“the STL decision”), available at [http://www.stl-tsl.org/x/file/TheRegistry/Library/CaseFiles/chambers/20110216\\_STL-](http://www.stl-tsl.org/x/file/TheRegistry/Library/CaseFiles/chambers/20110216_STL-)

<sup>197</sup> STL Decision, para. 249.

<sup>198</sup> STL Decision, paras 248 and 249.

<sup>199</sup> STL Decision, para. 249.

<sup>200</sup> STL Decision, para. 85.

objective behind the campaign of terror was to gain territorial control in order to pillage the mineral resources of Sierra Leone, in particular diamonds. These two issues, it is submitted, take the acts charged as terrorism in this case outside the ambit of the international customary law definition of the crime of terrorism espoused by the Appeals Chamber above.

174. The third point that the Defence makes, which is also relevant to the present case, is the finding by the Appeals Chamber that while there is an evolving practice in international tribunals of charging the crime of terrorism in times of war, the crime of terrorism as it has currently crystallised under international customary law only relates to times of peace.<sup>201</sup>
175. This decision, in particular the aspects highlight above, should be capable of persuading the Trial Chamber to review its conception of the crime of terrorism in this case, especially in relation to JCE III, and dismiss the allegation.

#### Planning

176. Commentary on aspects of planning cited in the PFB, at para. 611, are covered already in the Defence Final Brief as follows:

“Taylor forcibly conscripted or recruited the vanguards of the RUF and trained them at Camp Naama.” – Not directly discussed, although it is argued that CT was not aware of training at Camp Naama; paras. 805-810

“Taylor organized and designed the invasion of Sierra Leone, and his experienced NPFL forces led the fighting in the initial phase of the conflict.” - Discussed in paras. 780-795, 811-818, 1356-1358 of the DFB

“Taylor designed strategy for the AFRC Junta, the RUF and the AFRC forces, including selecting strategic areas to attack and control, including Koindu and the capital Freetown, and organizing the delivery of arms and ammunition needed to carry out the attacks.” - Discussed in paras. 1116-1120, 1344-1355

“Taylor planned and organized the theft of Sierra Leone’s diamond resources from their rightful owners through forced mining and their delivery through Monrovia, either to Taylor personally or his nominees.” - Discussed in paras. 1203-1208 (but the section on diamonds in its entirety should be considered) of the DFB

<sup>201</sup> STL Decision, para. 107 *et seq.* Also see para. 85 *et seq.*

“Taylor arranged for Ibrahim Bah to pass through Liberia’s closed borders in with equipment that allowed for more efficient mechanized mining.” - Discussed in para. 20 of the PFB. However, the footnote (FN68), does not identify Taylor as the one who arranged that Bah would be able to cross the Liberian/Sierra Leone border. In his testimony Sesay only referred to Liberian security forces and not to Taylor in particular. Thus, yet again the Prosecution wrongly interpreted the evidence before it in order to implicate Taylor.

“The diamonds stolen from Sierra Leone were used both to finance the rebel’s military operations and to personally benefit Taylor.” - Discussed in para. 1206 (but the section on diamonds in its entirety should be considered) of the DFB

“Taylor’s contributions through planning included promoting the alliance between the RUF and the AFRC forces and efforts to keep them working together.” - Discussed in paras. 848, 1248 of the DFB

“[T]he evidence from key Defence witnesses shows that Taylor organized and designed the rebels international public relations campaign and planned and promoted their contacts with other sources of outside support.” - Discussed in para. 849 (although there is no reference to Defence witness testimony) of the DFB

177. Allegations at para. 612 are discussed in paras. 783, 879, 1248, 1254, 1281 of the DFB.

178. Allegations at para. 613: “In all of Taylor’s planning for the war in Sierra Leone, he assisted the rebels with full awareness that they used terror as a tactic and were routinely committing the crimes charged in this indictment.” are discussed in paras. 781, 799-804 of the DFB

### Ordering

179. Commentary on aspects of ordering cited in the PFB, at para. 608, are covered already in the Defence Final Brief as follows:

“[t]he evidence had shown that Taylor, as the person who created the RUF military force and as its principle benefactor throughout the indictment period, issued explicit and implicit orders, instructions, and directions to the RUF and the AFRC.” – Discussed in II.B of the Prosecution Final Brief; paras. 790, 794, 1236-1245 of the DFB

“Taylor gave explicit instructions to attack and hold the diamond mining regions of Sierra Leone.” – Discussed in II.B of the PFB (for instance paras. 150-157); paras. 782, 796-799, 942-944, 1214-1217, 1276-1279 of the DFB

“[h]e gave instructions and made arrangements for the groups to launch the December 1998 offensive culminating in the attack on Freetown in January 1999.” – Discussed in II.B of the PFB (for instance paras. 158-174); paras 882- 928, 1280-1290 of the DFB

“[h]e gave explicit instructions to the RUF to evade the disarmament provisions of the Abidjan and Lomé peace agreements.” – Discussed in II.B of the PFB (for instance paras. 182-184); paras. 948, 970, 973, 1322 of the DFB

### Instigating

180. The *mens rea* required to establish a charge of instigating a statutory crime is proof that the Accused directly or indirectly intended that the crime in question be committed and that he intended to provoke or induce the commission of the crime, or was aware of the substantial likelihood that the commission of the crime would be a probable consequence of his acts.<sup>202</sup>

181. Allegations at para. 619 are discussed in the Defence Final Brief as follows:

“In his meetings and communications with AFRC/RUF leaders such a Sam Bockarie, Taylor induced the rebels to continue their attacks and encouraged criminal conduct.” – Discussed in paras. 1380-1381 of the DFB

“Taylor encouraged Sam Bockarie to conduct the December 1998 offensive so as to make the operation ‘fearful’.” – Discussed in paras. 882, 1283 of the DFB (Although there is no specific reference to ‘fearful’)

“From the time he created the RUF military force in Liberia, Taylor induced the rebels to model their ruthless terror campaign on the example set by his own NPFL forces.” - Discussed in paras. 781, 799-804 of the DFB

### Command Responsibility

182. Issues relating to command responsibility are for the most part adequately addressed in the Defence Final Brief under that heading. However, it is important to note a few additional weaknesses in the Prosecution’s theory, as argued in the PFB.

<sup>202</sup> *Nahimana et al v Prosecutor*, No. ICTR-99-52-A, *Judgement* (28 November 2007) at para. 480; *Prosecutor v Muvunyi*, No. ICTR-2000-55A-T, *Judgement and Sentence* (12 September 2006) at para. 465; *Prosecutor v Setako*, No. ICTR-04-81-T, *Judgement* (25 February 2010) at para. 447; *Nchamihigo v. Prosecutor*, No. ICTR-2001-63-A, *Judgement* (18 March 2010) at para. 61

183. Firstly, instead of supporting arguments with transcript references and admitted exhibits, the majority of the most damning statements are footnoted by directing us to a completely different section of the brief – without providing page / paragraph numbers of where to find the supporting evidence.<sup>203</sup>
184. Secondly, arguments which go to the Accused’s superior responsibility often have long footnotes accompanying them, however, these footnotes do not support the argument with evidence against the Accused; instead they cite legal decisions which relate to matters of law covered elsewhere in the brief.<sup>204</sup>
185. Thirdly, the footnotes are often imprecise. They string site transcript references and then write a paragraph within the footnotes; without making it clear where in the evidence this information came from.<sup>205</sup>

## VII. HIGHLIGHTS OF MISREPRESENTATIONS IN THE PFB

186. The following list cites Prosecution references which grossly distorted, purposefully misstated and dishonestly represented statements of evidence in the body of its final brief. This practice can be identified throughout the brief wherever there are inconvenient truths which the Prosecution wishes to distract from. These examples will alert the Trial Chamber to the drastically unreliable nature of the Prosecution final brief.

- (1) “Taylor arranged for Ibrahim Bah to pass through Liberia’s closed borders in with equipment that allowed for more efficient mechanized mining.”<sup>206</sup>

187. However, when checking the footnote (footnote 68), it nowhere identified Taylor as the one who arranged for Bah to cross the Liberian/Sierra Leone border. In his testimony, Sesay only referred to Liberian security forces and not to Taylor in particular. The Prosecution wrongly interpreted the evidence in order to implicate Taylor.

- (2) “Yes, I think the war in Sierra Leone is a war for diamonds.”<sup>207</sup>

<sup>203</sup> PFB, footnotes: 1707, 1717, 1718, 1719, 1728, 1730, 1739, 1740, 1752, 1767 etc.

<sup>204</sup> PFB footnotes: 1742, 1743, 1754, 1770, 1772.

<sup>205</sup> PFB footnotes: 1735, 1737, 1738.

<sup>206</sup> PFB, para. 20.

188. Here the Prosecution claims to quote an interview by Taylor to imply that Taylor confirmed his involvement in the war for diamonds. The Prosecution are careful to omit the rest of Taylor's comment: "But not because Liberia wants those diamonds. We already have diamonds. This war is taking place because the British want those diamonds."<sup>208</sup>

(3) "Further, even in the months of the invasion in 1991, crimes against civilians in Sierra Leone by the invading forces were brought to Taylor's attention, whose reaction was to advise others to "get used to it," "Guerrilla war... is destruction... You are not eating bread and butter, you are fighting."<sup>209</sup>

189. These are the statements Moses Blah claimed Taylor spoke to him. The Prosecution, in its footnote, stated that, "this passage of Blah's testimony was read to Taylor and **he did not dispute making such a statement**, only disagreeing with the date" (*Emphasis added*),<sup>210</sup> this is manifestly untrue. When Taylor was asked about the content of the conversation as recalled by Blah, he stated the following:

"No, no. I talk to him about Foday Sankoh's complaint and what I said: Look, we have got a lot of problems in Liberia. We have not won the war. And I am not in - we are there on security purposes. I am not there to fight Foday Sankoh's war. If he continues these things, I am just going to withdraw the men, okay, from there because I am not - we are not there to fight Foday Sankoh's war. We are there for security purposes, to fight ULIMO to keep them from coming into Liberia. So if this continues, we have to solve the problem by pulling our men out of Sierra Leone. Before I can take this decision, this clash occurs with this fight between the men and then I finally do that. That's why I am saying I disagree with his timeline."<sup>211</sup>

(4) "As the evidence demonstrates, once fully embodied with power and authority over the AFRC/RUF forces, **Bockarie would listen to, or take orders from no one but the Accused.**"<sup>212</sup> (*Emphasis added*)

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<sup>207</sup> PFB, para. 342, quoting from Exhibit P-33B.

<sup>208</sup> Exhibit P-33B.

<sup>209</sup> PFB, para. 401.

<sup>210</sup> PFB, footnote 1222, referencing TT, Taylor, 3 Nov 09, p. 31044-5.

<sup>211</sup> TT, Taylor, 3 Nov 09, p. 31044-5.

<sup>212</sup> PFB, para. 635, with reference to Exhibit P-430B.

190. In support of this, in footnote 1731, the Prosecution relied upon Exhibit P-430B, stating that Sam Bockarie's, "loyalty to the Accused even bordered on intransigence. Pre-Jan 6 invasion threat: 'I will kill and kill....only....will tell me to stop.'"<sup>213</sup> Compare these statements with Sam Bockarie's words as they appear in Exhibit P-430B: "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.**"<sup>214</sup> (*Emphasis added*). The Prosecution was blatantly dishonourable in its use of this quote; it twisted evidence which actually supports Taylor's Defence that Bockarie was answering to Foday Sankoh and not to Taylor.

(5) "by purposely not paying his fighters, he created an environment conducive to such crimes".<sup>215</sup>

191. Here the Prosecution completely distorted Taylor's evidence. Taylor was testifying about a civilian police unit, rather than "fighters" and certainly never stated that he "purposely" denied payment to create "an environment conducive to such crimes". On the contrary, he only explained how the civilian police unit was looked after:

"[T]his organisation didn't receive - have something like a salary structure in the western sense of the word. People received subsistence. They were given food. They were given medical attention. We were running a revolution. We didn't have the kind of money to sustain what you're talking about, no."<sup>216</sup>

(6) "SBUs used by Bockarie to guard civilians forced to mine for diamonds killed or beat those civilians if they were suspected of stealing diamonds."<sup>217</sup>

192. The Prosecution cherry-picked from the evidence of DCT-146 and omitted unfavourable parts to misrepresent the evidence in their favour. Whilst agreeing that this happened, DCT-146 was keen to emphasise that, "They might have killed them, but Mr Taylor is not

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<sup>213</sup> PFB, footnote 1731, with reference to Exhibit P-430B.

<sup>214</sup> Exhibit P-430B.

<sup>215</sup> PFB, para. 660, quoting TT, CT, 01 Dec 09, p. 32746.

<sup>216</sup> TT, CT, 01 Dec 09, p. 32746.

<sup>217</sup> PFB, para. 660, referencing the evidence of DCT-146, TT, DCT-146, 13 Apr, p. 38773.



responsible for that. It was during Sam Bockarie's administration. It is not Mr Taylor's responsibility."<sup>218</sup>

(7) Misrepresentation of JCE.

193. The Prosecution attempted to cloud the issue of liability under JCE I by misrepresenting the RUF Appeal Judgement, para. 655, in the body of its brief, as follows:

As regards the *mens rea* of the crime of terror, the Appeals Chamber has stated that when considering the crime in relation to the Accused's liability for JCE1, the Trial Chamber need not make a determination of the *mens rea* of the perpetrator of the act or threat of violence, rather the Trial Chamber need only be satisfied that **a member of the joint criminal enterprise**, vis-à-vis whom the act is imputed has the requisite *mens rea* for the offence.<sup>219</sup> (*Emphasis added*)

194. This suggests that as long as one member of the joint criminal enterprise, vis-à-vis whom the act is imputed, intends the act(s) of the perpetrator, that sufficient to establish guilt of the Accused. This is quite clearly not what the RUF Appeal Chamber intended by paragraph 655. In its footnote, the Prosecution correctly quotes the RUF Appeal Judgement as stating that:

[...] under JCE I liability, the Trial Chamber was not required to find, as an element of the liability of JCE members, that non-members who carried out the *actus reus* of the crime had the requisite *mens rea* for the crime of acts of terrorism. Rather, in addition to finding that the members of the JCE **shared the intent** to commit the crime and finding that the acts of non-members who carried out the *actus reus* of crimes could be imputed to a member of the JCE, the Trial Chamber was only required to find that the acts of the non-members satisfied the *actus reus* of the offence.<sup>220</sup> (*Emphasis added*)

195. Correctly interpreted, this means that once the requisite act has been committed by the perpetrator, the *mens rea* of the perpetrator is neither here nor there; what is required is the **shared intent of the JCE members** plus the act of the perpetrator. It is no coincidence that the Prosecution's interpretation in paragraph 706 incorrectly lowered the threshold for convicting an Accused through JCE I.

<sup>218</sup> TT, DCT-146, 13 Apr, p. 38773.

<sup>219</sup> PFB, para. 706, referencing the RUF Appeal Judgement, para. 655.

<sup>220</sup> PFB, footnote 1954, referencing the RUF Appeal Judgement, para. 655.

(8) “The importance of terror as a tactic can be traced to Liberia where it was instilled in those who trained and / or fought there, those receptive to this tactic because, as the Accused was aware, many or most of the fighters were seeking revenge.”<sup>221</sup>

196. Here the Prosecution have been dishonestly selective with Taylor’s testimony. While Taylor agreed that some Gio and Mano wanted revenge for the crimes committed against them, including against Krahn and Mandingos, he reiterated that he “**made sure that the NPFL as an organisation did not adopt that as its form**”. His “**job was to have a very firm hand to discourage anything of that sort**”, and he did. (*Emphasis added*). He states that “some people targeted people and those people that were found out were also discouraged by the firm hand that we executed”.<sup>222</sup>

(9) “...the NPFL displayed body parts such as heads and intestines on car bumpers and at checkpoints to create fear. The Accused knew about these checkpoints as he drove through them.”<sup>223</sup>

197. Using Taylor’s testimony to suggest that he drove through NPFL checkpoints displaying heads and intestines is dishonest. Taylor actually stated that “It’s a blatant diabolical lie” that he, “or anyone because of the discipline” they had, “would drive by a human head and intestine.” Instead, Taylor stated he drove past skulls; “enemy soldiers had been killed and skulls were used”; “Skulls were used as symbols of death”; and “Symbols as skulls are used now today in western circles, at universities and other things”.<sup>224</sup>

(10) RUF Recruits Pre-Indictment.

<sup>221</sup> PFB, para. 714, referencing TT, Charles Taylor, 19 November 2009, pp. 32242-51.

<sup>222</sup> TT, Charles Taylor, 19 November 2009, pp. 32242-51.

<sup>223</sup> PFB, para. 714, referencing TT, Charles Taylor, 16 July 2009 p. 24622.

<sup>224</sup> TT, Charles Taylor, 16 July 2009 p. 24622.

198. The Prosecution asserted that, “The training received by RUF recruits during the pre-indictment period in Liberia” had its focus upon “the commission of crimes against civilians.”<sup>225</sup> Once again, the Prosecution presented the evidence dishonestly, omitting significant contradictory statements. While Exhibit P-277 does discuss Isaac Mongor teaching recruits crimes against civilians, the Prosecution omits the following key detail:

This persistent ideology of Guerrilla Professor Isaac made most of the Sierra Leonean recruits uncomfortable, who brought the issue to Cpl. Sankoh's attention. The recruits argued why a 'Freedom fighter' should be told to kill the very people (armless civilians) he claimed to come and free. **Cpl. Sankoh gave C.O. Isaac some advice against the dangers of imparting such knowledge to future arm fighters. But his advice created little or no impact on C.O. Isaac who continued teaching that ideology at will.**<sup>226</sup>  
(*Emphasis added*)

199. The Defence dealt with the fact that RUF training in Liberia did not focus upon crimes against civilians at paragraph 406 of its final brief.<sup>227</sup>

(11) “19 November: RUF commander Sam “Maskita” Bockarie [said] ... **“I am a ruthless commander,” ... 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.**”<sup>228</sup>

200. As discussed above (in bullet point 5), this quotation is inaccurate and grossly distorted by the removal of the crucial part of the quotation, “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**” (*Emphasis added*).<sup>229</sup> The Defence submitted that having replaced SAJ Musa, it was Gullit who attacked Freetown with the AFRC on 6 January 1999, independently of Sam Bockarie and the RUF. This AFRC group no longer took instructions from Bockarie.<sup>230</sup>

<sup>225</sup> PFB, para. 715, referencing Exhibit P-277 pp. 00018183-4.

<sup>226</sup> Exhibit P-277.

<sup>227</sup> DFB, para. 406, referencing TT, TF1-371, 24 Jan 08, p. 2203. Also see TT, TF1-168, 23 Jan 09, p. 23395-6; the RUF's method was to give good treatment to the civilians because they needed their support and TT, TF1-168, 23 Jan 09, p. 23399; the RUF slogan was arms to the people, power to the people and wealth to the people.

<sup>228</sup> PFB, para. 722, quoting from Exhibit P-430B, para 1.

<sup>229</sup> Exhibit P-430B, para 1.

<sup>230</sup> DFB, para. 610. Also see Adjudicated Fact 12, in which it is established that after Bockarie announced over the BBC radio that RUF troops were advancing on Freetown, SAJ Musa contacted Bockarie, insulted him and stated he had no right to claim that the troops approaching Freetown were RUF troops.

- (12) “As observed by the expert witness, Dr. Ellis, enslavement was a prevalent tactic among NPFL forces in Liberia and this tactic was brought from Liberia to Sierra Leone.”<sup>231</sup>
201. The Prosecution misconstrued the evidence, in exhibit P-31, Dr. Ellis clearly stated that enslavement was a practice of the NPFL *and other armed factions* in the Liberian civil war: “All the various unofficial militias in the Liberian war made use of impressed labour - not only the NPFL. In light of these observations, it is not safe to infer that the use of forced labourers by the RUF is conclusive evidence that NPFL influence was the cause.”<sup>232</sup> In fact, during Dr. Ellis’ cross-examination, he agreed that forced labour was very common within many parts of Africa and confirmed that “in both countries [Sierra Leone and Liberia] there were regulations on that subject”.<sup>233</sup>
- (13) “Taylor characterized the ‘Sierra Leonean matter’ as a ‘monkey on my back.’ The evidence demonstrates that **he would do anything to shake that ‘monkey,’ rather than have his control of it exposed.**”<sup>234</sup> (*Emphasis added*).
202. Once more, the Prosecution selectively used phrases from Taylor’s testimony to distort its meaning, whilst avoiding the larger context and relevant part of the quote. In this case, the full comment was: “It’s like a monkey on my back, it can’t go away, **so my best option is to keep pushing for peace.**”<sup>235</sup> (*Emphasis added*).
- (14) “While CT in his own testimony denied Prosecution evidence that Musa Cisse was operating a radio from his house for the RUF, **saying it never happened...**” (*Emphasis added*).<sup>236</sup>

<sup>231</sup> PTB, para 1070, referencing P-31.

<sup>232</sup> Exhibit P-31, p. 0026619.

<sup>233</sup> TT, Stephen Ellis, 17 January 2008, p. 1500.

<sup>234</sup> PFB, para 1174, quoting TT, Charles Taylor, 17 Aug 09, p. 26910.

<sup>235</sup> TT, Charles Taylor, 17 Aug 09, p. 26910.

<sup>236</sup> PTB, para. 1234, quoting TT, Charles Taylor, 23 Sep 09, p. 29528.

203. This amounts to a gross misstatement of Mr. Taylor's testimony, in which he said quite the opposite: "At [Cisse's] house in Danane. He had a radio. Now if [the RUF] went in and used the radio I don't know. **It's possible.** I can't say."<sup>237</sup> (*Emphasis added*).

(15) "[redacted] admitted he had himself committed what any civilized person would describe as an act of terror."<sup>238</sup>

204. The testimony put forward to support this statement collapses under proper scrutiny. In fact, [redacted]  
[redacted]  
[redacted]  
[redacted] and did not describe it as an act of terror or that any civilized person would describe it as an act of terror.<sup>239</sup>

(16) "...the Government of Liberia clarified that the deployment [of UN observers at the Liberian-Sierra Leonean border] was **unnecessary.**"<sup>240</sup>

205. Here the Prosecution has twisted the content of the exhibit to make it unfavourable. The exhibit actually stated:

...[the Liberian Foreign Minister] provided [Downes-Thomas] with clarification to the effect that the GOL was not desperately inviting UN monitors/milobs or observers to Liberia... the GOL's request [for UN deployment] was made simply to assist the UN and and the international community to engage in their own verification exercise [that the allegations against Liberia were false]. The Minister concluded by saying that it was **up to the UN to decide whether it was necessary** for it to take advantage of the opportunity offered by the request.<sup>241</sup> (*Emphasis added*)

206. To conclude, whilst it is not the responsibility of the Prosecution to highlight the weaknesses in its case or the strengths in the Defence case, the Prosecution does bear the responsibility to state the evidence accurately, honestly and reliably. As delineated above,

<sup>237</sup> TT, Charles Taylor, 23 Sep 09, p. 29528.

<sup>238</sup> PFB, para. 1268, quoting from TT, DCT-125, 19 Mar 10, p. 37681-2.

<sup>239</sup> TT, DCT-125, 19 Mar 10, p. 37681-2

<sup>240</sup> PFB, para. 1200, referencing Exhibit D-239 C, para. 1.


<sup>241</sup> Exhibit D-239 C, para. 1.

this has not been the case for the Prosecution's final brief, and the Defence would entreat the Trial Chamber to carefully check the reliability of every assertion contained within it.

### VIII. CONCLUSION

207. From the foregoing, it is clear that the Prosecution case against the Mr. Taylor, as argued in the Prosecution Final Trial Brief and in light of all the evidence available to the Trial Chamber cannot sustain a finding of guilt beyond a reasonable doubt on any of the crimes charged, pursuant to any mode of liability. Consequently, this Trial Chamber must acquit the Accused.

Respectfully Submitted,



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**Courtenay Griffiths, Q.C.**  
**Lead Counsel for Charles G. Taylor**  
Dated this 20<sup>th</sup> Day of May 2011,  
The Hague, The Netherlands

## Table of Authorities

### SCSL Cases

*Prosecutor v. Taylor*, SCSL-03-01-T-1189, Confidential Prosecution Final Trial Brief, 4 February 2011 (the revised and refined version as contained in the Confidential Annex thereto)

*Prosecutor v. Taylor*, SCSL-03-01-T-1105, Order Setting a Date for Closure of the Defence Case and Dates for Filing Final Trial Briefs and the Presentation of Closing Arguments, 22 October 2010

### ICTR Cases

*Prosecutor v. Bagosora, Kabiligi, Ntabakuze and Nsengiyumva*, ICTR-98-41-AR93 & ICTR-98-41-AR93.2, Decision on Prosecutor's Interlocutory Appeals regarding Exclusion of Evidence, 19 December 2003

<http://www.unictr.org/Portals/0/Case%5CEnglish%5CBagosora%5CTrail%20and%20Appeal%5C191203.pdf>

*Prosecutor v. Mpambara*, ICTR-01-65-T, Judgement, 12 September 2006

<http://www.unictr.org/Portals/0/Case%5CEnglish%5CMpambara%5Cjudgement%5C120906.pdf>

*Prosecutor v. Nahimana et al*, ICTR-99-52-A, Judgement, 28 November 2007

[http://www.unictr.org/Portals/0/Case%5CEnglish%5CNahimana%5Cdecisions%5C071128\\_judgment.pdf](http://www.unictr.org/Portals/0/Case%5CEnglish%5CNahimana%5Cdecisions%5C071128_judgment.pdf)

*Prosecutor v. Nchamihigo*, ICTR-01-63-A, Judgement, 18 March 2010

<http://www.unictr.org/Portals/0/Case%5CEnglish%5CNchamihigo%5C100318.pdf>

*Prosecutor v. Nchamihigo*, ICTR-01-63-T, Judgement and Sentence, 12 November 2008

[http://www.unictr.org/Portals/0/Case%5CEnglish%5CNchamihigo%5C081112\\_judgment&sentence.pdf](http://www.unictr.org/Portals/0/Case%5CEnglish%5CNchamihigo%5C081112_judgment&sentence.pdf)

*Prosecutor v. Nshogoza*, ICTR-07-91-T, Decision on Prosecutor's Motion to Admit Evidence of a Consistent Pattern of Conduct, 20 February 2009

<http://www.unictr.org/Portals/0/Case%5CEnglish%5CNSHOGOZA%20L%C3%A9onidas%5Ctrial%20chamber%5C090220.pdf>

*Prosecutor v. Ntagerura et al*, ICTR-99-46-A, Judgement, 7 July 2006

<http://www.unictr.org/Portals/0/Case%5CEnglish%5CNtagerura%5Cjudgement%5C060707.pdf>

*Prosecutor v. Ntakirutimana*, ICTR-96-10-A, Judgement, 13 December 2004

<http://www.unictr.org/Portals/0/Case%5CEnglish%5CNtakirutimanaE%5Cdecisions%5Cindex.pdf>

*Prosecutor v. Setako*, ICTR-04-81-T, Judgement, 25 February 2010

<http://www.unictr.org/Portals/0/Case%5CEnglish%5CSetako%5Cjudgement%5C100225.pdf>

### **ICTY Cases**

*Prosecutor v. Blagojevic & Jokic*, IT-02-60-T, Judgement, 17 January 2005

[http://www.icty.org/x/cases/blagojevic\\_jokic/tjug/en/bla-050117e.pdf](http://www.icty.org/x/cases/blagojevic_jokic/tjug/en/bla-050117e.pdf)

*Prosecutor v. Halilovic*, IT-01-48-T, Judgement, 16 November 2005

<http://www.icty.org/x/cases/halilovic/tjug/en/tcj051116e.pdf>

*Prosecutor v. Kupreskic et al*, IT-95-16-A, Judgement, 23 October 2001

<http://www.icty.org/x/cases/kupreskic/acjug/en/kup-aj011023e.pdf>

*Prosecutor v. Kupreskic et al*, IT-95-16-T, Decision on Evidence of Good Character of the Accused and the Defence of Tu Quoque, 17 February 1999

<http://www.icty.org/x/cases/kupreskic/tdec/en/90217MS25407.htm>

*Prosecutor v. Limaj et al.*, IT-03-66-A, Judgement, 27 September 2007

<http://www.icty.org/x/cases/limaj/acjug/en/Lima-Jug-070927.pdf>

*Prosecutor v. Mrksic & Sljivancanin*, IT-95-13/1-A, Judgement, 5 May 2009

<http://www.icty.org/x/cases/mrksic/acjug/en/090505.pdf>

### **STL Cases**

Case No. STL-11-01/I/AC/R176bis, Appeals Chamber Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging, 16 February 2011

[http://www.stl-tsl.org/x/file/TheRegistry/Library/CaseFiles/chambers/20110216\\_STL-11-01\\_R176bis\\_F0010\\_AC\\_Interlocutory\\_Decision\\_Filed\\_EN.pdf](http://www.stl-tsl.org/x/file/TheRegistry/Library/CaseFiles/chambers/20110216_STL-11-01_R176bis_F0010_AC_Interlocutory_Decision_Filed_EN.pdf)